Taxation Laws Amendment Act (No. 5) 2003

No. 142, 2003

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

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

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Taxation Laws Amendment Act (No. 5) 2003

No. 142, 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 *Taxation Laws Amendment Act (No. 5) 2003*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedule 1	The day on which this Act receives the Royal Assent	17 December 2003
3. Schedule 2	The day on which this Act receives the Royal Assent	17 December 2003
4. Schedule 3, Part 1	Immediately after the commencement of Part 4 of Schedule 2 to this Act	
5. Schedule 3, Part 2	The day on which this Act receives the Royal Assent	17 December 2003
6. Schedule 4	The day on which this Act receives the Royal Assent	17 December 2003
7. Schedule 5	The day on which this Act receives the Royal Assent	17 December 2003
8. Schedule 6, Part 1	The day on which this Act receives the Royal Assent	17 December 2003
9. Schedule 6, Part 2	Immediately after the commencement of Division 2 of Part 3 of the *Taxation Laws Amendment (Superannuation) Act 1993*	
10. Schedule 7	The day on which this Act receives the Royal Assent	17 December 2003
11. Schedule 8, items 1 to 22	The day on which this Act receives the Royal Assent	17 December 2003

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
12. Schedule 8, item 23	The later of: (a) immediately after the commencement of Schedule 24 to the *New Business Tax System (Consolidation and Other Measures) Act 2003*; and (b) the day on which this Act receives the Royal Assent	
13. Schedule 8, item 24	The day on which this Act receives the Royal Assent	17 December 2003

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

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

3 Schedule(s)

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

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Thin Capitalisation: amendments taking effect on 1 July 2001

Part 1—Application of amendments

1 Application

The amendments made by this Schedule apply in relation to an income year that begins on or after 1 July 2001.

Part 2—Exemption of certain special purpose entities

Income Tax Assessment Act 1997

2 After section 820-37

Insert:

820-39 Exemption of certain special purpose entities

(1) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any *debt deduction of an entity for an income year if the entity meets the conditions in subsection (3) throughout the income year.

(2) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any *debt deduction of an entity for an income year that is an amount incurred by the entity during a part of that year, if the entity meets the conditions in subsection (3) throughout that part.

(3) The conditions are:

(a) the entity is one established for the purposes of managing some or all of the economic risk associated with assets, liabilities or investments (whether the entity assumes the risk from another entity or creates the risk itself); and

(b) the total value of *debt interests in the entity is at least 50% of the total value of the entity's assets; and

(c) the entity is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances.

(4) The condition in paragraph (3)(c) can be met without the rating agency determining that the entity meets those criteria.

Note 1: While an entity meets the conditions in subsection (3), it is treated for the purposes of this Division as *not* being:

- in a resident TC group (see section 820-552); or
- a member of a consolidated group or MEC group (see section 820-584).

Note 2: An entity that does not qualify for the exemption in this section may still be a securitisation vehicle under subsection 820-942(2), in which

case the value of its securitised assets will count towards its zero-capital amount under Subdivision 820-K.

Multi-tier special purpose entities

(5) An entity is taken to meet the conditions in subsection (3) throughout a period that is all or part of an income year, if the entity is one of 2 or more entities that together satisfy the condition that, assuming:

(a) each of the entities had been a division or part of the same entity (the ***notional entity***), rather than a separate entity, throughout that period; and

(b) the notional entity had consisted only of those divisions and parts throughout that period;

the notional entity would meet the conditions in subsection (3) throughout that period.

3 After subsection 820-550

Insert:

820-552 Treatment of exempt special purpose entities

(1) The fact that an entity meets the conditions in subsection 820-39(3) (about insolvency-remote special purpose entities established to manage economic risk) throughout a period ending at the end of an income year does *not* prevent the entity from being in a *resident TC group for that income year.

(2) However, the entity is treated as *not* being in that group for the purposes of sections 820-550, 820-555, 820-565 and 820-575.

(3) While an entity meets the conditions in subsection 820-39(3), it is treated for the purposes of this Division (except this section) as *not* being in a *resident TC group that it is in.

Note: This section has the effect that the circumstances of the entity are not taken into account in applying this Division to the resident TC group. The entity itself is exempt from this Division because of section 820-39.

4 After subsection 820-583

Insert:

820-584 Exempt special purpose entities treated as not being member of group

While an entity meets the conditions in subsection 820-39(3) (about insolvency-remote special purpose entities established to manage economic risk), the entity is treated for the purposes of this Division (except this section) as *not* being a *member of a *consolidated group or *MEC group of which it is a member.

Note: This section has the effect that the circumstances of the entity are not taken into account in applying this Division to the head company of the group. The entity itself is exempt from this Division because of section 820-39.

5 At the end of 820-942(2)

Add:

Note: An entity that does not qualify as a securitisation vehicle may be exempt from the thin capitalisation rules under section 820-39.

Part 3—Choice by some financial entities to be treated as ADIs for thin capitalisation purposes

Income Tax Assessment Act 1997

6 After Subdivision 820-E

Insert:

Subdivision 820-EA—Some financial entities may choose to be treated as ADIs

Table of sections

820-430 When choice can be made, and what effect it has
820-435 Conditions
820-440 Revocation of choice
820-445 How this Subdivision interacts with Subdivisions 820-F, 820-FA and 820-FB

820-430 When choice can be made, and what effect it has

(1) An entity may choose to be treated, for the purposes of this Division (except this Subdivision), as set out in the table. However, the entity can make the choice only if subsection (5) is satisfied.

Choice by financial entity to be treated as an ADI

	Column 1	Column 2
Item	**For a period that the choice covers, and for which the entity would, apart from this Subdivision, have been:**	**The entity is treated as if it had instead been:**
1	an *outward investor (financial)	an *outward investing entity (ADI)
2	an *inward investor (financial)	an *inward investing entity (ADI)
3	an *inward investment vehicle (financial)	an *outward investing entity (ADI)

(2) The choice:

(a) has effect accordingly, except as provided in subsection (4); and

(b) ceases to have effect only as provided in this Subdivision; and

(c) covers each period:

(i) that started on or after a day specified in the choice (or on the day the choice is made if no day is specified); and

(ii) that is all or part of an income year.

(3) Subdivision 820-E applies to the entity, in relation to a period for which this section treats it as an *inward investing entity (ADI), as if all the entity's *business were banking business of the entity.

(4) The choice does not have effect for the purposes of determining whether the entity is covered by paragraph 820-910(2)(a) (about working out the associate entity debt of another entity).

Conditions for making the choice

(5) For the income year that is or includes the first period for which the entity would be treated in accordance with the choice, the entity must satisfy:

(a) subsection 820-435(1); or

(b) subsections 820-435(2) and (3).

Also, the entity must *not* have made a previous choice under this section that has ceased to have effect.

Conditions are retested every 3 years

(6) The choice ceases to have effect, or is taken to have ceased to have effect, as appropriate, at the *end* of an income year covered by subsection (7) of this section, unless the entity:

(a) satisfies subsection 820-435(1) for that income year; or

(b) satisfies subsections 820-435(2) and (3) for that income year.

(7) This subsection covers every third income year after the one referred to in subsection (5).

820-435 Conditions

(1) An entity satisfies this subsection for an income year if the average value, for that income year, of the entity's *on-lent amount is at least 80% of the average value, for that income year, of all the entity's assets.

(2) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:

(a) a period throughout which the entity is a *financial entity because of paragraph (d) of the definition of ***financial entity*** in subsection 995-1(1) (which covers licensed (or exempt) dealers in derivatives);

(b) a period throughout which:

(i) the entity is the *head company of a *consolidated group or *MEC group; and

(ii) at least one *member of the group is a financial entity because of that paragraph.

(3) An entity satisfies this subsection for an income year if it satisfies subsection (2) and the amount worked out using this formula is greater than or equal to 0.8:

$$\frac{\text{On-lent amount} + \left(\text{UG on derivatives} - \text{UL on derivatives}\right)}{\text{Total assets} - \text{UL on derivatives}}$$

where:

on-lent amount means the average value, for that income year, of the entity's *on-lent amount.

total assets means the average value, for that income year, of all the entity's assets.

UG on derivatives means the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of the *Corporations Act 2001*.

UL on derivatives means the lesser of:

(a) the average value, for that income year, of the entity's liabilities consisting of unrealised losses on trading derivatives within the meaning of the *Corporations Act 2001*; and

(b) the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of that Act.

On-lent amount increased for financial entity whose assets include precious metals

(4) In working out whether an entity satisfies subsection (1) or (3) for an income year, the average value, for that income year, of the entity's *on-lent amount is increased by the average value, for that income year, of the entity's assets that consist of *precious metals, but only if the entity satisfies subsection (5) for that income year.

