Tax Laws Amendment (2004 Measures No. 2) Act 2004

No. 83, 2004

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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Tax Laws Amendment (2004 Measures No. 2) Act 2004

No. 83, 2004

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

[*Assented to 25 June 2004*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2004 Measures No. 2) Act 2004*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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.	
2. Schedule 1, items 1 to 84	Immediately after the commencement of item 84 of Schedule 2 to the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*.	30 June 2000
3. Schedule 1, items 85 to 89	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.	30 June 2001
4. Schedule 1, items 90 to 92	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*.	30 June 2001
5. Schedule 1, items 93 and 94	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.	30 June 2001
6. Schedule 1, items 95 to 99	Immediately after the commencement of Schedule 6 to the *New Business Tax System (Consolidation and Other Measures) Act 2003*.	24 October 2002
7. Schedule 1, item 100	Immediately after the commencement of Schedule 1 to the *Taxation Laws Amendment (Structured Settlements and Structured Orders) Act 2002*.	19 December 2002
8. Schedule 1, items 101 to 103	Immediately after the commencement of item 126 of Schedule 3 to the *Taxation Laws Amendment Act (No. 4) 2003*.	30 June 2003

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
9. Schedule 1, item 104	Immediately after the commencement of item 127 of Schedule 3 to the *New Business Tax System (Miscellaneous) Act (No. 4) 2003*.	30 June 2003
10. Schedule 1, items 105 and 106	Immediately after the commencement of item 9 of Schedule 8 to the *Taxation Laws Amendment Act (No. 5) 2003*.	17 December 2003
11. Schedule 1, item 107	Immediately after the commencement of item 22 of Schedule 8 to the *Taxation Laws Amendment Act (No. 5) 2003*.	17 December 2003
12. Schedule 1, items 108 to 126	The day on which this Act receives the Royal Assent.	
13. Schedule 2, Parts 1 and 2	The day on which this Act receives the Royal Assent.	
14. Schedule 2, items 5 to 8	The day on which this Act receives the Royal Assent.	
15. Schedule 2, item 9	The provision(s) do not commence at all unless the Bill introduced into the Parliament as the Taxation Laws Amendment Bill (No. 7) 2003 is enacted (with or without amendments), in which case the provision(s) are taken to have commenced immediately after the commencement of Schedule 5 to that Act.	
16. Schedule 2, Parts 4 to 13	The day on which this Act receives the Royal Assent.	
17. Schedules 3 to 7	The day on which this Act receives the Royal Assent.	
18. Schedule 8, items 1 to 3	The day on which this Act receives the Royal Assent.	
19. Schedule 8, item 4	The later of: (a) the day on which the *Tax Laws Amendment (2004 Measures No. 1) Act 2004* receives the Royal Assent; and (b) the day on which this Act receives the Royal Assent.	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
20. Schedule 8, items 5 to 11	The day on which this Act receives the Royal Assent.	
21. Schedule 9	The day on which this Act receives the Royal Assent.	
22. Schedule 10, items 1 and 2	Immediately after the commencement of Schedule 2 to the *New Business Tax System (Miscellaneous) Act (No. 1) 2000*.	1 July 2000
23. Schedule 10, items 3 to 22	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*.	29 June 2002
24. Schedule 10, items 23 to 29	The day on which the *Taxation Laws Amendment Act (No. 4) 2003* received the Royal Assent.	30 June 2003
25. Schedule 10, items 30 to 40	Immediately after the commencement of Part 1 of Schedule 10 to the *Taxation Laws Amendment Act (No. 6) 2003*.	30 June 2003
26. Schedule 10, items 41 and 42	The provision(s) do not commence at all unless the Bill introduced into the Parliament as the Taxation Laws Amendment Bill (No. 7) 2003 is enacted (with or without amendments), in which case the provision(s) are taken to have commenced immediately after the commencement of Schedule 7 to that Act.	
27. Schedule 10, items 43 and 44	The day on which this Act receives the Royal Assent.	
28. Schedule 11	The day on which this Act receives the Royal Assent.	
29. Schedule 12, Part 1	The day on which this Act receives the Royal Assent.	
30. Schedule 12, Part 2	Immediately after the commencement of Part 1 of Schedule 12 to this Act.	

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 contains additional information that is not part of this Act. Information in this column may be added to or edited 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—Life insurance companies

Part 1—Amendments commencing on 30 June 2000

Income Tax Assessment Act 1936

1 At the end of section 148

Add:

Application to a life assurance company

(10) This section applies to a life assurance company in relation to the whole or a part of a risk if, and only if, the risk or that part of the risk:

(a) is covered by a disability policy as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*; and

(b) relates to a benefit that is payable in an event mentioned in that definition.

Income Tax Assessment Act 1997

2 At the end of section 4-15

Add:

Note: A life insurance company can have a taxable income of the complying superannuation class and/or a taxable income of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

3 Section 12-5 (table item headed "tax losses")

After:

film losses	Subdivision 375-G

insert:

life insurance companies	Subdivision 320-D

4 Section 36-25 (at the end of the table headed "*Tax losses of companies*")

Add:

5.	A *life insurance company	Subdivision 320-D

5 Section 320-1

Omit all the words from and including "The taxable income of life insurance companies" to and including "the company tax rate.", substitute:

> Life insurance companies can have one or both of these taxable incomes for any income year for the purposes of working out their income tax for that year:
>
> - a taxable income of the complying superannuation class, which consists of taxable income that relates to complying superannuation business and is taxed at the rate of tax that applies to complying superannuation funds;
>
> - a taxable income of the ordinary class, which consists of taxable income that relates to other businesses and is taxed at the corporate tax rate.
>
> Life insurance companies can also have tax losses that correspond to those 2 classes. The Division provides that tax losses of a particular class can be deducted only from incomes in respect of that class.
>
> The Division ensures that the income tax worked out on the basis of these taxable incomes and tax losses is a single amount of income tax on one taxable income.

6 Paragraphs 320-5(2)(c), (d) and (e)

Repeal the paragraphs, substitute:

(c) enables a life insurance company to have taxable incomes and *tax losses of the following classes for the purposes of working out its income tax for an income year:

(i) the *complying superannuation class;

(ii) the *ordinary class; and

(d) contains other provisions necessary to enable the income tax on the taxable income of a life insurance company to be worked out.

7 Paragraph 320-15(b)

After "*contracts of reinsurance", insert "(except amounts that relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies)".

8 Paragraph 320-15(c)

Omit "a *contract of reinsurance", substitute "a contract of reinsurance (except any amount that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies)".

9 After paragraph 320-15(d)

Insert:

(da) the *transfer values of assets transferred by the company from a *virtual PST under subsection 320-180(1) or 320-195(3); and

(db) the transfer values of assets transferred by the company to a virtual PST under subsection 320-180(3) or 320-185(1); and

10 Paragraph 320-15(e)

Omit "*virtual PST under subsection 320-180(1) or (2)", substitute "virtual PST under subsection 320-180(1) or (3)".

11 Paragraph 320-15(f)

Repeal the paragraph, substitute:

(f) the transfer values of assets transferred by the company from the company's *segregated exempt assets under subsection 320-235(1) or 320-250(2); and

12 Paragraph 320-15(g)

Omit "320-235(2)", substitute "320-235(3)".

13 Paragraph 320-15(h)

Before "if", insert "subject to subsection (2),".

14 After paragraph 320-15(j)

Insert:

(ja) amounts imposed by the company in respect of risk riders for *ordinary investment policies in an income year in which the company did not receive any life insurance premiums for those policies; and

15 Paragraph 320-15(k)

After "included in", insert ", or taken into account in working out,".

16 At the end of section 320-15

Add:

(2) Paragraph (1)(h) does not cover any liabilities under:

(a) a *life insurance policy that provides for *participating benefits or *discretionary benefits; or

(b) an *exempt life insurance policy; or

(c) a *funeral policy.

17 Paragraph 320-40(5)(b)

Repeal the paragraph, substitute:

(b) so much of the sum of:

(i) any amounts transferred to the virtual PST in the income year under subsection 320-180(3) or 320-185(1); and

(ii) any of the amounts mentioned in paragraph (a) that are related to the company's liability to pay amounts on the death or disability of a person; and

(iii) any of the amounts mentioned in paragraph (a) that are related to expenses incurred by the company in respect of policies that provide for *participating benefits or *discretionary benefits; and

(iv) any of the amounts mentioned in paragraph (a) that are not covered by subparagraph (ii) or (iii) and are covered by subsection (5A);

as does not exceed the sum of the amounts mentioned in paragraph (a).

18 After subsection 320-40(5)

Insert:

(5A) This subsection covers amounts that:

(a) are related to expenses incurred by the company directly in respect of *virtual PST assets in relation to a period during which the assets were virtual PST assets; and

(b) were transferred from the *virtual PST in the income year (as mentioned in paragraph (5)(a)) because the expenses were not paid from the virtual PST as required by subsection 320-195(4).

Note: For example, the amounts were transferred out of the virtual PST under subsection 320-195(3) because fees or charges were imposed to recover those expenses (as the expenses would have been paid from assets other than virtual PST assets).