(5) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:

(a) a period throughout which the entity is a *financial entity;

(b) a period throughout which:

(i) the entity is the *head company of a *consolidated group or *MEC group; and

(ii) at least one *member of the group is a financial entity.

820-440 Revocation of choice

(1) A choice under section 820-430 can be revoked only with the written approval of the Commissioner. The Commissioner may approve a revocation only if satisfied that the entity's circumstances have changed significantly since the choice was made.

(2) If revoked, the choice does not have effect for a period that starts on or after the day on which the Commissioner's approval is given, unless the revocation is expressed to take effect on an earlier day. In that case, it does not have effect for a period that starts on or after the earlier day.

820-445 How this Subdivision interacts with Subdivisions 820-F, 820-FA and 820-FB

Subdivision 820-F

(1) A choice under section 820-430 does not affect how section 820-550 (Classification of the resident TC group) applies to a *resident TC group for an income year unless the group could have made a choice under section 820-430 covering the whole of that income year if:

(a) the group had been a company throughout the income year; and

(b) each entity in the group had been a division or part of that company, rather than a separate entity, at all times during the income year when the entity was in the group.

Note: To work out the times during the income year when an entity was in the group, see section 820-530.

(2) A choice under section 820-430 does not have effect for so much of a period as happens while the entity is in a *resident TC group for an income year if, apart from the choice, section 820-575 would apply Subdivision 820-E to the group for that income year as if the group were an *inward investing entity (ADI).

Subdivision 820-FA

(3) A choice under section 820-430 does not have effect for so much of a period as happens while the entity is a *subsidiary member of a *consolidated group or *MEC group.

Note: If the head company of the group makes a choice under that section, that choice will have effect instead.

Subdivision 820-FB

(4) A choice under section 820-430 does not have effect for so much of a period as happens during the grouping period for a choice by the entity under section 820-597 or 820-599 (about treating foreign bank branches as part of the entity).

Note: Instead, the choice under section 820-597 or 820-599 will result in the entity being an outward investing entity (ADI) or an inward investing entity (ADI) for the grouping period: see section 820-609.

7 Subsection 995-1(1) (at the end of the definition of *inward investing entity (ADI)*)

Add:

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

8 Subsection 995-1(1) (at the end of the definition of *inward investment vehicle (financial)*)

Add:

Note: Section 820-430 allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

9 Subsection 995-1(1) (at the end of the definition of *inward investor (financial)*)

Add:

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

10 Subsection 995-1(1) (at the end of the definition of *outward investing entity (ADI)*)

Add:

Note: Section 820-430:

- allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases; and
- allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

11 Subsection 995-1(1) (at the end of the definition of *outward investor (financial)*)

Add:

Note: Section 820-430 allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases.

12 Subsection 995-1(1)

Insert:

precious metal has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Part 4—Revaluing assets for thin capitalisation purposes

Income Tax Assessment Act 1997

13 At the end of subsection 820-680(2)

Add:

Note: The entity must also keep records in accordance with section 820-985 about the revaluation, unless the exception in subsection (2A) of this section applies.

14 After subsection 820-680(2)

Insert:

Revaluation reflected in statutory financial statements for the same period

(2A) A revaluation of an asset need not comply with subsection (2) if:

(a) the revaluation is for the purpose of the entity calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period; and

(b) the entity is required by an Australian law to prepare financial statements for a period that is or includes all or part of that period; and

(c) those financial statements reflect the revaluation.

External validation of a revaluation made internally

(2B) A revaluation of assets mentioned in paragraph (1)(a) may be made by a person (the ***internal expert***) if:

(a) apart from this subsection, paragraph (2)(b) would prevent the internal expert from making the revaluation, but only because, in making it, he or she would be:

(i) performing duties as an employee of the entity; or

(ii) providing services under an *arrangement with the entity that is substantially similar to a contract of employment; and

(b) another person (the ***external expert***):

(i) is not prevented by subsection (2) from making the revaluation; and

(ii) has reviewed the methodology for making it (including the validity of any assumptions to be made, and the accuracy and reliability of the data and other information to be used); and

(iii) has agreed that that methodology is suitable for making it; and

(c) the internal expert makes the revaluation in accordance with that methodology.

Revaluation of individual assets

(2C) Subsection (1) does not prevent the entity from revaluing one or more assets in a class of assets (as distinct from revaluing all the assets in the class) if the value of no asset in that class has fallen since the entity last calculated the total value of all the assets in that class in accordance with the *accounting standards.

When further revaluation of assets required

(2D) If:

(a) the entity revalues one or more assets (whether constituting a class of assets or not) for the purpose of calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period (the ***first period***); and

(b) the revaluation is *not* required by the *accounting standards; and

(c) if the revaluation *had* been required by the accounting standards, the entity could have relied on it in preparing financial statements that the entity is required by an Australian law to prepare for a period (the ***later period***) that ends *after* the first period;

the entity may also rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is or includes all or part of the later period.

(2E) If subsection (2D) does *not* permit the entity to rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is later than the first period, the revaluation is disregarded in determining

whether subsection (1) requires the entity to revalue the one or more assets in calculating the value of its assets for those purposes.

Note: As a result, the entity may not be required to make a further revaluation of the one or more assets. However, if the entity does not, it must use the value of the one or more assets that is reflected in financial statements for the relevant period that comply with the accounting standards.

Accounting standards need not otherwise apply to the entity

15 After section 820-980

Insert:

Records about asset revaluations

820-985 Methodology of revaluation and independence of valuer

(1) An entity must keep records under this section for a revaluation of assets mentioned in subsection 820-680(2) (except a revaluation that need not comply with that subsection because of subsection 820-680(2A)).

(2) The records must contain particulars about:
  (a) the methodology used in making the revaluation (including any assumptions made); and
  (b) how that methodology was applied (including the data and other information used); and
  (c) who made the revaluation; and
  (d) that person's qualifications and experience as an expert in valuing assets of the relevant kind; and
  (e) the remuneration and expenses paid to that person.

(3) If the revaluation was made in accordance with subsection 820-680(2B) (about external validation of a revaluation made internally), the records must also contain particulars of:
  (a) who was the external expert referred to in that subsection; and
  (b) his or her qualifications and experience as an expert in valuing assets of the relevant kind; and
  (c) the remuneration and expenses paid to him or her; and

(d) his or her review of the methodology for making the revaluation (as required by subparagraph 820-680(2B)(b)(ii)); and

(e) his or her agreement that the methodology is suitable for making it (as required by subparagraph 820-680(2B)(b)(iii)).

(4) The entity must prepare the records before the time by which the entity must lodge its *income tax return for the income year in relation to all or a part of which the revaluation is made.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

Income Tax Assessment Act 1936

16 Subsection 262A(2AA)

Omit "or 820-980", substitute ", 820-980 or 820-985".

17 At the end of subsection 262A(3)

Add:

; and (e) for records required to be kept under section 820-985 of that Act—comply with subsections (2) and (3) of that section.

Part 5—Arrangements for borrowing securities

Income Tax Assessment Act 1997

18 Subsection 820-85(3) (step 4 of the method statement)

Repeal the step, substitute:

Step 4.	If the entity is a *financial entity throughout the relevant year, add to the result of step 3 the average value, for the relevant year, of the entity's *borrowed securities amount.

19 Subsection 820-120(2) (step 4 of the method statement)

Repeal the step, substitute:

Step 4.	If the entity is a *financial entity throughout that period, add to the result of step 3 the average value, for that period, of the entity's *borrowed securities amount.

20 Subsection 820-185(3) (step 3 of the method statement)

Repeal the step, substitute:

Step 3.	If the entity is a *financial entity throughout the relevant year, add to the result of step 2 the average value, for the relevant year, of the entity's *borrowed securities amount.

21 Subsection 820-225(2) (step 3 of the method statement)

Repeal the step, substitute:

Step 3.	If the entity is a *financial entity throughout that period, add to the result of step 2 the average value, for that period, of the entity's *borrowed securities amount.

22 Subsection 820-942(1) (step 1 of the method statement)

Repeal the step, substitute:

Step 1. Work out the total value, as at that particular time, of all the assets of the entity that represent *debt interests that:

(a) are of a kind commonly dealt in by entities that carry on a *business of dealing in securities; and

(b) the entity has sold under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and

(c) the entity has not yet repurchased under the agreement or arrangement.

23 Subsection 820-942(1) (after step 3 of the method statement)

Insert:

Step 3A. Add to the result of step 3 the total value, as at that time, of all the assets of the entity, to the extent that they:

(a) consist of rights to the return of assets covered by subsection (2A); and

(b) are covered by none of steps 1, 2 and 3.