19 Paragraphs 320-40(6)(a) and (b)

Repeal the paragraphs, substitute:

(a) the sum of the amounts transferred from the segregated exempt assets in the income year under subsection 320-235(1) or 320-250(2);

less:

(b) so much of the sum of:

(i) any amounts transferred to the segregated exempt assets in the income year under subsection 320-235(3) or 320-240(1); and

(ii) any of the amounts mentioned in paragraph (a) that are related to expenses incurred by the company in respect of policies that provide for *participating benefits or *discretionary benefits; and

(iii) any of the amounts mentioned in paragraph (a) that are not covered by subparagraph (ii) and are covered by subsection (6A);

as does not exceed the sum of the amounts mentioned in paragraph (a).

20 After subsection 320-40(6)

Insert:

(6A) This subsection covers amounts that:

(a) are related to expenses incurred by the company directly in respect of *segregated exempt assets in relation to a period during which the assets were segregated exempt assets; and

(b) were transferred from the segregated exempt assets in the income year (as mentioned in paragraph (6)(a)) because the expenses were not paid from the segregated exempt assets as required by subsection 320-250(3).

Note: For example, the amounts were transferred out of the segregated exempt assets under subsection 320-250(2) because fees or charges were imposed to recover those expenses (as the expenses would have been paid from assets other than segregated exempt assets).

21 Subsection 320-40(7)

Repeal the subsection, substitute:

(7) The ***applicable amount*** for other policies is:

(a) the sum of:

(i) the *life insurance premiums received in respect of the policies in the income year; and

(ii) any amounts that the company includes in its assessable income in respect of the policies under paragraph 320-15(1)(k) for the income year;

less:

(b) so much of the sum of:

(i) the amounts that the company can deduct under section 320-75 in respect of the policies in the income year; and

(ii) the *risk components of claims paid under the policies in the income year;

as does not exceed the sum of the amounts mentioned in paragraph (a).

22 Subsection 320-55(3)

Repeal the subsection, substitute:

(3) For the purposes of subsection (2) only, the amount of a *life insurance premium that ***relates*** to the company's liability to pay amounts on the death or disability of a person is:

(a) if the policy provides for *participating benefits or *discretionary benefits—nil; or

(b) if paragraph (a) does not apply and the policy states that the whole or a specified part of the premium is payable in respect of such a liability—the whole or that part of the premium, as appropriate; or

(c) if neither paragraph (a) nor (b) applies:

(i) if the policy is an *endowment policy—10% of the premium; or

(ii) if the policy is a *whole of life policy—30% of the premium; or

(iii) otherwise—so much of the premium as an *actuary determines to be attributable to such a liability.

23 Subsection 320-70(2)

Repeal the subsection, substitute:

(2) This section does not apply to:

(a) *life insurance policies that provide for *participating benefits or *discretionary benefits; or

(b) funeral policies.

24 Section 320-75

Repeal the section, substitute:

320-75 Deduction for ordinary investment policies

(1) This section applies to a *life insurance company in respect of *ordinary investment policies issued by the company.

(2) The company can deduct, in respect of *life insurance premiums received in the income year for those policies:

(a) the sum of the *net premiums;

less:

(b) so much of the net premiums as an *actuary determines to be attributable to fees and charges charged in that income year.

(3) In making a determination under subsection (2), an *actuary is to have regard to:

(a) the changes over the income year in the sum of the *net current termination values of the policies; and

(b) the movements in those values during the income year.

(4) In addition, if an *actuary determines that:

(a) there has been a reduction in the income year (the ***current year***) of exit fees that were imposed in respect of those policies in a previous income year; and

(b) the reduction (or a part of it) has not been taken into account in a determination under subsection (2) for the current year;

the company can deduct so much of that reduction as has not been so taken into account.

25 Subparagraph 320-80(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) the policy is neither an *exempt life insurance policy nor a *funeral policy; and

26 Paragraph 320-80(2)(b)

After "exempt life insurance policy", insert "or a funeral policy".

27 Subsection 320-85(2)

Repeal the subsection, substitute:

(2) Subsection (1) does not cover any liabilities under:

(a) a *life insurance policy that provides for *participating benefits or *discretionary benefits; or

(b) an *exempt life insurance policy; or

(c) a *funeral policy.

28 Section 320-87

Repeal the section, substitute:

320-87 Deduction for assets transferred from or to virtual PST

(1) A *life insurance company can deduct the *transfer values of assets that are transferred by the company in the income year from a *virtual PST under subsection 320-180(1) or 320-195(3).

(2) A *life insurance company can deduct the *transfer values of assets that are transferred by the company in the income year to a *virtual PST under subsection 320-180(3) or 320-185(1).

(3) If an asset (other than money) is transferred by a *life insurance company:

(a) from a *virtual PST under subsection 320-180(1) or 320-195(2) or (3); or

(b) to a virtual PST under subsection 320-180(3) or section 320-185;

the company can deduct the amount (if any) that it can deduct because of section 320-200.

29 Section 320-100

Repeal the section, substitute:

320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance

A *life insurance company can deduct amounts that:

(a) were paid by the company in the income year as *life insurance premiums under *contracts of reinsurance; and

(b) do not relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

30 Section 320-105

Omit "320-235(2)" (wherever occurring), substitute "320-235(3)".

31 At the end of section 320-120

Add:

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the ordinary class: see sections 320-139 and 320-143.

32 At the end of section 320-125

Add:

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the complying superannuation class: see sections 320-137 and 320-141.

33 Subdivisions 320-D and 320-E

Repeal the Subdivisions, substitute:

Subdivision 320-D—Income tax, taxable income and tax loss of life insurance companies

Guide to Subdivision 320-D

320-130 What this Subdivision is about

This Subdivision explains how a life insurance company's income tax is worked out.

For that purpose, this Subdivision enables a life insurance company to have taxable incomes and tax losses of the following classes:

- the complying superannuation class;
- the ordinary class.

320-131 Overview of Subdivision

Working out the income tax

(1) In any income year, a life insurance company can have:
  (a) a taxable income of the complying superannuation class and/or a taxable income of the ordinary class; or
  (b) a tax loss of the complying superannuation class and/or a tax loss of the ordinary class; or
  (c) a taxable income of one class and a tax loss of the other class.

Note: The taxable incomes mentioned in paragraph (a) are taxed at different rates: see section 23A of the *Income Tax Rates Act 1986*.

(2) Taxable incomes and tax losses of both classes are taken into account in working out the amount of income tax that the company has to pay for the income year (see section 320-134). That amount is then taken to be the income tax on the company's taxable income for that income year.

Working out taxable income and tax loss of each class

(3) In general, the rules in this Act about working out a company's taxable income or tax loss, or deducting a company's tax loss, apply to a life insurance company in relation to:

(a) working out a taxable income or tax loss of a particular class; or

(b) deducting a tax loss of a particular class.

(4) However, that general rule is subject to the following:

(a) sections 320-137 to 320-143, which allocate amounts of incomes and deductions for the purposes of working out a taxable income or tax loss of a particular class;

(b) subsections 320-141(2) and 320-143(2), which provide that tax losses of a particular class can be deducted only from incomes in respect of that class;

(c) section 320-149, which sets out the provisions in this Act that have effect only in relation to a taxable income or tax loss of the ordinary class.

Table of sections

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Taxable income and tax loss of life insurance companies

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320-143 Tax loss—ordinary class
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[This is the end of the Guide.]

General rules

320-133 Object of Subdivision

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

(a) for the purposes of working out the amount of a *life insurance company's income tax for an income year:

(i) the company's taxable income or *tax loss of one *class is worked out separately from its taxable income or tax loss of the other class; and

(ii) the company's tax losses of a particular class can be deducted only from its incomes in respect of that class; and

(b) for the purposes of this Act, that amount of income tax is treated as the company's income tax on its taxable income for that income year.

(2) In subsection (1), a ***class*** means the *complying superannuation class or the *ordinary class.

320-134 Income tax of a life insurance company

Working out the income tax

(1) Work out a *life insurance company's income tax for an income year under section 4-10 as follows:

(a) apply steps 1 and 2 of the method statement in subsection 4-10(3) to work out separately the amount that would be the company's basic income tax liability for its taxable income of each *class for that year;

(b) treat the sum of these amounts as the company's basic income tax liability for that year and apply step 4 of the method statement to subtract its *tax offsets from that sum.

(2) For the purposes of this Act:

(a) the income tax worked out in accordance with subsection (1) is taken to be the company's income tax on its taxable income for the income year; and

(b) except as provided by subsection (1) of this section and sections 320-135 to 320-149, the company's taxable income for that year is taken to be equal to the sum of the company's taxable incomes of the 2 *classes for that year.

Note: This means that there is only one assessment in respect of the company's taxable income for the income year and that the income tax constitutes only one debt to the Commonwealth.

Working out the income tax on certain assumptions

(3) Subsection (1) also has effect in relation to working out an amount that would be the company's income tax if certain assumptions were made. It has that effect in the same way as it has effect in relation to working out the company's income tax under section 4-10 (except in regard to those assumptions).

Note: This means, for example, subsection (1) also has effect in relation to working out the amount of a life insurance company's income tax on the basis of the assumptions mentioned in section 67-30 (about getting a refund of a tax offset).

320-135 Taxable income and tax loss of each of the 2 classes

(1) Subject to the other provisions in this Subdivision:

(a) this Act has effect for a *life insurance company in relation to working out a taxable income of a particular *class in the same way as it has effect in relation to working out a taxable income of any other company; and

(b) this Act has effect for a life insurance company in relation to working out or deducting a *tax loss of a particular class in the same way as it has effect in relation to working out or deducting a tax loss of any other company.

(2) Sections 320-137 to 320-143 have effect in addition to other provisions in this Act that relate to working out a taxable income or *tax loss, or deducting a tax loss (as appropriate).

(3) Nothing in this Subdivision prevents a *life insurance company from:

(a) having taxable incomes, or *tax losses, of both *classes for the same income year; or

(b) having a taxable income of one class and a tax loss of the other class for the same income year.

Note: In certain circumstances, a life insurance company can have a taxable income and a tax loss of the same class in an income year (see Subdivision 165-B as it has effect under this Subdivision).

Taxable income and tax loss of life insurance companies

320-137 Taxable income—complying superannuation class

(1) A *life insurance company's taxable income of the ***complying superannuation class*** is a taxable income worked out under this Act on the basis of only:

(a) assessable income of the company that is covered by subsection (2); and

(b) deductions of the company that are covered by subsection (4); and

(c) *tax losses of the company that are of the *complying superannuation class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

Relevant assessable income

(2) This subsection covers the following assessable income of a *life insurance company:

(a) assessable income derived by the company from the investment of its *virtual PST assets in relation to the period during which those assets were virtual PST assets;

(b) so much of the amount that is included in the company's assessable income because of paragraph 320-15(1)(a) as is equal to the total *transfer value of assets transferred in the income year by the company to a *virtual PST under subsection 320-185(3);

(c) if an asset (other than money) is transferred by the company from a virtual PST under subsection 320-180(1) or 320-195(2) or (3)—amounts that are included in the company's assessable income because of section 320-200;

(d) amounts that are included in the company's assessable income because of paragraph 320-15(1)(db), (i) or (j);

(e) amounts that are included in the company's assessable income under subsection 115-280(4);

(f) subject to subsection (3), so much of the company's assessable income for the income year as is:

(i) the total amount credited during that year to the *RSAs provided by the company; less

(ii) the total amount debited during that year from the RSAs.

Amounts disregarded for RSAs

(3) In working out the amount mentioned in paragraph (2)(f), disregard the following amounts:

(a) contributions credited to the *RSAs that are not *taxable contributions;

(b) amounts debited from the RSAs that are benefits paid to, or in respect of, the holders of the RSAs;

(c) income tax debited from the RSAs;

(d) if an *annuity was paid from an RSA in respect of the whole of the income year, or the whole of the part of the income year in which the RSA existed, the total amount credited to the RSA during the income year;

(e) if an annuity was paid from an RSA in respect of a part, but not the whole, of the portion of the income year in which the RSA existed, so much of the total amount credited to the RSA during the income year as is equal to the amount worked out using the following formula:

$$\text{Total amount credited to the *RSA during the income year} \times \frac{\text{Number of days in the part of the income year in which the *annuity was paid}}{\text{Number of days in the income year in which the RSA existed}}$$

Relevant deductions

(4) This subsection covers the following deductions of a *life insurance company:

(a) amounts that the company can deduct under section 320-55;

(b) amounts that the company can deduct (other than any *tax losses) in respect of the investment of the company's *virtual PST assets in relation to the period during which those assets were virtual PST assets;

(c) amounts that the company can deduct under section 320-87 because of subsection (1) or paragraph (3)(a) of that section;

(d) amounts that the company can deduct under subsection 115-280(1);

(e) so much of the amounts that the company can deduct under subsection 115-215(6) as are attributable to *capital gains that:

(i) the company is taken to have under subsection 115-215(3); and

(ii) are in respect of the investment of the company's virtual PST assets; and

(iii) are in relation to the period during which those assets were virtual PST assets.

320-139 Taxable income—ordinary class

A *life insurance company's taxable income of the ***ordinary class*** is a taxable income worked out under this Act on the basis of only:

(a) assessable income of the company that is not covered by subsection 320-137(2); and

(b) amounts (other than *tax losses) that the company can deduct and are not covered by subsection 320-137(4); and

(c) tax losses of the company that are of the *ordinary class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

320-141 Tax loss—complying superannuation class

Working out a tax loss of the complying superannuation class

(1) A *life insurance company's *tax loss of the ***complying superannuation class*** is a tax loss worked out under this Act on the basis of only:

(a) assessable income of the company that is covered by subsection 320-137(2); and

(b) deductions of the company that are covered by subsection 320-137(4); and

(c) *net exempt income of the company that is attributable to *exempt income derived:

(i) from the company's *virtual PST assets; and

(ii) in relation to the period during which those assets were virtual PST assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

Deducting a tax loss of the complying superannuation class

(2) A *life insurance company's *tax loss of the ***complying superannuation class*** can be deducted under this Act only from:

(a) *net exempt income of the company that is attributable to *exempt income derived:

(i) from the company's *virtual PST assets; and

(ii) in relation to the period during which those assets were virtual PST assets; and

(b) assessable income of the company that is covered by subsection 320-137(2), reduced by deductions of the company that are covered by subsection 320-137(4).

Note: For the usual way of deducting a tax loss: see section 36-15. For other ways of deducting a tax loss: see section 36-25.

320-143 Tax loss—ordinary class

Working out a tax loss of the ordinary class

(1) A *life insurance company's *tax loss of the ***ordinary class*** is a tax loss worked out under this Act on the basis of only:

(a) assessable income of the company that is not covered by subsection 320-137(2); and

(b) amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4); and

(c) *net exempt income of the company that is not attributable to *exempt income derived:

(i) from the company's *virtual PST assets; and

(ii) in relation to the period during which those assets were virtual PST assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

Deducting a tax loss of the ordinary class

(2) A *life insurance company's *tax loss of the ***ordinary class*** can be deducted under this Act only from:

(a) *net exempt income of the company that is not attributable to *exempt income derived:

(i) from the company's *virtual PST assets; and

(ii) in relation to the period during which those assets were virtual PST assets; and

(b) assessable income of the company that is not covered by subsection 320-137(2), reduced by amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4).

Note: For the usual way of deducting a tax loss: see section 36-15. For other ways of deducting a tax loss: see section 36-25.

320-149 Provisions that apply only in relation to the ordinary class

(1) The provisions covered by subsection (2):

(a) have effect as provided by section 320-135 in relation to a *life insurance company's taxable income, or *tax loss, of the *ordinary class; but

(b) have no effect in relation to the company's taxable income, or tax loss, of the *complying superannuation class.

(2) This subsection covers these provisions:

(a) section 36-55;

(b) Division 165 (except Subdivision 165-CD).

Example 1: A life insurance company that has an amount of excess franking offsets will need to recalculate its tax loss of the ordinary class under section 36-55. But its tax loss of the complying superannuation class is unaffected by that section.

Example 2: A life insurance company that fails to meet the relevant tests of Division 165 will need to recalculate the ordinary class of its taxable income and tax loss under Subdivision 165-B. But the complying superannuation class of its taxable income and tax loss are unaffected by that Subdivision.

34 Subdivision 320-F (heading)

Repeal the heading, substitute:

Subdivision 320-F—Virtual PST

35 Section 320-165

Repeal the section, substitute:

320-165 What this Subdivision is about

This Subdivision explains how a life insurance company can segregate assets (to be known as a ***virtual PST***) to be used for the sole purpose of discharging its complying superannuation liabilities.

36 Subsection 320-170(3)

Repeal the subsection, substitute:

(3) The assets segregated must have, as at the time of the segregation, a total *transfer value that does not exceed the sum of:

(a) the company's *virtual PST liabilities as at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of the assets segregated.

37 Section 320-175

Repeal the section, substitute:

320-175 Valuations of virtual PST assets and virtual PST liabilities for each valuation time

(1) A *life insurance company that has established a *virtual PST must cause the following amounts to be calculated within the period of 60 days starting immediately after each *valuation time:

(a) the total *transfer value of the company's *virtual PST assets as at the valuation time;

(b) the company's *virtual PST liabilities as at the valuation time.

(2) These are the ***valuation times***:

(a) the end of the income year in which the *virtual PST was established;

(b) the end of each later income year.

Note: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

38 Section 320-180

Repeal the section, substitute:

320-180 Consequences of a valuation under section 320-175

Transfer from the virtual PST

(1) If the total *transfer value of the company's *virtual PST assets as at a *valuation time exceeds the sum of:

(a) the company's *virtual PST liabilities as at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company must transfer, from the *virtual PST, assets of any kind having a total transfer value equal to the excess.

(2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:

(a) the day on which the total *transfer value and the *virtual PST liabilities (as at the *valuation time) were calculated; or

(b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

Transfer to the virtual PST

(3) If the total *transfer value of the company's *virtual PST assets as at a *valuation time is less than the sum of:

(a) the company's *virtual PST liabilities as at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company can transfer, to the *virtual PST, assets of any kind having a total transfer value not exceeding the difference.