24 Subsection 820-942(1) (step 4 of the method statement)

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

25 After subsection 820-942(1)

Insert:

(2A) This subsection covers an asset that:

(a) the entity provided as security for the performance of its obligations in relation to securities it acquired under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and

(b) does not consist of *shares.

26 Subsection 995-1(1)

Insert:

borrowed securities amount of an entity at a particular time means the total of the liabilities of the entity, to the extent that they meet these conditions:

(a) the value of the liability at that time is worked out by reference to the value at that time of securities that the entity has short sold;

(b) as at that time, the entity has settled the sale using securities it acquired under one or more of these *arrangements:

(i) a reciprocal purchase agreement (otherwise known as a repurchase agreement);

(ii) a sell-buyback arrangement;

(iii) a securities loan arrangement.

27 Subsection 995-1(1) (at the end of the definition of *non-debt liabilities*)

Add:

; or (e) a liability of the entity, to the extent that it meets the conditions for being taken into account in working out the *borrowed securities amount of the entity as at that time.

28 Subsection 995-1(1) (at the end of the definition of *on-lent amount*)

Add:

; and (d) if the entity:

(i) carries on a *business of dealing in securities; and

(ii) does not carry on that business predominantly for the purposes of dealing in securities with, or on behalf of, the entity's *associates;

all *shares that:

(iii) the entity holds at that time; and

(iv) are listed at that time for quotation in the official list of an *approved stock exchange; and

(v) are not shares in an *associate entity at that time of the entity.

Part 6—Definition of financial entity

Income Tax Assessment Act 1997

29 Subsection 995-1(1) (paragraph (c) of the definition of *financial entity*)

Repeal the paragraph, substitute:

(c) an entity that:

(i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in at least one of the financial products mentioned in paragraphs 764A(1)(a), (b) and (j) of that Act; or

(ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an Australian financial services licence for dealings in at least one of those financial products;

and carries on a *business of dealing in securities, but not predominantly for the purposes of dealing in securities with, or on behalf of, the entity's *associates;

Note 1: Paragraphs 764A(1)(a), (b) and (j) of the *Corporations Act 2001* deal respectively with securities, managed investment products and government debentures, stocks and bonds.

Note 2: Paragraph 911A(2)(h) of that Act exempts financial services provided to wholesale clients in the course of a business that is regulated by an overseas regulatory authority approved by the Australian Securities and Investments Commission (ASIC).

Note 3: Paragraph 911A(2)(l) of that Act empowers ASIC to exempt financial services.

(d) an entity that:

(i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in derivatives within the meaning of that Act; or

(ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an Australian financial services licence for dealings in such derivatives;

and carries on a business of dealing in such derivatives, but not predominantly for the purposes of dealing in such derivatives with, or on behalf of, the entity's associates.

Part 7—Cost-free debt capital

Income Tax Assessment Act 1997

30 Paragraph 820-946(1)(c)

Repeal the paragraph, substitute:

(c) neither section 820-35 ($250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any *debt deduction of the entity for the income year;

(da) for some or all of that period, the entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities);

31 At the end of subsection 820-946(4)

Add:

However, if the total period for which the interest remains on issue is 180 days or more, this subsection is taken *not* to have covered the interest at that time.

Part 8—Associate entity debt

Income Tax Assessment Act 1997

32 Subsection 820-910(2)

Repeal the subsection, substitute:

(2) This section also applies, for the relevant entity, to an *associate entity (a ***relevant associate entity***) of the relevant entity, if:

(a) either:

(i) the associate entity is an *outward investing entity (non-ADI), an *inward investment vehicle (general), or an *inward investment vehicle (financial), for the relevant period; or

(ii) the associate entity is an *inward investor (general) or an *inward investor (financial) for the relevant period, and the condition in subsection (2A) of this section is satisfied; and

(b) neither section 820-35 ($250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any *debt deduction of the relevant associate entity for the income year; and

(c) for some or all of the relevant period, the relevant associate entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities); and

(d) the relevant associate entity is not an *exempt entity for the income year.

(2A) The condition referred to in subparagraph (2)(a)(ii) is that the relevant period consists of one or more periods each of which is either or both of these:

(a) a period throughout which the *associate entity carries on its *business in Australia at or through one or more of its *Australian permanent establishments;

(b) a period throughout which the associate entity holds any of the following assets:

(i) assets that are attributable to the associate entity's Australian permanent establishments;

(ii) other assets that are held for the purposes of producing the associate entity's assessable income.

Part 9—Debt deductions for borrowing expenses

Income Tax Assessment Act 1997

33 Paragraph 820-40(1)(c)

Repeal the paragraph, substitute:

(c) the cost is not incurred before 1 July 2001 if the entity can deduct it under section 25-25 of this Act or section 67 of the *Income Tax Assessment Act 1936*.

Note: The sections referred to in paragraph (c) spread deductions for borrowing expenses over up to 5 years in most cases.

Part 10—Foreign controlled Australian partnerships

Income Tax Assessment Act 1997

34 Paragraph 820-795(2)(a)

Repeal the paragraph, substitute:

(a) at least one of the partners is an *Australian entity; and

Part 11—Arm's length debt amount

Income Tax Assessment Act 1997

35 Paragraph 820-105(2)(d)

Omit "paragraph (e)", substitute "paragraphs (e), (f) and (g)".

36 At the end of subsection 820-105(2)

Add:

; (f) the entity's only activities during that year were the Australian business;

(g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

37 Paragraph 820-215(2)(d)

Omit "paragraph (e)", substitute "paragraphs (e), (f) and (g)".

38 At the end of subsection 820-215(2)

Add:

; (f) the entity's only activities during that year were the Australian business;

(g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

Part 12—Maximum allowable debt

Income Tax Assessment Act 1997

39 Paragraph 820-90(1)(c)

Before "the", insert "unless the entity has *worldwide equity of a negative amount—".

Part 13—Non-debt liabilities

Income Tax Assessment Act 1997

40 Subsection 995-1(1) (paragraph (c) of the definition of *non-debt liabilities*)

Repeal the paragraph, substitute:

(c) if the entity is a *corporate tax entity—a provision for a *distribution of profit; or

(ca) if paragraph (c) does not apply—a provision for a distribution to the entity's *members; or

Schedule 2—Thin Capitalisation: amendments taking effect on 1 July 2002

Part 1—Application of amendments

1 Application

The amendments made by this Schedule (except Part 5) apply in relation to an income year that begins on or after 1 July 2002.

Part 2—Records about Australian permanent establishments

Income Tax Assessment Act 1997

2 Section 820-960

Repeal the section, substitute:

820-960 Records about Australian permanent establishments

(1) If an entity:

(a) is an *inward investor (general), *inward investor (financial) or *inward investing entity (ADI), for all or a part of an income year; and

(b) carries on its *business at or through one or more of its *Australian permanent establishments throughout that year; and

(c) has total revenues attributable to those Australian permanent establishments for that year that are at least $2,000,000;

the entity must keep for that year the records for which subsection (1A) or (1B) provides.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

Australian accounting standards

(1A) If the entity chooses this subsection, it must keep the following records for the *Australian permanent establishments:

(a) a statement of financial position (within the meaning of the *accounting standards);

(b) a statement of financial performance (within the meaning of those standards).

The statements must:

(c) be prepared in accordance with the *accounting standards (in particular, but not limited to, accounting standards AASB 1001, AASB 1018 and AASB 1040); and

(d) include all the notes required to accompany them under the standards.

Overseas and international accounting standards

(1B) If the entity chooses this subsection, it must keep for the *Australian permanent establishments the statements (however described) that, under standards covered by subsection (1C) or (1D) (the ***overseas or international accounting standards***), correspond to the statements referred to in subsection (1A). The statements must:

(a) be prepared in accordance with those standards; and

(b) include all the notes required to accompany them under those standards.

(1C) This subsection covers the standards (however described) that correspond to the *accounting standards and are made by the responsible body in:

(a) the United Kingdom of Great Britain and Northern Ireland; or

(b) the United States of America; or

(c) Canada; or

(d) New Zealand; or

(e) Japan; or

(f) the French Republic; or

(g) the Federal Republic of Germany.

(1D) This subsection covers the international accounting standards made or adopted by the International Accounting Standards Board.

Requirements for the records under subsection (1A) or (1B)

(2) The entity must prepare the records for which subsection (1A) or (1B) provides:

(a) before the time by which the entity must lodge its tax return for the income year; and

(b) as if:

(i) the *Australian permanent establishments were an entity (the ***notional entity***) for which those records would be required to be prepared under the *accounting standards

or the overseas or international accounting standards, as appropriate; and

(ii) for the purposes of the statement of financial position or the corresponding statement, as appropriate—the assets, liabilities (including *debt capital) and *equity capital that are attributable to the Australian permanent establishments for that income year were assets, liabilities and equity of the notional entity for that year; and

(iii) for the purposes of the statement of financial performance or the corresponding statement, as appropriate—the revenues and expenses that are attributable to the Australian permanent establishments for that year were the revenues and expenses of the notional entity for that year; and

(iv) the *accounting standards, or the overseas or international accounting standards, as appropriate, referred to income years instead of financial years or the corresponding term in the overseas or international accounting standards.