(4) A transfer under subsection (3) is taken to have been made at the *valuation time if it is made within the period of 30 days starting immediately after:

(a) the day on which the total *transfer value and the *virtual PST liabilities (as at the valuation time) were calculated; or

(b) if those amounts were calculated on different days—the later of those days.

39 Section 320-185 (heading)

Repeal the heading, substitute:

320-185 Transfer of assets to virtual PST otherwise than as a result of a valuation under section 320-175

40 Subsection 320-185(1)

Repeal the subsection, substitute:

(1) If a *life insurance company determines, at a time other than a *valuation time, that the total *transfer value of the company's *virtual PST assets as at that time is less than the sum of:

(a) the company's *virtual PST liabilities as at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company can transfer, to the *virtual PST, assets of any kind having a total transfer value not exceeding the difference.

41 Subsection 320-185(4)

Omit "320-180(2)", substitute "320-180(3)".

42 Section 320-195 (heading)

Repeal the heading, substitute:

320-195 Transfer of assets and payment of amounts from a virtual PST otherwise than as a result of a valuation under section 320-175

43 Paragraph 320-195(3)(c)

Repeal the paragraph, substitute:

(c) determines, at a time other than a *valuation time, that the total *transfer value of the company's virtual PST assets as at that time exceeds the sum of:

(i) the company's *virtual PST liabilities at that time; and

(ii) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

44 Subsection 320-195(4)

Repeal paragraph (c) and omit all the words after it, substitute:

(c) any liabilities to pay *PAYG instalments, or income tax, that are attributable to the company's *virtual PST assets;

the life insurance company must pay, from the virtual PST, any amounts required to discharge the liabilities, or amounts equal to the expenses (as appropriate).

45 Subsection 320-200(1)

Omit "320-180(2)", substitute "320-180(3)".

46 After subsection 320-200(2)

Insert:

(2A) Without limiting subsection (2), where the asset transferred is a unit of *plant, Division 42 has effect for the company as if:

(a) in relation to the sale of the asset that is taken to have occurred under paragraph (2)(c):

(i) the sale were a *balancing adjustment event; and

(ii) the *termination value of the asset for that event were equal to the consideration for the sale under that paragraph; and

(iii) the company had ceased to be the owner or *quasi-owner of the asset at the time of the sale; and

(b) in relation to the purchase of the asset that is taken to have occurred under paragraph (2)(d):

(i) the company had only become the owner or quasi-owner of the asset after the purchase; and

(ii) the asset's cost were equal to the consideration for the purchase under that paragraph; and

(iii) the company had acquired the asset from an *associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 42 is reset; and
- the company's assessable income might be adjusted under section 42-30.

47 At the end of section 320-200

Add:

(4) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 42.

48 Section 320-205

Repeal the section.

49 Subdivision 320-G

Repeal the Subdivision.

50 Subsection 320-225(3)

Repeal the subsection, substitute:

(3) The assets segregated must have, as at the time of the segregation, a total *transfer value that does not exceed the amount of the company's *exempt life insurance policy liabilities as at that time.

51 Section 320-230

Repeal the section, substitute:

320-230 Valuations of segregated exempt assets and exempt life insurance policy liabilities for each valuation time

(1) A *life insurance company that has segregated any of its assets in accordance with section 320-225 must cause the following amounts to be calculated within the period of 60 days starting immediately after each *valuation time:

(a) the total *transfer value of the company's *segregated exempt assets as at the valuation time;

(b) the amount of the company's *exempt life insurance policy liabilities as at the valuation time.

(2) These are the ***valuation times***:

(a) the end of the income year in which the segregation occurred;

(b) the end of each later income year.

Note: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

52 Section 320-235

Repeal the section, substitute:

320-235 Consequences of a valuation under section 320-230

Transfer from the segregated exempt assets

(1) If:

(a) the total *transfer value of the company's *segregated exempt assets as at a *valuation time;

exceeds

(b) the amount of the company's *exempt life insurance policy liabilities as at that time;

the company must transfer, from the segregated exempt assets, assets of any kind having a total transfer value equal to the excess.

(2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:

(a) the day on which the total *transfer value and the *exempt life insurance policy liabilities (as at the *valuation time) were calculated; or

(b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

Transfer to the segregated exempt assets

(3) If:

(a) the total *transfer value of the company's *segregated exempt assets as at a *valuation time;

is less than

(b) the amount of the company's *exempt life insurance policy liabilities as at that time;

the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

(4) A transfer under subsection (3) is taken to have been made at the *valuation time if it is made within the period of 30 days starting immediately after:

(a) the day on which the total *transfer value and the *exempt life insurance policy liabilities (as at the valuation time) were calculated; or

(b) if those amounts were calculated on different days—the later of those days.

53 Section 320-240 (heading)

Repeal the heading, substitute:

320-240 Transfer of assets to segregated exempt assets otherwise than as a result of a valuation under section 320-230

54 Subsection 320-240(1)

Repeal the subsection, substitute:

(1) If a *life insurance company determines, at a time other than a *valuation time, that:

(a) the total *transfer value of the company's *segregated exempt assets as at that time;

is less than

(b) the company's *exempt life insurance policy liabilities as at that time;

the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

55 Subsection 320-240(4)

Omit "320-235(2)", substitute "320-235(3)".

56 Subparagraph 320-245(3)(a)(ii)

Repeal the subparagraph.

57 After section 320-245

Insert:

320-246 Exempt life insurance policy

(1) An ***exempt life insurance policy*** is a *life insurance policy (other than an *RSA):

(a) that is held by the trustee of a *complying superannuation fund and provides solely for the discharge of the current pension liabilities (within the meaning of Part IX of the *Income Tax Assessment Act 1936*) of the fund; or

(b) that is held by the trustee of a *pooled superannuation trust, where:

(i) the policy provides solely for the discharge of the current pension liabilities (within the meaning of Part IX of the *Income Tax Assessment Act 1936*) of complying superannuation funds; and

(ii) the funds are unit holders of the trust; or

(c) that is held by another *life insurance company and is a *segregated exempt asset of that other company; or

(d) that is held by the trustee of a *constitutionally protected fund; or

(e) that provides for an *immediate annuity that:

(i) was purchased on or before 9 December 1987 and was not purchased wholly or partly with a rolled-over amount; or

(ii) satisfies the conditions in subsections (3), (4) and (5) and was purchased on or before 9 December 1987 wholly or partly with a rolled-over amount; or

(iii) satisfies the conditions in subsections (3), (4) and (5) and was purchased after 9 December 1987.

Note: A part of a life insurance policy may be taken to be an exempt life insurance policy under section 320-247.

(2) In subsection (1), a ***rolled-over amount*** has the same meaning as it has under section 27A of the *Income Tax Assessment Act 1936*.

(3) An *immediate annuity satisfies the conditions in this subsection if it is payable until the later of:

(a) the death of a person (or the death of the last to die of 2 or more persons); or

(b) the end of a fixed term.

(4) An *immediate annuity satisfies the conditions in this subsection if the contract under which it is payable does not permit:

(a) the total amount payable for its commutation to exceed its reduced purchase price (within the meaning of section 27A of the *Income Tax Assessment Act 1936*); and

(b) any payment of its residual capital value (within the meaning of that section) to exceed its purchase price (within the meaning of that section).

(5) An *immediate annuity satisfies the conditions in this subsection if there is no unreasonable deferral of the payments of the annuity, having regard to:

(a) to the extent to which the payments depend on the returns of the investment of the assets of the *life insurance company paying the annuity—when the payments are made and when those returns are derived; and

(b) to the extent to which the payments do not depend on those returns—the relative sizes of the payments from year to year; and

(c) any other relevant factors.

320-247 Policy split into an exempt life insurance policy and another life insurance policy

When is a part of a policy taken to be an exempt life insurance policy?

(1) A part of a *life insurance policy (the ***original policy***) is taken to be an *exempt life insurance policy for the purposes of this Act if:

(a) the part provides solely for the discharge of the current pension liabilities (within the meaning of Part IX of the *Income Tax Assessment Act 1936*) of a *complying superannuation fund; and

(b) the trustee of the fund holds the original policy.

(2) A part of a *life insurance policy (the ***original policy***) is taken to be an *exempt life insurance policy for the purposes of this Act if:

(a) the part provides solely for the discharge of liabilities that are attributable to the current pension liabilities (within the meaning of Part IX of the *Income Tax Assessment Act 1936*) of *complying superannuation funds; and

(b) the trustee of a *pooled superannuation trust holds the original policy; and

(c) the funds are unit holders of the trust.

What happens to the rest of the policy?

(3) If a part of a policy (the ***original policy***) is taken to be an *exempt life insurance policy under subsection (1) or (2), the rest of the original policy is taken to be another *life insurance policy for the purposes of this Act.

58 Section 320-250 (heading)

Repeal the heading, substitute:

320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of a valuation under section 320-230

59 Paragraph 320-250(2)(c)

Repeal the paragraph, substitute:

(c) determines, at a time other than a *valuation time, that the total *transfer value of the company's segregated exempt assets as at that time exceeds the amount of the company's *exempt life insurance policy liabilities as at that time;

60 Subsection 320-250(4)

Repeal the subsection.