Commissioner's power to exempt from complying with Australian accounting standards

(4) The Commissioner may decide that an entity, or entities in a class of entities, need not comply with all or any part of the *accounting standards for one or more income years for the purposes of subsection (1A) if the Commissioner is satisfied that it would be unreasonable that the entity, or the entities in that class, be required to do so.

Note: The Commissioner's power under this subsection does not extend to the overseas or international accounting standards.

(5) The Commissioner:

(a) may make a decision under subsection (4) in such cases and to such extent as the Commissioner thinks fit; and

(b) must make the decision in writing; and

(c) cause a copy of the decision to be published in the *Gazette*.

The decision has effect despite subsection (1A).

Excluding Australian permanent establishments not covered by applicable double tax treaty

(6) An entity need not comply with this section for an income year in relation to an *Australian permanent establishment if:

(a) throughout that year, the entity was, for the purposes of a double tax agreement (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in relation to a foreign country, a resident of that foreign country (even if the entity was also an Australian resident or a resident of another foreign country); and

(b) throughout the period during that year when the entity was carrying on its *business at or through that Australian permanent establishment, the Australian permanent establishment was *not* a permanent establishment within the meaning of that double tax agreement.

Income Tax Assessment Act 1936

3 Paragraph 262A(3)(c)

Omit "subsections (2) to (4)", substitute "the applicable provisions".

Part 3—Equity interests excluded in working out safe harbour debt amount

Income Tax Assessment Act 1997

4 Section 820-10 (table item 8A)

After "cost-free debt capital", insert ", and excluded equity interest,".

5 Section 820-95 (after step 1 of the method statement)

Insert:

Step 1A.	Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

6 Section 820-95 (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

7 Subsection 820-100(2) (after step 1 of the method statement)

Insert:

Step 1A.	Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

8 Subsection 820-100(2) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

9 Subsection 820-100(3) (after step 1 of the method statement)

Insert:

Step 1A.	Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

10 Subsection 820-100(3) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

11 Section 820-195 (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

12 Section 820-195 (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

13 Subsection 820-200(2) (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

14 Subsection 820-200(2) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

15 Subsection 820-200(3) (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

16 Subsection 820-200(3) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

17 Section 820-205 (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

18 Section 820-205 (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

19 Subsection 820-210(2) (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

20 Subsection 820-210(2) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

21 Subsection 820-210(3) (after step 1 of the method statement)

Insert:

> *Step 1A.* Reduce the result of step 1 by the average value, for that year, of all the *excluded equity interests in the entity.

22 Subsection 820-210(3) (step 2 of the method statement)

Omit "step 1", substitute "step 1A".

23 Subdivision 820-KA (heading)

Repeal the heading, substitute:

Subdivision 820-KA—Cost-free debt capital and excluded equity interests

24 Section 820-945

After "cost-free debt capital", insert ", and excluded equity interest,".

25 Section 820-946 (heading)

Repeal the heading, substitute:

820-946 *Cost-free debt capital* and *excluded equity interest*

26 Subsection 820-946(1)

After "period" (first occurring), insert "(the ***relevant period***)".

27 Subsection 820-946(2)

Omit "If subsection (1) applies to an entity for a period (the ***relevant period***), the", substitute "The".

28 After subsection 820-946(2)

Insert:

(2A) An *equity interest in the entity is an ***excluded equity interest*** at a particular time during the relevant period if, and only if:

(a) if subsection (1) does not apply to the holder of the interest for all or part of the relevant period:

(i) the entity is an *associate of the holder; and

(ii) at that time, the interest has been *on issue for a period of less than 180 days; or

(b) if subsection (1) applies to the holder for all or part of the relevant period:

(i) the entity is an associate of the holder; and

(ii) at that time, the interest has been on issue for a period of less than 180 days; and

(iii) the interest is covered by subsection (3) at that time.

29 Subsection 820-946(3)

After "*debt interest", insert "or *equity interest".

33 Subsection 995-1(1)

Insert:

excluded equity interest has the meaning given by section 820-946.

34 Subsection 995-1(1) (definition of *on issue*)

Repeal the definition, substitute:

on issue:

(a) a *debt interest is ***on issue*** as provided in paragraph 974-55(1)(e); and

(b) an *equity interest in an entity:

(i) is ***on issue*** from when it is issued until it stops being on issue because of subparagraph (ii); and

(ii) stops being ***on issue*** when, for reasons other than the economic performance of the entity (or of a *connected entity of the entity), there is no longer a reasonable likelihood that a substantial *financial benefit will be provided in respect of the interest under the *scheme, or under any of the schemes, that give rise to the interest.

Part 4—Adjusted average equity capital for grouping purposes

Income Tax Assessment Act 1997

35 Subsection 820-562(3)

Repeal the subsection (but not the note or the table), substitute:

(3) The amount worked out under this subsection as at a particular day is:

(a) the total of the amounts worked out under the table below for each member of the group that is covered by an item in the table and is in the group on that day (except so much of that total as is attributable to any of the *overseas permanent establishments of such members); minus

(b) the total of the *controlled foreign equity, at the end of that day, of each member of the group that is in the group on that day (except so much of that total as is attributable to any of the overseas permanent establishments of such members).

36 Subsection 820-589(3)

Omit all the words from and including "The amount" to and including "consolidated accounts:", substitute "The amount worked out under this subsection as at a particular day is:".

37 Paragraphs 820-589(3)(a) and (b)

Repeal the paragraphs, substitute:

(a) the total of the amounts worked out under the table below for each entity that is a *member of the group on that day (except so much of that total as is attributable to any of the*overseas permanent establishments of such entities); minus

(b) the total of the *controlled foreign equity, at the end of that day, of each such entity (except so much of that total as is attributable to any of the overseas permanent establishments of such entities).

38 Subsection 820-589(3) (note)

Repeal the note.

39 At the end of section 820-589

Add:

(4) The amounts referred to in paragraphs (3)(a) and (b) are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts:

(a) prepared, in accordance with the *accounting standard on consolidated accounts, as at the end of that day; and

(b) covering the *members of the group as at the end of that day.

Note: This subsection does not depend on whether such a set of consolidated accounts was prepared, or had to be prepared, for other purposes.

40 Paragraphs 820-613(3)(a) and (b)

Repeal the paragraphs, substitute:

(a) in the case of a choice under section 820-597:

(i) the amounts worked out under the table in subsection 820-589(3) for that day for each entity that is a *member of the group on that day (except so much of those amounts as is attributable to any of the *overseas permanent establishments of such entities); minus

(ii) the total of the *controlled foreign equity, at the end of that day, of each such entity (except so much of that total as is attributable to any of the overseas permanent establishments of such entities); and

(b) in the case of a choice under section 820-599:

(i) the amount worked out under the table in subsection 820-589(3) for that day for the single company (except so much of that total as is attributable to any of the single company's overseas permanent establishments); minus

(ii) the single company's controlled foreign equity, at the end of that day (except so much of it as is attributable to any of the single company's overseas permanent establishments); and

Part 5—Disallowed deductions not included in cost base of a CGT asset

Income Tax Assessment Act 1997

41 At the end of Subdivision 110-A

Add:

110-54 Debt deductions disallowed by thin capitalisation rules

Expenditure does *not* form part of the third element of the ***cost base*** to the extent that Division 820 (Thin capitalisation rules) prevented or prevents you, or a partnership in which you are or were a partner, from deducting it.

42 At the end of section 820-115

Add:

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

43 At the end of section 820-220

Add:

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

44 At the end of section 820-325

Add:

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

45 At the end of section 820-415

Add:

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

46 Section 820-465 (note)

Omit “Note”, substitute “Note 1”.

47 At the end of section 820-465

Add:

Note 2: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

48 Section 820-605 (before Note 1)

Insert:

Note 1A: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

49 Application

The amendments made by this Part (except items 50 and 51) do *not* apply for the purposes of working out a capital gain made from a CGT event happening before 1 July 2002.

Taxation Laws Amendment Act (No. 7) 2000

50 Item 31 of Schedule 4

Omit "Before section 110-40", substitute "After the group heading before section 110-40".

51 Application

Item 31 of Schedule 4 to the *Taxation Laws Amendment Act (No. 7) 2000* is taken always to have had effect as amended by item 50 of this Schedule.