61 Subsection 320-255(1)

Omit "320-235(2)", substitute "320-235(3)".

62 After subsection 320-255(3)

Insert:

(3A) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 42.

63 Subsection 320-255(7)

Omit "*notional undeducted cost", substitute "*undeducted cost".

64 Subsection 320-255(7)

Omit "notional undeducted cost" (wherever occurring), substitute "undeducted cost".

65 At the end of section 320-255

Add:

(9) Division 42 has effect in relation to an asset covered by subsection (6), (7) or (8) as if:

(a) in relation to the sale of the asset that is taken to have occurred under that subsection:

(i) the sale were a *balancing adjustment event; and

(ii) the *termination value of the asset for that event were equal to the consideration for the sale; and

(iii) the company had ceased to be the owner or *quasi-owner of the asset at the time of the sale; and

(b) in relation to the purchase of the asset that is taken to have occurred under that subsection:

(i) the company had only become the owner or quasi-owner of the asset after the purchase; and

(ii) the asset's cost were equal to the consideration for the purchase under that subsection; and

(iii) the company had acquired the asset from an *associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 42 is reset; and
- the company's assessable income might be adjusted under section 42-30 if the transfer is a transfer to the company's segregated exempt assets.

66 Subsection 995-1(1)

Insert:

class of a taxable income or a *tax loss of a *life insurance company has the meaning given by section 320-133.

67 Subsection 995-1(1) (definition of *complying superannuation class*)

Repeal the definition, substitute:

complying superannuation class for a taxable income of a *life insurance company has the meaning given by section 320-137.

68 Subsection 995-1(1)

Insert:

complying superannuation class for a *tax loss of a *life insurance company has the meaning given by section 320-141.

69 Subsection 995-1(1) (definition of *exempt life insurance policy*)

Repeal the definition, substitute:

exempt life insurance policy has the meaning given by section 320-246.

Note: This definition is affected by section 320-247.

70 Subsection 995-1(1) (definition of *net risk component*)

Repeal the definition, substitute:

net risk component of a *life insurance policy means so much of the policy's risk component as:

(a) is not reinsured under a *contract of reinsurance; or

(b) is reinsured under a contract of reinsurance to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

71 Subsection 995-1(1) (definition of *ordinary class*)

Repeal the definition, substitute:

ordinary class for a taxable income of a *life insurance company has the meaning given by section 320-139.

72 Subsection 995-1(1)

Insert:

ordinary class for a *tax loss of a *life insurance company has the meaning given by section 320-143.

73 Subsection 995-1(1)

Insert:

ordinary investment policy means a *life insurance policy that is not:

(a) a *virtual PST life insurance policy; or

(b) an *exempt life insurance policy; or

(c) a policy that provides for *participating benefits or *discretionary benefits; or

(d) a policy (other than a *funeral policy) under which amounts are to be paid only on the death or disability of a person.

74 Subsection 995-1(1) (definition of *RSA component*)

Repeal the definition.

75 Subsection 995-1(1)

Insert:

sickness policy means a *life insurance policy issued by a *friendly society for the sole purpose of providing:

(a) benefits in respect of a sickness of the insured person; or

(b) benefits covered by paragraph (a) and benefits to pay for the funeral of the insured person.

76 Subsection 995-1(1) (definition of *specified roll-over component*)

Repeal the definition.

77 Subsection 995-1(1) (at the end of paragraph (a) of the definition of *tax loss*, after the notes)

Add:

Note 3: A life insurance company can have a tax loss of the complying superannuation class and/or a tax loss of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

78 Subsection 995-1(1)

Insert:

valuation time for a *life insurance company has the meaning given by sections 320-175 and 320-230.

Note: This definition is affected by section 713-525.

79 Subsection 995-1(1) (definition of *virtual PST component*)

Repeal the definition.

Income Tax (Transitional Provisions) Act 1997

80 After section 320-85

Insert:

Subdivision 320-D—Taxable income and tax loss of life insurance companies

320-100 Savings—tax losses of previous income years

If:

(a) a life insurance company has a tax loss for an income year ending before 1 July 2000; and

(b) all or a part of that tax loss is carried forward to the income year that includes that date;

so much of that tax loss as is so carried forward has effect as if it were a tax loss of the ordinary class.

81 Subdivision 320-F (heading)

Repeal the heading, substitute:

Subdivision 320-F—Virtual PST

82 Subsection 320-175(1)

Repeal the subsection, substitute:

(1) If:

(a) a life insurance company had a liability before 1 July 2000 under a life insurance policy; and

(b) the liability or a part of the liability is to be discharged out of the company's virtual PST assets; and

(c) there is a transfer of the company's assets to the virtual PST to meet that liability or that part of the liability;

then, to the extent to which the assets are transferred to meet that liability or that part of the liability:

(d) if the transfer occurs before 1 October 2000—the transfer is to be disregarded for the purposes of the *Income Tax Assessment Act 1997*; or

(e) if the transfer occurs on or after 1 October 2000—the transfer is to be disregarded for the purposes of that Act, except:

(i) section 320-200 of that Act; and

(ii) any other provisions that rely on the operation of that section (for example, paragraph 320-15(1)(e) of that Act).

Note: This means, amongst other things, that a life insurance company to which this subsection applies will not be able to claim a deduction in respect of the transfer under subsection 320-87(2) of that Act.

(1A) If subsection (1) has applied to a life insurance company in respect of a transfer of assets to meet a liability or a part of a liability, that subsection does not apply again in respect of another transfer of assets to meet that liability or that part of the liability.

83 Subsection 320-230(1)

Repeal the subsection, substitute:

(1) If:

(a) a life insurance company had a liability before 1 July 2000 under a life insurance policy where the income of the company attributable to the liability was exempt from tax before that date; and

(b) the liability or a part of the liability is to be discharged out of the company's segregated exempt assets; and

(c) there is a transfer of the company's assets to the segregated exempt assets to meet that liability or that part of the liability;

then, to the extent to which the assets are transferred to meet that liability or that part of the liability:

(d) if the transfer occurs before 1 October 2000—the transfer is to be disregarded for the purposes of the *Income Tax Assessment Act 1997*; or

(e) if the transfer occurs on or after 1 October 2000—the transfer is to be disregarded for the purposes of that Act, except:

(i) section 320-255 of that Act; and

(ii) any other provisions that rely on the operation of that section (for example, paragraph 320-15(1)(g) of that Act).

Note: This means, amongst other things, that a life insurance company to which this subsection applies will not be able to claim a deduction in respect of the transfer under subsection 320-105(1) of that Act.

(1A) If subsection (1) has applied to a life insurance company in respect of a transfer of assets to meet a liability or a part of a liability, that subsection does not apply again in respect of another transfer of assets to meet that liability or that part of the liability.

Taxation Administration Act 1953

84 Subsection 45-330(3) in Schedule 1 (method statement)

Repeal the method statement, substitute:

Method statement

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

Step 2. Add to the step 1 result the deductions for *tax losses of the *ordinary class that were used in making the *base assessment.

Step 3. Reduce the step 2 result by the amount of any *tax losses of the *ordinary class, to the extent that the company can carry them forward to the next income year.

Step 4. Add to the step 3 result the taxable income of the *complying superannuation class for the *base assessment.

Step 5. Add to the step 4 result the deductions for *tax losses of the *complying superannuation class that were used in making the *base assessment.

Step 6.	Reduce the step 5 result by the amount of any *tax losses of the *complying superannuation class, to the extent that the company can carry them forward to the next income year. The result of this step is the ***adjusted taxable income*** of the company for the *base year.

Part 2—Amendments commencing on 30 June 2001

Income Tax Assessment Act 1997

85 Section 40-15 (note)

Renumber the note as Note 1.

86 At the end of section 40-15

Add:

Note 2: The application of this Division to a life insurance company is affected by sections 320-200 and 320-255.

87 Subsection 320-200(2A)

Repeal the subsection, substitute:

(2A) Without limiting subsection (2), where the asset transferred is a *depreciating asset, Division 40 has effect for the company as if:

(a) in relation to the sale of the asset that is taken to have occurred under paragraph (2)(c):

(i) the sale were a *balancing adjustment event; and

(ii) the *termination value of the asset for that event were equal to the consideration for the sale under that paragraph; and

(iii) the company had stopped *holding the asset at the time of the sale; and

(b) in relation to the purchase of the asset that is taken to have occurred under paragraph (2)(d):

(i) the company had only begun to hold the asset after the purchase; and

(ii) the first element of the asset's *cost were equal to the consideration for the purchase under that paragraph; and

(iii) the company had acquired the asset from an *associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
- the company's assessable income might be adjusted under section 40-285.

88 Subsection 320-200(4)

Repeal the subsection, substitute:

(4) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.

89 Subsection 320-255(3A)

Repeal the subsection, substitute:

(3A) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.

90 Subsection 320-255(5)

Repeal the subsection.

91 Subsection 320-255(7)

Omit "*notional adjustable value", substitute "*adjustable value".