Part 6—Premium excess amount

Income Tax Assessment Act 1997

52 Subsection 820-920(3) (step 2 of the method statement)

Repeal the step, substitute:

Step 2.	Work out the value, as at that time, of all the *equity capital of the *associate entity that is attributable to *equity interests that the relevant entity holds in the associate entity at that time (except equity interests whose value is all or a part of the relevant entity's *controlled foreign entity equity at that time).

Part 7—Attributable safe harbour excess amount

Income Tax Assessment Act 1997

53 Subsection 820-920(4) (at the end of step 1 of the method statement)

Add:

; and (d)	if the associate entity would otherwise be treated as an *inward investor (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an *inward investor (general) for that day.

Schedule 3—Thin Capitalisation: amendments taking effect on 1 July 2003

Part 1—Definition of equity capital and related concepts

Income Tax Assessment Act 1997

1 Subsection 820-300(3)

Omit "*equity capital", substitute "*ADI equity capital".

2 Subsection 820-300(3)

Omit "equity capital" (second occurring), substitute "ADI equity capital".

3 Subsection 820-330(2)

Omit "*equity capital", substitute "*ADI equity capital".

4 Subsection 820-330(2)

Omit "equity capital" (second occurring), substitute "ADI equity capital".

5 Paragraph 820-395(3)(a)

Omit "*equity capital", substitute "*ADI equity capital".

6 Section 820-589

Repeal the section, substitute:

820-589 How Subdivision 820-D applies to a MEC group

(1) This section has effect for the purposes of working out the *adjusted average equity capital of the *head company of a *MEC group for a period (the ***test period***) that is all or part of an income year if Subdivision 820-D applies to the head company in relation to that period.

Note: Section 820-587 extends the application of Subdivision 820-D.

(2) The *head company's *ADI equity capital at a particular time during the test period is to be worked out:

(a) taking into account an *equity interest or *debt interest in the head company only if it is held at that time by an entity that is *not* a member of the group; and

(b) on the basis that an equity interest or debt interest in an *eligible tier-1 company (other than the head company) that is a member of the group at that time is treated as an equity interest or debt interest (as appropriate) in the head company, but only if it is held at that time by an entity that is *not* a member of the group; and

(c) on the basis of the information that would be contained in a set of consolidated accounts:

(i) prepared, in accordance with the *accounting standard on consolidated accounts, as at that time; and

(ii) covering the members of the group as at that time.

7 Subsection 820-611(2)

Omit all the words after "820-617".

8 Subsections 820-613(2) and (3)

Repeal the subsections, substitute:

Adjusted average equity capital

(2) The *adjusted average equity capital of the *head company or single company for the test period is increased by the average value, for the period, of the amount worked out under subsection (3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

(3) The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the following paragraphs for each *Australian permanent establishment through which the *foreign bank carried on its banking business in Australia on that day:

(a) the *ADI equity capital of the foreign bank, as at the end of that day, that:
  (i) is attributable to that Australian permanent establishment; but
  (ii) has not been allocated to the *OB activities of the foreign bank; and
(b) the amounts that, as at the end of that day:
  (i) are made available by the foreign bank to the Australian permanent establishment as loans to the Australian permanent establishment; and
  (ii) do not give rise to any *debt deductions of the foreign bank for the income year or any other income year.

Note: The amounts are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts. See section 820-611.

9 Subsection 820-615(2)

Repeal the subsection, substitute:

Average equity capital

(2) The ***average equity capital*** of the *head company or single company for the test period is:
  (a) the average value, for that period, of all the *ADI equity capital of the company; plus
  (b) the average value, for that period, of the amount worked out under subsection 820-613(3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

10 Subsection 995-1(1)

Insert:

ADI equity capital of an entity at a particular time means the total of the following:
  (a) all the entity's *equity capital at that time; and
  (b) the total value of all the *debt interests *issued by the entity that satisfy all of the following:

(i) at that time, the interests are *on issue and have been on issue for 90 days or more;

(ii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).

A debt interest is treated as having satisfied subparagraph (b)(i) at that time if it was on issue at that time, and the total period for which it remains on issue is 90 days or more.

11 Subsection 995-1(1) (definition of *equity capital*)

Repeal the definition, substitute:

equity capital of an entity at a particular time means the total of the following as at that time:

(a) the issue price (however described) of each *equity interest in the entity that is still *on issue, reduced by so much (if any) of the issue price as remains unpaid;

(b) the entity's general reserves and asset revaluation reserves;

(c) the entity's retained earnings;

(d) the entity's net earnings (if any) for the current year, reduced by:

(i) the *tax the entity expects to pay in respect of those net earnings; and

(ii) so much of each distribution to the entity's *members that has been made or declared as at that time as is attributable to the entity's earnings for the current year;

(e) if the entity is a *corporate tax entity—provisions for *distributions of profit;

(f) if paragraph (e) does not apply—provisions for distributions to the entity's *members;

reduced by the total of the following as at that time:

(g) the entity's negative retained earnings (if any);

(h) the entity's net loss (if any) for the current year.

12 Subsection 995-1(1) (definition of *equity interest* in an entity)

Repeal the definition, substitute:

equity interest in an entity has the meaning given by:

(a) in the case of a company—Subdivision 974-C; and

(b) in the case of a trust or partnership—section 820-930.

13 Subsection 995-1(1) (definition of *equity interest* in a company)

Repeal the definition.

14 Subsection 995-1(1) (definition of *worldwide equity*)

Repeal the definition, substitute:

worldwide equity, of an entity and at a particular time, means the total of the following amounts:

(a) all the *equity capital of the entity as at that time, but worked out disregarding *equity interests in the entity held at that time by *Australian controlled foreign entities (the ***controlled entities***) of which the entity is an *Australian controller at that time;

(b) all the equity capital of the controlled entities as at that time, but worked out disregarding equity interests in the controlled entities held at that time by:

(i) the entity; or

(ii) other controlled entities.

15 Application

The amendments made by this Part apply in relation to an income year that begins on or after 1 July 2003.

Part 2—Assets and liabilities

Income Tax Assessment Act 1997

16 Subsection 820-680(1)

After "the *accounting standards", insert "in determining what are its assets and liabilities and".

17 After subsection 820-680(1)

Insert:

(1A) In particular, for the purposes of this Division, the entity has an asset or liability at a particular time if, and only if, according to the *accounting standards, the asset or liability can or must be recognised at that time.

Requirements for revaluation of assets

18 Application

The amendments made by this Part apply in relation to an income year that begins on or after 1 July 2003, and are not intended to affect the interpretation of subsection 820-680(1) as applying in relation to an income year that starts before that day.

Schedule 4—Foreign dividend accounts

Income Tax Assessment Act 1936

1 Paragraph 128TB(1)(b)

Repeal the paragraph, substitute:

(b) the company incurs expenditure that:

(i) is not an allowable deduction of the company for any year of income (or would not be apart from section 25-90 of the *Income Tax Assessment Act 1997*); but

(ii) would be such a deduction to any extent if section 23AJ of this Act were disregarded; or

2 Application

The amendment made by this Schedule applies to expenditure incurred on or after 1 July 2002.

Schedule 5—FBT exemption for public hospitals

Fringe Benefits Tax Assessment Act 1986

1 Subsection 5B(1E) (method statement, step 2)

Omit:

> (a) the employer is a public hospital that is a public benevolent institution; or

2 Subsection 5B(1E) (method statement, step 2)

Omit "described in subsection 57A(3) (which is about public hospitals other than hospitals connected with the Commonwealth, a State or a Territory)".

3 Subsection 5B(1E) (method statement, step 2)

Omit "(a),".

4 Subparagraphs 57A(2)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) a public hospital; or

5 Subsection 57A(3)

Omit all the words after "public hospital".

6 Paragraphs 140(1B)(a) and (b)

Repeal the paragraphs, substitute:

(a) a public hospital;

7 Subparagraphs 140(1C)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) a public hospital; or

8 Application of amendments

The amendments of the *Fringe Benefits Tax Assessment Act 1986* made by this Schedule apply in relation to benefits provided on or after 1 April 2003.

Schedule 6—Reducing tax on excessive ETPs

Part 1—Main amendments

Income Tax Rates Act 1986

1 Subsection 3(1)

Insert:

> ***ETP*** has the meaning given by subsection 27A(1) of the Assessment Act.

2 Subsection 3(1)

Insert:

> ***post-June 83 component*** of an ETP has the meaning given by section 27AA of the Assessment Act.

3 Subsection 3(1)

Insert:

> ***retained amount*** of the post-June 83 component of an ETP has the meaning given by section 27AC of the Assessment Act.

4 Subsection 3(1)

Insert:

> ***taxed element*** of the retained amount of the post-June 83 component of an ETP has the meaning given by section 27AC of the Assessment Act.

5 Paragraph 1(a) of Part I of Schedule 7

Repeal the paragraph, substitute:

(a) 38% for the amount (if any) of the EC part of the taxable income that does not exceed the difference between:

(i) the amount that would have been the taxed element of the retained amount of the post-June 83 component of the ETP if the amount of the excessive component of the ETP had been nil; and

(ii) the taxed element of the retained amount of the post-June 83 component of the ETP;

worked out disregarding section 27AAA of the Assessment Act;

(aa) 47% for the remainder (if any) of the EC part of the taxable income;

6 Paragraph 1(a) of Part II of Schedule 7

Repeal the paragraph, substitute:

(a) 38% for the amount (if any) of the EC part of the taxable income that does not exceed the difference between:

(i) the amount that would have been the taxed element of the retained amount of the post-June 83 component of the ETP if the amount of the excessive component of the ETP had been nil; and

(ii) the taxed element of the retained amount of the post-June 83 component of the ETP;

worked out disregarding section 27AAA of the Assessment Act;

(aa) 47% for the remainder (if any) of the EC part of the taxable income;

7 Paragraph 1(a) of Part I of Schedule 9

Repeal the paragraph, substitute:

(a) 38% for the amount (if any) of the EC part of the taxable income that does not exceed the difference between:

(i) the amount that would have been the taxed element of the retained amount of the post-June 83 component of the ETP if the amount of the excessive component of the ETP had been nil; and

(ii) the taxed element of the retained amount of the post-June 83 component of the ETP;

worked out disregarding section 27AAA of the Assessment Act;

(aa) 47% for the remainder (if any) of the EC part of the taxable income;

8 Paragraph 1(a) of Part II of Schedule 9

Repeal the paragraph, substitute:

(a) 38% for the amount (if any) of the EC part of the taxable income that does not exceed the difference between:

(i) the amount that would have been the taxed element of the retained amount of the post-June 83 component of the ETP if the amount of the excessive component of the ETP had been nil; and

(ii) the taxed element of the retained amount of the post-June 83 component of the ETP;

worked out disregarding section 27AAA of the Assessment Act;

(aa) 47% for the remainder (if any) of the EC part of the taxable income;

Superannuation Contributions Tax (Assessment and Collection) Act 1997

9 Paragraph 7A(3)(d)

After "year", insert ", worked out ignoring subsection 8(8) of this Act and subsection 9(9) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*".

10 Paragraph 7B(3)(e)

After "year", insert ", worked out ignoring subsection 8(8) of this Act and subsection 9(9) of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*,".

11 At the end of section 8

Add:

Reduced surchargeable contributions

(8) The amount of the ***surchargeable contributions*** of a member for a financial year is the amount worked out under subsection (2) or (3) (as appropriate), reduced by the amount worked out under subsection (9), if:

(a) an eligible termination payment is made to the member in the financial year from the superannuation fund, approved deposit fund or RSA; and

(b) the eligible termination payment has an excessive component.

(9) The amount of the reduction is worked out as follows:

Amount of the reduction

Step 1. Work out the amount that would have been the taxed element of the retained amount of the post-June 83 component of the eligible termination payment if the amount of the excessive component of the eligible termination payment had been nil.

Step 2. Work out the taxed element of the retained amount of the post-June 83 component of the eligible termination payment.

Step 3. Subtract the result of step 2 from the result of step 1.

Step 4. Divide the result of step 3 by 0.85.

Step 5. Subtract the result of step 3 from the result of step 4.

Step 6. Add the result of step 5 to the excessive component of the eligible termination payment.

Step 7. Identify the amount of the surchargeable contributions (apart from subsection (8)) of the member reported for the financial year by the entity that paid the eligible termination payment.

Step 8. Identify the lesser of the results of steps 6 and 7 (or either result if they are the same).

12 Section 43

Insert:

excessive component of an eligible termination payment has the meaning given by subsection 27A(1) of the Income Tax Assessment Act.

13 Section 43

Insert:

post-June 83 component of an eligible termination payment has the meaning given by section 27AA of the Income Tax Assessment Act.

14 Section 43

Insert:

retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

15 Section 43

Insert:

taxed element of the retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

16 At the end of section 9

Add:

Reduced surchargeable contributions

(9) The amount of the ***surchargeable contributions*** of a member for a financial year is the amount worked out under subsection (2) or (4) (as appropriate), reduced by the amount worked out under subsection (10), if:

(a) an eligible termination payment is made to the member in the financial year from the constitutionally protected superannuation fund; and

(b) the eligible termination payment has an excessive component.

(10) The amount of the reduction is worked out as follows:

Amount of the reduction

Step 1. Work out the amount that would have been the taxed element of the retained amount of the post-June 83 component of the eligible termination payment if the amount of the excessive component of the eligible termination payment had been nil.

Step 2. Work out the taxed element of the retained amount of the post-June 83 component of the eligible termination payment.

Step 3. Subtract the result of step 2 from the result of step 1.

Step 4. Divide the result of step 3 by 0.85.

Step 5. Subtract the result of step 3 from the result of step 4.

Step 6. Add the result of step 5 to the excessive component of the eligible termination payment.

Step 7. Identify the amount of the surchargeable contributions (apart from subsection (9)) of the member reported for the financial year by the entity that paid the eligible termination payment.

Step 8. Identify the lesser of the results of steps 6 and 7 (or either result if they are the same).

17 Section 38

Insert:

excessive component of an eligible termination payment has the meaning given by subsection 27A(1) of the Income Tax Assessment Act.

18 Section 38

Insert:

post-June 83 component of an eligible termination payment has the meaning given by section 27AA of the Income Tax Assessment Act.

19 Section 38

Insert:

retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

20 Section 38

Insert:

taxed element of the retained amount of the post-June 83 component of an eligible termination payment has the meaning given by section 27AC of the Income Tax Assessment Act.

21 Application

The amendments made by this Part apply to eligible termination payments (as defined in section 27A of the *Income Tax Assessment Act 1936*) made on or after 1 July 2002.

Part 2—Technical correction

Income Tax Rates Act 1986

22 Subsection 3(1) (definition of *EC part of the taxable income*)

After "27B(3)", insert "of the Assessment Act".

23 Application

The amendment made by this Part applies to assessments for the 1994-95 year of income and later years of income.

Schedule 7—Application of same business test

Part 1—Tax losses

Division 1—Main amendment

Income Tax Assessment Act 1997

1 Section 165-13

Repeal the section, substitute:

165-13 Alternatively, company must carry on same business

(1) This section sets out the condition that the company must meet to be able to deduct the *tax loss if:

(a) the company fails to meet a condition in subsection 165-12(2), (3) or (4); or

(b) it is not practicable to show that the company meets the conditions in those subsections.

Note: Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-12(2), (3) and (4).

(2) The company must satisfy the *same business test for the income year (the ***same business test period***). Apply the test to the *business the company carried on immediately before the time (the ***test time***) shown in the relevant item of the table.

Test time		
Item	**If:**	**The test time is:**
1	It is practicable to show there is a period that meets these conditions: (a) the period starts at the start of the *ownership test period or, if the company came into being during the *loss year, at the time the company came into being; (b) the company would meet the conditions in subsections 165-12(2), (3) and (4) if the period were the ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and the company was in being throughout the *loss year	The start of the loss year
3	Item 1 does not apply and the company came into being during the *loss year	The end of the loss year

For the same business test: see Subdivision 165-E.

Division 2—Consequential amendments

Income Tax Assessment Act 1997

2 Paragraph 165-10(b)

Omit "conditions", substitute "condition".

3 Subsection 165-115B(3) (second sentence)

Repeal the sentence, substitute:

The changeover time is the ***test time*** for applying section 165-13 to the company.

4 Subsection 165-115B(4)

Omit "conditions", substitute "condition".

5 Subsections 165-115BA(4) and (5)

Omit "conditions", substitute "condition".

6 Paragraph 165-115BA(5)(c)

Omit "continuity period ended at the changeover time", substitute "changeover time is the ***test time***".

7 Paragraph 707-125(1)(b)

Omit "subsection 165-13(3),", substitute "section 165-13 or subsection".

8 Subsection 707-125(2)

Omit "subsection 165-13(3)", substitute "section 165-13".

9 Subparagraph 707-125(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) the income year that included the *test time worked out for section 165-13 for the joining entity (disregarding paragraph (b) of this subsection), if that income year started before the trial year; and

10 Subsection 707-125(2) (note)

Repeal the note.