92 Subsection 320-255(7)

Omit "notional adjustable value" (wherever occurring), substitute "adjustable value".

93 Subsection 320-255(9)

Repeal the subsection, substitute:

(9) Division 40 has effect in relation to an asset covered by subsection (6), (7) or (8) as if:

(a) in relation to the sale of the asset that is taken to have occurred under that subsection:

(i) the sale were a *balancing adjustment event; and

(ii) the *termination value of the asset for that event were equal to the consideration for the sale under that subsection; and

(iii) the company had stopped *holding the asset at the time of the sale; and

(b) in relation to the purchase of the asset that is taken to have occurred under that subsection:

(i) the company had only begun to hold the asset after the purchase; and

(ii) the first element of the asset's *cost were equal to the consideration for the purchase under that subsection; and

(iii) the company had acquired the asset from an *associate of the company.

Note: This means that, amongst other things, as a result of the transfer:

- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
- the company's assessable income might be adjusted under section 40-285 if the transfer is a transfer to the company's segregated exempt assets.

94 Subsection 995-1(1) (definition of *notional adjustable value*)

Repeal the definition.

Part 3—Amendments commencing on 24 October 2002

Income Tax Assessment Act 1997

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

Add:

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

96 At the end of subsection 320-230(2)

Add:

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

97 Section 713-525

Repeal the section, substitute:

713-525 Obligation to value certain assets and liabilities

Division 320 has effect as if:

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

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

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

Note: This means that:

- there must be a valuation of the virtual PST assets and virtual PST liabilities under section 320-175 (with the consequences set out in section 320-180), and a valuation of the segregated exempt assets and exempt life insurance policy liabilities under section 320-230 (with the consequences set out in section 320-235), as at the joining time; and
- there must be a valuation of these assets and liabilities as at the leaving time.

98 Subparagraph 713-530(1)(c)(ii)

Repeal the subparagraph, substitute:

(ii) the head company has a *tax loss of the *complying superannuation class.

99 Subsection 713-530(2)

Omit "or the difference", substitute "or the *tax loss".

Part 4—Amendment commencing on 19 December 2002

Income Tax Assessment Act 1997

100 At the end of subsection 320-246(1)

Add:

; or (f) that provides for either or both of the following:

(i) a *personal injury annuity, payments of which are exempt from income tax under Division 54;

(ii) a *personal injury lump sum, payment of which is exempt from income tax under Division 54.

Part 5—Amendments commencing on 30 June 2003

Income Tax Assessment Act 1997

101 Paragraph 320-35(b)

Repeal the paragraph, substitute:

(b) if the company is an *RSA provider—any amounts that are disregarded because of paragraph 320-137(3)(d) or (e) in working out the company's taxable income of the *complying superannuation class.

102 Subparagraph 320-37(1)(d)(ii)

Omit "or *funeral policies", substitute ", *funeral policies or *sickness policies".

103 Subparagraph 320-37(1)(d)(iv)

Omit "or funeral policies", substitute ", funeral policies or *sickness policies, that were".

104 Section 320-40 (heading)

Repeal the heading, substitute:

320-40 One-third of certain management fees received under contracts made before 1 July 2000 are non-assessable non-exempt income

Part 6—Amendments commencing on 17 December 2003

Income Tax Assessment Act 1997

105 Subsection 320-141(2) (note)

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

106 Subsection 320-143(2) (note)

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

Taxation Administration Act 1953

107 Subsection 45-330(3) in Schedule 1 (method statement)

Repeal the method statement, substitute:

Method statement

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

Step 2. Add to the step 1 result the deductions for *tax losses of the *ordinary class that were used in making the *base assessment.

Step 3. Reduce the step 2 result by the lesser of the following amounts:

(a) the amount of any *tax losses of the *ordinary class, to the extent that the company can carry them forward to the next income year;

(b) deductions for tax losses of the ordinary class that were used in making the *base assessment.

Step 4. Add to the step 3 result the taxable income of the *complying superannuation class for the *base assessment.

Step 5. Add to the step 4 result the deductions for *tax losses of the *complying superannuation class that were used in making the *base assessment.

Step 6. Reduce the step 5 result by the lesser of the following amounts:

(a) the amount of any *tax losses of the *complying superannuation class, to the extent that the company can carry them forward to the next income year;

(b) deductions for tax losses of the complying superannuation class that were used in making the *base assessment.

The result of this step is the ***adjusted taxable income*** of the company for the *base year.

Part 7—Amendments commencing on Royal Assent

Income Tax Assessment Act 1936

108 Subsection 6(1) (paragraph (f) of the definition of *dividend*)

Omit "a policy of life-assurance", substitute "a life assurance policy".

109 Paragraph 26(i)

Omit "a policy of life assurance", substitute "a life assurance policy".

110 Subsection 26AH(1) (definition of *eligible policy*)

Omit "a policy of life assurance", substitute "a life assurance policy".

111 Subsection 26AH(2)

Omit "paid-up policy of life assurance", substitute "paid-up life assurance policy".

112 Subparagraph 102AE(2)(b)(iv)

Omit "a policy of life assurance", substitute "a life assurance policy".

113 Section 282A

Omit "a policy of life assurance", substitute "a life assurance policy".

Note: The heading to section 282A is altered by omitting "**policies of life assurance**" and substituting "**life assurance policies**".

114 Section 291A

Omit "a policy of life assurance", substitute "a life assurance policy".

Note: The heading to section 291A is altered by omitting "**policies of life assurance**" and substituting "**life assurance policies**".

115 Section 297A

Omit "a policy of life assurance", substitute "a life assurance policy".

Note: The heading to section 297A is altered by omitting "**policies of life assurance**" and substituting "**life assurance policies**".

Income Tax Assessment Act 1997

116 After paragraph 320-15(c)

Insert:

(ca) any reinsurance commission received or recovered by the company in respect of a contract of reinsurance (except any commission that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies); and

117 Paragraph 320-37(1)(c)

Omit "*foreign establishment amounts", substitute "foreign establishment amounts".

118 After subsection 320-37(1)

Insert:

(1A) For the purposes of paragraph (1)(c), ***foreign establishment amounts*** for the *life insurance company means the total amount of assessable income that was derived in the income year:

(a) in the course of the carrying on by the company of a business in a foreign country at or through a *permanent establishment of the company in that country; and

(b) from sources in that or any other foreign country; and

(c) from assets that:

(i) are attributable to the permanent establishment; and

(ii) are held to meet the liabilities under the *life insurance policies issued by the company at or through the permanent establishment.

119 Subsection 320-37(2)

Omit "*foreign establishment amounts", substitute "foreign establishment amounts".

120 Subsection 320-37(2) (definition of *all foreign establishment policy liabilities*)

Repeal the definition, substitute:

all foreign establishment policy liabilities means the average value for the income year (as calculated by an *actuary) of the policy liabilities (as defined in the *Valuation Standard) for all *life insurance policies that:

(a) were included in the class of *life insurance business to which the company's *Australian/overseas fund or *overseas fund relates; and

(b) were issued by the company at or through the *permanent establishment to which the foreign establishment amounts relate.

121 Subsection 320-37(2) (definition of *non-resident foreign establishment policy liabilities*)

Repeal the definition, substitute:

non-resident foreign establishment policy liabilities means the average value for the income year (as calculated by an *actuary) of the policy liabilities (as defined in the *Valuation Standard) for all *life insurance policies that:

(a) are *non-resident life insurance policies; and

(b) were issued by the company at or through the *permanent establishment to which the foreign establishment amounts relate.

122 Subsection 995-1(1) (definition of *foreign establishment amounts*)

Repeal the definition.

123 Subsection 995-1(1) (definition of *Solvency Standard*)

Repeal the definition, substitute:

Solvency Standard means the solvency standard mentioned in section 65 of the *Life Insurance Act 1995*.

124 Subsection 995-1(1) (definition of *Valuation Standard*)

Repeal the definition, substitute:

Valuation Standard means any actuarial standard that:

(a) provides for a valuation of the policy liabilities mentioned in subsection 114(2) of the *Life Insurance Act 1995*; and

(b) is in force under that Act.

Taxation Administration Act 1953

125 At the end of Division 288 in Schedule 1 (before the link note)

Add:

288-70 Administrative penalties for life insurance companies

Virtual PST—calculation of an amount

(1) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to calculate a particular amount under section 320-175 of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 60 days that is required by that section.

Virtual PST—transfer following valuation

(2) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to transfer assets having a particular *transfer value from its *virtual PST assets under subsection 320-180(1) of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 30 days that is required by subsection 320-180(2) of that Act.

Segregated exempt assets—calculation of an amount

(3) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to calculate a particular amount under section 320-230 of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 60 days that is required by that section.

Segregated exempt assets—transfer following valuation

(4) A *life insurance company is liable to an administrative penalty if the company:

(a) is required to transfer assets having a particular *transfer value from its *segregated exempt assets under subsection 320-235(1) of the *Income Tax Assessment Act 1997*; but

(b) fails to do so within the period of 30 days that is required by subsection 320-235(2) of that Act.

How to work out the administrative penalty

(5) The administrative penalty under subsection (1), (2), (3) or (4) for a failure to make a calculation or transfer is equal to 5 penalty units for each period of 28 days or part of a period of 28 days:

(a) starting immediately after the end of the period mentioned in paragraph (b) of that subsection; and

(b) ending at the end of the day on which the calculation or transfer is made.

However, the maximum penalty for that failure must not exceed 25 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for the penalties provided by this section.

Part 8—Application of the amendments

126 Application

(1) The amendment made by item 84 applies to a base year that is an income year including 1 July 2000 or is a later income year.

(2) The amendments made by items 85 to 94 apply in relation to depreciating assets that, apart from the effect of any of those amendments, a life insurance company:

(a) started to hold under a contract entered into after 30 June 2001; or

(b) started to construct after that day; or

(c) started to hold in some other way after that day.

(3) The amendments made by items 95 to 99 apply in relation to a consolidated group that comes into existence on or after 1 July 2002.

(4) The amendment made by item 100 applies to assessments for the 2001-2002 income year and later income years, where the date of the settlement or order (within the meaning of Division 54 of the *Income Tax Assessment Act 1997*) is 26 September 2001 or a later date.

(5) The amendments made by items 101 to 104 apply to amounts derived by a life insurance company on or after 1 July 2000.

(6) The amendment made by item 107 applies to a base year that is an income year including 1 July 2002 or is a later income year.

(7) The amendments made by items 108 to 115 apply in relation to amounts received or derived by a taxpayer under or in relation to a life assurance policy after the day on which this Act receives the Royal Assent.

(8) The amendment made by item 116 applies to any reinsurance commission received or recovered by a life insurance company at any time after the day on which this Act receives the Royal Assent.

(9) The amendments made by items 117 to 122 apply to the 2003-2004 income year and later income years.

(10) The amendments made by items 123 and 124 apply to the income year in which 30 June 2002 occurs and later income years.

(11) The amendment made by item 125 applies in relation to a valuation time that occurs after the day on which this Act receives the Royal Assent.

Schedule 2—Consolidation etc.

Part 1—Application

1 Application

Except as provided otherwise, the amendments made by this Schedule apply on and after 1 July 2002.

Part 2—Certain unit trusts heading consolidated groups

Division 1—Main amendment

Income Tax Assessment Act 1997

2 After Subdivision 713-A

Insert:

Subdivision 713-C—Some unit trusts treated like head companies of consolidated groups

Guide to Subdivision 713-C

713-120 What this Subdivision is about

A corporate unit trust or public trading trust can sometimes choose to form a consolidated group and be treated like a company and head company of the group. The treatment affects the trust, the trustee and other entities connected with the trust (such as members of the trust and entities the trustee holds membership interests in).

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[This is the end of the Guide.]

Object of this Subdivision

713-125 Object of this Subdivision

(1) The main object of this Subdivision is to provide, by the means described in subsections (2) and (3), for certain unit trusts to be treated like companies, and therefore like *head companies of *consolidated groups, with consequent effects on other entities including:

(a) the trustees; and

(b) *members of the trusts; and

(c) entities the trustees hold *membership interests in.

(2) The first means is letting a *corporate unit trust, or *public trading trust, that could become the *head company of a *consolidated group if the trust were a company, choose to form such a group (with other entities as *subsidiary members).

(3) The second means is changing the way in which the law relating to income tax applies on and after the time the choice takes effect, so that law (with some modifications) applies in relation to the trust or the trustee (as appropriate) in a way corresponding to the way in which that law applies in relation to a company.

Note: The law relating to income tax includes legislation relating to associated imposts (such as those connected with the imputation system).

Choice to form a consolidated group

713-130 Choosing to form a consolidated group

A trust may make a choice under section 703-50 (Choice to consolidate a consolidatable group), as if the trust were a company (the ***assumed company***), but only if:

(a) the assumed company could make the choice, if it beneficially owned the *membership interests in other entities that are legally owned by the trustee; and

(b) the day specified in the choice is the first day of an income year for which the trust is a *corporate unit trust or a *public trading trust.

Note: Assuming that a trust is a company also involves assuming:

(a) that the company has characteristics of the trust, such as the location of the central management and control (which is relevant to residence), the business of the trust, not being incorporated etc.; and

(b) that membership interests in the trust are membership interests in the company (owned by the same persons and in the same way as membership interests in the trust are owned); and

(c) that the company's taxable income is taxed at the same rate as the trust's net income.

Effects of choice

713-135 Effects of choice

(1) If the trust makes the choice, the law (the ***applied law***) described in subsection (2) applies in relation to the trust in a way corresponding to the way in which that law applies to a company. The applied law applies in that way in relation to the trust or trustee (as appropriate):

(a) with the appropriate modifications (including those described in section 713-140, so far as they are appropriate); and

(b) in relation to all times at or after the start of the day specified in the choice; and

(c) so far as it is relevant to the operation of the applied law in relation to the trust and a time at or after the start of that day—in relation to a time when the trust existed before the start of that day.

Note 1: The application of the applied law in this way affects not only the trust and the trustee but also other entities connected with the trust, such as members of the trust and entities in which the trustee holds membership interests. Some examples of that effect are that:

(a) a consolidated group comes into existence on the day specified in the choice; and

(b) there may be a scrip for scrip roll-over for an entity exchanging its shares in a company for membership interests in the trust.

Note 2: The application of the applied law in this way involves treatment of characteristics, things and persons relating to the trust corresponding to the treatment by the applied law of analogous characteristics, things and persons relating to a company (as envisaged in the note to section 713-130). These are some examples of analogous things and analogous persons:

(a) units in the trust and shares in a company;

(b) unitholders in the trust and shareholders in a company;

(c) trust voting interests and voting shares in a company.

(2) The applied law is:

(a) this Act (other than this Subdivision); and

(b) an Act that imposes any impost payable under this Act; and

(c) the *Income Tax Rates Act 1986*; and

(d) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and

(e) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c) or (d); and

(f) regulations and other legislative instruments under an Act covered by any of the preceding paragraphs.

(3) Subsection (1) does not make an entity liable to a criminal, civil or administrative penalty.

Note: An entity is liable to such a penalty under the applied law only if that law, as it applies apart from subsection (1), makes the entity liable.

713-140 Modifications of the applied law

Overview

(1) This section describes modifications of the applied law in its application in relation to a trust or trustee under section 713-135, but does not limit the modifications of that law that are appropriate for the purposes of that section.

General modifications

(2) A reference in the applied law to a thing or person described in column 2 of an item of the table includes a reference to a thing or person described in column 3 of the item.

General modifications

Column 1 Item	Column 2 A reference in the applied law to:	Column 3 Includes a reference to:
1	A body corporate	The trust or trustee (as appropriate)
2	A dividend	A distribution from the trust, so far as the distribution is from profits

General modifications

Column 1 Item	Column 2 A reference in the applied law to:	Column 3 Includes a reference to:
3	A share capital account	The amount of the trust estate that is *not* attributable to profits
4	A director (of a company, body corporate or corporation)	The trustee or, if the trustee is a body corporate, a director of the trustee (as appropriate)

Note: An expression in column 2 of an item of the table has the meaning that the expression has in the provision of the applied law containing the reference.

(3) The trust is not covered by a reference in the applied law to a trust.

Note: Subsections (3) and (4) of this section do not affect an entity's liability for criminal, civil and administrative penalties under the applied law, as those subsections modify (so far as appropriate) the applied law as it applies because of subsection 713-135(1), and that subsection does not affect liability for such penalties (see subsection 713-135(3)).

(4) The trustee is not covered by a reference in the applied law to a trustee (except a reference in section 254 of the *Income Tax Assessment Act 1936*).

Note: Section 254 of the *Income Tax Assessment Act 1936* deals with obligations and liabilities of trustees.

Modifications of specific provisions

(5) A provision of an Act identified in an item of the table is modified as set out in the item.

Modifications of specific provisions

Item	Act(s)	Provision	Modification
1	*Income Tax Assessment Act 1936*	Subsection 128TK(2)	The subsection has effect as if it did not refer to the purposes of Division 4 of Part 3.6 of the *Corporations Act 2001*.
2	*Income Tax Assessment Act 1936*	Paragraph 128TK(4)(b)	The paragraph has effect as if it referred to a person or firm who is eligible to consent to being appointed as the auditor of a company in accordance with the *Corporations Act 2001*.

Modifications of specific provisions			
Item	**Act(s)**	**Provision**	**Modification**
3	*Income Tax Assessment Act 1936*	Division 13A of Part III	The Division does not apply in relation to a share or right acquired under an employee share scheme (within the meaning of that Division) before the day specified in the choice if the Division did not apply in relation to the share or right before that day.
4	*Income Tax Assessment Act 1997* and *Income Tax (Transitional Provisions) Act 1997*	Part 3-90 (of each Act)	The Part has effect as if an entity were a *wholly-owned subsidiary of the trust if the entity would have been one had the trustee owned beneficially *membership interests in the entity that the trustee owned legally.