11 Subsection 715-90(2)

Repeal the subsection, substitute:

(2) In applying to the leaving entity for the *changeover time that is the leaving time, subsection 165-115B(3) has effect as if it provided that the time just after the changeover time were the ***test time*** for applying section 165-13 to the company.

Note: This ensures that the same business test is applied to the business that the leaving entity carries on at the leaving time.

12 Subsection 719-260(2) (note)

Omit "conditions", substitute "condition".

13 Subsection 995-1(1) (definition of *test time*)

After "165-45,", insert "165-115B, 165-115BA,".

14 Subsection 995-1(1) (definition of *test time*)

After "715-70,", insert "715-90,".

Division 3—Application of amendments

15 Application

(1) The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

(2) However, an amendment made by this Part affecting a provision does not apply to anything to which the provision did not apply before the amendment.

Example: Section 707-125 of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002. Despite the reference in subitem (1) to the 1997-98 income year, the amendments of that section made by this Part do not apply before 1 July 2002.

Part 2—Bad debts

Division 1—Main amendment

Income Tax Assessment Act 1997

16 Section 165-126

Repeal the section, substitute:

165-126 Alternatively, company must carry on same business

(1) This section sets out the condition that the company must meet to be able to deduct a debt or part of a debt that it writes off as bad in the *current year if:

(a) either:

(i) the company fails to meet a condition in subsection 165-123(2), (3) or (4); or

(ii) it is not practicable to show that the company meets the conditions in those subsections; and

(b) paragraph 165-120(1)(b) (about the Commissioner thinking it is unreasonable to require the company to meet the conditions in section 165-123) does not apply.

Note: Other provisions may treat the company as meeting, or failing to meet, the conditions in subsections 165-123(2), (3) and (4).

(2) The company must satisfy the *same business test for the *second continuity period (the ***same business test period***). Apply the test to the *business the company carried on immediately before the time (the ***test time***) shown in the relevant item of the table.

Test time		
Item	**If:**	**The test time is:**
1	It is practicable to show there is a period that meets these conditions: (a) the period starts at the start of the *first continuity period; (b) the company would meet the conditions in subsections 165-123(2), (3) and (4) if the period were the *ownership test period for the purposes of this Act	The latest time that it is practicable to show is in the period
2	Item 1 does not apply and either: (a) the debt was incurred before the *current year; or (b) the company came into being during the current year	The end of the day on which the debt was incurred
3	All these conditions are met: (a) item 1 does not apply; (b) the debt was incurred in the *current year; (c) the company was in being throughout the current year	The start of the current year

For the same business test: see Subdivision 165-E.

Division 2—Consequential amendments

Income Tax Assessment Act 1997

17 Paragraph 165-120(1)(c)

Omit "conditions", substitute "condition".

18 Paragraph 165-132(1)(c)

Omit "*minimum continuity period", substitute "*test time worked out under section 165-126".

19 Subsection 165-132(2)

Omit "time (the ***test time***) when the *minimum continuity period ended", substitute "*test time worked out for section 165-126".

20 Subsection 995-1(1) (definition of *minimum continuity period*)

Repeal the definition.

21 Subsection 995-1(1) (definition of *test time*)

Omit "165-132,".

Division 3—Technical correction

Income Tax Assessment Act 1997

22 Subsection 166-40(5)

Omit "(2)(a) or (b)", substitute "(2)(c) or (d)".

Division 4—Application of amendments

23 Application

The amendments made by this Part apply to assessments for the 1998-99 income year and later income years.

Schedule 8—Tax losses

Income Tax Assessment Act 1936

1 Section 245-110 in Schedule 2C (item 1 in column 2 of the table in the definition of *table of deductible revenue losses*)

After "36-15", insert "or 36-17".

2 Section 57-75 in Schedule 2D

After "36-15", insert "or 36-17".

3 Subsection 268-60(5) in Schedule 2F (note)

After "36-15", insert "or 36-17".

Income Tax Assessment Act 1997

4 At the end of subsection 4-10(3A)

Add:

Note 3: Amounts of tax offsets to which a corporate tax entity is entitled under Division 207 and Subdivision 210-H may in some circumstances be converted into an amount of a tax loss for the entity. See Subdivision 36-C.

5 Section 36-10 (note)

Omit "Note", substitute "Note 1".

6 At the end of section 36-10

Add:

Note 2: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

7 Section 36-15 (heading)

Repeal the heading, substitute:

36-15 How to deduct tax losses of entities other than corporate tax entities

8 Subsection 36-15(1)

Repeal the subsection, substitute:

(1) Your *tax loss for a *loss year is deducted in a later income year as follows if you are not a *corporate tax entity at any time during the later income year.

Note: See section 36-17 for the deduction of a tax loss of an entity that is a corporate tax entity at any time during the later income year.

9 After section 36-15

Insert:

36-17 How to deduct tax losses of corporate tax entities

(1) A *tax loss of an entity for a *loss year is deducted in a later income year as follows if the entity is a *corporate tax entity at any time during the later income year.

If the entity has no net exempt income

(2) If the entity's total assessable income for the later income year exceeds the entity's total deductions (except *tax losses), the entity is to deduct from that excess so much of the tax loss as the entity chooses. The entity may choose a nil amount.

If the entity has net exempt income

(3) If the entity has *net exempt income for the later income year and the entity's total assessable income (if any) for that year exceeds the entity's total deductions (except *tax losses), the entity is to:

(a) first, deduct the tax loss from the net exempt income; and

(b) secondly, deduct from the part of the total assessable income that exceeds those deductions so much of the undeducted amount of the tax loss (if any) as the entity chooses.

The entity may choose a nil amount under paragraph (b).

Note: To work out the corporate tax entity's net exempt income: see section 36-20.

(4) However, if the entity has *net exempt income for the later income year and those deductions exceed the entity's total assessable income, the entity is to:

(a) subtract that excess from the net exempt income; and

(b) deduct the *tax loss from any net exempt income that remains.

Note: This means there is no choice available under this subsection.

Limit to how much the entity can choose

(5) The choice that the entity has under subsection (2) or (3) for the later income year is subject to both of the following:

(a) the entity must choose a nil amount if, disregarding the *tax loss and other tax losses of the entity, the entity would have an amount of *excess franking offsets for that year;

(b) if, disregarding the tax loss and other tax losses of the entity, the entity would *not* have an amount of excess franking offsets for that year—the entity must not choose an amount that would result in the entity having an amount of excess franking offsets for that year.

Example: For the 2002-2003 income year, Company A has:

- a tax loss of $150 from a previous income year; and
- assessable income of $200 (franked distribution of $70, franking credit of $30 and $100 of income from other sources); and
- no allowable deductions; and
- no net exempt income.

The tax offset of $30 from the franking credit is not subject to the refundable tax offset rules in Division 67.

Company A would not have an amount of excess franking offsets for that year if the tax loss were disregarded (see section 36-55). This is because the tax offset of $30 is less than $60, the amount of income tax that Company A would have to pay if it did not have the tax offset and the tax loss. Paragraph (a) therefore does not apply.

If Company A chooses to deduct the full amount of the tax loss, it would have an amount of excess franking offsets of $15:

$$\$30 - \left(\left(\$200 - \$150\right) \times 30\%\right)$$

Company A therefore cannot make this choice because of paragraph (b).

However, if Company A chooses to deduct $100 of the tax loss, it would not have an amount of excess franking offsets:

$$\$30 = \left(\left(\$200 - \$100\right) \times 30\%\right)$$

Company A therefore can choose to deduct $100 of the tax loss.

(6) The entity must state its choice under subsection (2) or (3) in its *income tax return for the later income year.

General

(7) If the entity has 2 or more *tax losses, the entity is to deduct them in the order in which the entity incurred them.

(8) A *tax loss can be deducted under this section only to the extent that it has not already been deducted.

(9) If, under this section, a *corporate tax entity does not or cannot deduct all or part of a *tax loss in an income year, the entity can carry forward the undeducted amount to the next income year. This Subdivision then applies in working out how it can deduct the tax loss in that income year.

Note: The entity's tax losses may be reduced if any of its commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

Recalculation of amounts resulting in a choice or a change of a choice

(10) Subsection (11) or (12) applies if at least one of the following amounts is recalculated after an entity has lodged its *income tax return for an income year:

(a) the amount of a *tax loss that the entity can deduct in that year;

(b) the amount of the difference between the entity's total assessable income for that year and the entity's total deductions (other than *tax losses) for that year;

(c) the amount of the entity's *net exempt income for that year;

whether or not the amount is recalculated in an amendment of the entity's assessment for that year, and whether or not the amount was a nil amount before the recalculation (or has become a nil amount after the recalculation).

(11) If:

(a) before the recalculation, a choice under subsection (2) or (3) for the income year was not available to the entity; but

(b) as a result of the recalculation, the choice has (apart from subsection (6)) become available to the entity;

the entity can make that choice by written notice given to the Commissioner.

(12) If:

(a) the entity made a choice under subsection (2) or (3) for the income year; but

(b) as a result of the recalculation, the entity wishes to change that choice;

the entity can do so by written notice given to the Commissioner.

(13) Subsections (10) to (12) have effect subject to section 170 of the *Income Tax Assessment Act 1936* (about amendment of assessments).

10 Section 36-25 (after the table headed "*Tax losses of companies*")

Insert:

Tax losses of corporate tax entities

Item	For the special rules about this situation...	See:
1.	A *corporate tax entity that has an amount of *excess franking offsets for an income year: it works out its *tax loss in a special way.	Subdivision 36-C

11 At the end of Division 36

Add (before the link note):

Subdivision 36-C—Excess franking offsets

Guide to Subdivision 36-C

36-50 What this Subdivision is about

Amounts of tax offsets to which a corporate tax entity is entitled under Division 207 and Subdivision 210-H may in some circumstances be converted into an amount of a tax loss for the entity.

Table of sections

Operative provision

36-55 Converting excess franking offsets into tax loss

[This is the end of the Guide.]

Operative provision

36-55 Converting excess franking offsets into tax loss

Excess franking offsets

(1) An entity that is a *corporate tax entity at any time during an income year has an amount of ***excess franking offsets*** for that year if:

(a) the total amount of *tax offsets to which the entity is entitled for that year under Division 207 and Subdivision 210-H (except those that are subject to the refundable tax offset rules because of section 67-25);

exceeds:

(b) the amount of income tax that the entity would have to pay on its taxable income for that year if:

(i) it did not have those tax offsets; and

(ii) it did not have any tax offsets that are subject to the tax offset carry forward rules or the refundable tax offset rules;

but had all its other tax offsets.

The excess is the amount of ***excess franking offsets***.

Note: Division 65 sets out the tax offset carry forward rules. Division 67 sets out the refundable tax offset rules.

Example: For the 2002-2003 income year, Company E has:

- assessable income of $200 (franked distribution of $140 and franking credit of $60); and
- $100 of deductions that are allowable.

The tax offset of $60 from the franking credit is not subject to the refundable tax offset rules in Division 67.

Disregarding the tax offset of $60 from the franking credit, the amount of income tax that Company E would have to pay is $30:

$$\left(\left(\$140 + \$60\right) - \$100\right) \times 30\%$$

This amount is $30 less than the tax offset of $60. Company E therefore has an amount of excess franking offsets of $30 for that year.

How to work out the amount of the tax loss

(2) For the purposes of this Act, if:

(a) an entity has an amount of *excess franking offsets for an income year; and

(b) the result of applying the following method statement is a positive amount;

then:

(c) the entity is taken to have a *tax loss for that year equal to that positive amount (instead of an amount of tax loss worked out under section 36-10, 165-70, 175-35 or 701-30); and

(d) that year is taken to be a *loss year for the entity if the entity would not otherwise have a tax loss for that year.

Method statement

Step 1. Work out the amount (if any) that would have been the entity's *tax loss for that year under section 36-10, 165-70, 175-35 or 701-30 if the entity's *net exempt income for that year (if any) were disregarded.

Note: See section 36-20 for the calculation of net exempt income.

Step 2.	Divide the amount of *excess franking offsets by the *corporate tax rate.
Step 3.	Add the results of steps 1 and 2.
Step 4.	Reduce the result of step 3 by the entity's *net exempt income for that year (if any). The result of this step is taken to be the entity's *tax loss for that year. However, if the result of this step is nil or a negative amount, the company does not have any tax loss for that year.

Example: Assume that company E did not derive any exempt income for the 2002-2003 income year and that it would not otherwise have any tax loss for that year under section 36-10, 165-70, 175-35 or 701-30.

Applying the method statement, the amount of excess franking offsets of $30 generates a tax loss of $100 for that year, which can be deducted in a later income year under section 36-15 or 36-17.

12 Subsection 165-70(5) (note)

Omit "36-15", substitute "36-17".

13 At the end of section 165-70 (before the notes)

Add:

Note: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

14 Subsection 170-20(1)

Omit "36-15", substitute "36-17".

15 Subsection 170-45(1)

Repeal the subsection, substitute:

Loss company can only transfer what it cannot use itself

(1) The amount transferred cannot exceed the amount of the *loss company's *tax loss that, apart from the transfer, the loss company would carry forward to the next income year after deducting in the *deduction year the maximum amount of tax losses that the loss company can deduct under section 36-17.

16 Subsection 175-35(5) (note)

Omit "36-15", substitute "36-17".

17 At the end of section 175-35 (before the notes)

Add:

Note: The meanings of ***tax loss*** and ***loss year*** are modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

17A Subsection 707-310(3) (table item 6, paragraph (c) of column 2)

Repeal the paragraph, substitute:

(c) any *net assessable film income;

reduced by the amount (the ***transferee's grossed-up franking offset amount***) worked out in accordance with paragraph (3A)(c)

17B After subsection 707-310(3)

Insert:

(3A) For the purposes of subsection (3):

(a) the transferee's *tax losses to which paragraph (b) of, or the table in, that subsection applies are to be worked out on the assumption that the transferee chooses to deduct under subsection 36-17(2) all of the tax losses and that subsection 36-17(5) does not apply to that choice; and

(b) except as mentioned in paragraph (a) of this subsection, amounts worked out as described in column 2 of an item of the table in subsection (3) are to be worked out making the same choices as the transferee actually makes in working out its taxable income as stated in its *income tax return for the income year; and

(c) the transferee's grossed-up franking offset amount mentioned in column 2 of item 6 in the table is the amount worked out using the formula:

$$\frac{1}{\text{*General company tax rate for the income year}} \times \text{Franking offsets}$$

where:

franking offsets means the total amount of *tax offsets to which the transferee is entitled for the income year under Division 207 and Subdivision 210-H (except those that are subject to the refundable tax offset rules because of section 67-25).

18 Subsection 995-1(1)

Insert:

excess franking offsets has the meaning given by section 36-55.

19 Subsection 995-1(1) (at the end of the definition of *loss year*)

Add:

Note: The meaning of ***loss year*** in sections 36-10, 165-70 and 175-35 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

20 Subsection 995-1(1) (the note at the end of paragraph (a) of the definition of *tax loss*)

Omit "Note", substitute "Note 1".

21 Subsection 995-1(1) (before paragraph (b) of the definition of *tax loss*)

Insert:

Note 2: The meaning of ***tax loss*** in sections 36-10, 165-70, 175-35 and 701-30 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

Taxation Administration Act 1953

22 Subsections 45-330(2A) and (3) in Schedule 1

Repeal the subsections, substitute:

Special rule for some entities

(2A) If an entity:

(a) has *tax losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; or

(b) is a *corporate tax entity at any time during the *base year;

the ***adjusted taxable income*** of the entity for the base year is worked out under subsection (1) as if paragraph (1)(c) were replaced by the following provision:

(c) the lesser of the following amounts:

(i) the amount of any tax loss, to the extent that you can carry it forward to the next income year;

(ii) the amount of the deductions for tax losses used in making your *base assessment.

Special rule for life insurance companies

(3) The ***adjusted taxable income*** of a *life insurance company for the *base year is worked out as follows:

Method statement

Step 1. Recalculate the *ordinary class of the taxable income for the *base assessment on the basis that the assessable income that relates to the class did not include any *net capital gain.

Step 2. Add to the step 1 result the *complying superannuation class of the taxable income for the *base assessment.

Step 3. Add to the step 2 result the deductions for *tax losses used in making the *base assessment.

Step 4. Reduce the step 3 result by the lesser of the following amounts:

(a) the amount of any tax loss, to the extent that the *life insurance company can carry it forward to the next income year;

(b) deductions for *tax losses used in making the *base assessment.

23 Subsections 45-330(4) and (5) in Schedule 1

Repeal the subsections.

24 Application of amendments

(1) The amendments made by items 1, 2 and 3 apply in relation to the deduction of a tax loss in the year of income including 1 July 2002 and each later year of income.

(2) The amendments made by items 7, 8, 9, 12, 14, 15 and 16 apply in relation to the deduction of a tax loss in the income year including 1 July 2002 and each later income year.

(3) The amendments made by items 4, 5, 6, 10, 11, 13, 17, 17A, 17B, 18, 19, 20 and 21 apply to the income year including 1 July 2002 and each later income year.

(4) The amendments made by items 22 and 23 apply to a base year that is an income year including 1 July 2002 or is a later income year.

[*Minister's second reading speech made in—*
House of Representatives on 27 March 2003
Senate on 1 December 2003]

(45/03)