Division 2—Related amendments

Income Tax Assessment Act 1936

3 At the end of subsection 102L(1)

Add:

Note: Under Subdivision 713-C of the *Income Tax Assessment Act 1997*, this Act applies differently in relation to a corporate unit trust that chooses to form a consolidated group.

4 At the end of subsection 102T(1)

Add:

Note: Under Subdivision 713-C of the *Income Tax Assessment Act 1997*, this Act applies differently in relation to a public trading trust that chooses to form a consolidated group.

Part 3—Technical amendments relating to membership rules

Income Tax Assessment Act 1997

5 Subsection 124-380(7)

Omit "2 months", substitute "28 days".

6 Application

The amendment made by this Schedule to subsection 124-380(7) of the *Income Tax Assessment Act 1997* applies to choices made after the commencement of this item.

7 Subsection 126-50(6)

Repeal the subsection, substitute:

(6) If the originating company or the recipient company is an Australian resident at the time of the trigger event, that company must:

(a) be a *member of a *consolidated group or *MEC group at that time; or

(b) *not* be a member of a *consolidatable group at that time.

8 Subsection 703-60(2)

Omit "company that makes the choice", substitute "*head company of the consolidated group".

Income Tax (Transitional Provisions) Act 1997

9 Paragraph 701D-10(5)(a)

Omit "paragraph 126-50(6)(b)", substitute "subsection 126-50(6)".

Part 4—Cost setting for assets that the head company does not hold under the single entity rule

Income Tax Assessment Act 1997

10 Paragraph 104-510(1)(b)

Repeal the paragraph, substitute:

(b) the sum of the *tax cost setting amounts for all *retained cost base assets that are taken into account under paragraph 705-35(1)(b) in working out the tax cost setting amount of each reset cost base asset of the entity exceeds the group's *allocable cost amount for the entity.

11 Subsection 701-10(2)

Omit "each asset that becomes an asset of the *head company because subsection 701-1(1) (the single entity rule) applies", substitute "each asset that would be an asset of the entity at the time it becomes a *subsidiary member of the group, assuming that subsection 701-1(1) (the single entity rule) did not apply".

Note: The heading to section 701-10 is replaced by the heading "**Cost to head company of assets of joining entity**".

12 At the end of subsection 701-10(2)

Add:

Note: See subsection 705-35(3) for the treatment of a goodwill asset resulting from the head company's ownership and control of the joining entity.

13 After section 701-55

Insert:

701-58 Effect of setting the tax cost of an asset that the head company does not hold under the single entity rule

(1) This section applies if:

(a) the *tax cost of an asset was set at the time (the ***joining time***) an entity became a *subsidiary member of a *consolidated group, at the asset's *tax cost setting amount; and

(b) ignoring the operation of subsection 701-1(1) (the single entity rule), the entity held the asset at the joining time; and

(c) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group did *not* hold the asset at the joining time.

Example: A debt owed by a member of the group to the joining entity at the joining time.

(2) To avoid doubt, the asset's *tax cost setting amount mentioned in paragraph (1)(a) is not to be taken into account in applying the provisions mentioned in subsections 701-55(2), (3), (4), (5) and (6) in relation to the asset at and after the joining time.

14 Section 701-60 (table item 1, column headed "If the asset's tax cost is set by:")

Omit "Cost to head company of assets that entity brings into group", substitute "Cost to head company of assets of joining entity".

15 Paragraph 713-205(3)(a)

Omit "assets that an entity brings into the group", substitute "assets of an entity joining a group".

16 Subsection 715-70(1) (note 1)

Omit "cost to head company of assets that entity brings into group", substitute "cost to head company of assets of joining entity".

17 Subsection 715-225(1) (note 1)

Omit "cost to head company of assets that entity brings into group", substitute "cost to head company of assets of joining entity".

18 Paragraph 719-160(3)(a)

Omit "assets that an entity brings into the group", substitute "assets of an entity joining a group".

Income Tax (Transitional Provisions) Act 1997

19 Section 701-15

Omit "cost to head company of assets that entity brings into group", substitute "cost to head company of assets of joining entity".

Part 5—Partnership leaving consolidated group

Income Tax Assessment Act 1997

20 Subsection 701-15(3) (note)

Omit "Note", substitute "Note 1".

21 At the end of subsection 701-15(3)

Add:

Note 2: If the entity is a partnership, Subdivision 713-E sets the tax cost of interests in partnership assets, rather than membership interests in the partnership.

22 At the end of subsection 701-20(4)

Add:

Note: If the entity is a partnership, Subdivision 713-E sets the tax cost of assets consisting of a partner's share of a liability owed by the partnership to a member of the group.

23 Subsection 701-45(4) (note)

Omit "Note", substitute "Note 1".

24 At the end of subsection 701-45(4)

Add:

Note 2: If the entity is a partnership, Subdivision 713-E sets the tax cost of a partner's interest in an asset consisting of a liability that a member of the group owes to the partnership.

25 At the end of subsection 701-50(3)

Add:

Note: If the asset consists of a membership interest in a partnership, Subdivision 713-E sets the tax cost of interests in partnership assets, rather than membership interests in the partnership.

26 At the end of section 701-60 (before the note)

Add:

Note 1: The tax cost setting amount of certain interests in partnership assets is worked out under Subdivision 713-E.

27 Section 701-60 (note)

Omit "Note", substitute "Note 2".

28 Section 713-200

Omit "and 705", substitute ", 705 and 711".

29 Paragraph 713-200(b)

After "becomes", insert ", or ceases to be,".

30 At the end of section 713-205

Add:

(4) The third object of this Subdivision is to ensure that, where a partnership ceases to be a *subsidiary member of a *consolidated group, the provisions mentioned in subsection (5) operate:

(a) as if the group's *partnership cost setting interests were the group's only assets relating to the partnership; and

(b) to set the *tax cost of those interests at an appropriate amount, taking into account the fact that the group ceases to be the holder of the assets of the partnership.

(5) The provisions are:

(a) sections 701-15 and 701-50 (about setting the tax cost of membership interests in an entity that leaves the group); and

(b) sections 701-20 and 701-45 (about the cost of assets consisting of certain liabilities owed by or to an entity that leaves the group); and

(c) Division 711.

31 After subsection 713-225(6)

Insert:

Partnership overall foreign losses—working out allocable cost amount

(6A) Sections 705-100 and 705-110 operate as if a loss of the partnership of a *sort covered by any of paragraphs 701-1(4)(d) to (g) were a loss of that sort of the joining entity, to the extent of the joining entity's individual share of the loss.

32 At the end of Subdivision 713-E (before the link note)

Add:

Special rules where partnership leaves consolidated group

713-250 Partnership leaves group—standard provisions modified

(1) This section applies if a partnership ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***).

Note: The section applies whether or not any partner that is a subsidiary member of the group also ceases to be a subsidiary member at the leaving time.

(2) Apply the provisions mentioned in subsection 713-205(5) subject to the modifications in the provisions that follow under this *group heading.

713-255 Partnership leaves group—tax cost setting amount for partnership cost setting interests

Overview

(1) Instead of working out *tax cost setting amounts for *membership interests in the partnership, a special rule requires *partnership cost setting interests in the partnership to be worked out. Where other entities cease to be *subsidiary members at the same time, the normal tax cost setting amount rules are applied for membership interests in the other entities, but the special rule is applied for partnership cost setting interests in the partnership.

Tax cost setting amounts for membership interests in partnership not to be worked out

(2) Do not work out *tax cost setting amounts for *membership interests in the partnership.

Partnership is only entity that exits—tax cost setting amount for partnership cost setting interests

(3) Except where the partnership ceases to be a *subsidiary member in circumstances covered by subsection (5), work out in accordance with subsection (4) the *tax cost setting amount just before the leaving time for each *partnership cost setting interest in the

partnership held by a partner that is a *member of the group just before the leaving time.

Tax cost setting amount

(4) The *tax cost setting amount is equal to the partner's individual share of the *terminating value of the partnership asset to which the *partnership cost setting interest relates.

Note: For income tax purposes there is no disposal by the head company of any assets of the partnership when it ceases to be a subsidiary member of the group.

Multiple exit case—tax cost setting amounts for both partnership cost setting interests in partnership and membership interests in other entities

(5) If the partnership is one of 2 or more entities that cease to be *subsidiary members of the old group at the same time because of an event happening in relation to one of them, apply section 711-55 as if:

(a) except in paragraph 711-55(3)(a), a reference to *membership interests in an entity, or to the *tax cost setting amount for such interests, where the entity is the partnership, were a reference to *partnership cost setting interests in the partnership, or to the tax cost setting amount for such interests; and

(b) paragraph 711-55(3)(a) were replaced by a requirement that, where the entity in which the membership interests mentioned in subsection 711-55(3) are held is the partnership, subsection (4) of this section is to be applied in working out the tax cost setting amount of the partnership cost setting interests in the partnership.

713-260 Partnership leaves group—tax cost setting amount for assets consisting of being owed certain liabilities

(1) This section applies if:

(a) when the partnership ceases to be a *subsidiary member of the group, a partner remains a *member of the group; and

(b) an asset becomes an asset of the *head company because subsection 701-1(1) (the single entity rule) ceases to apply to

the partnership when it ceases to be a subsidiary member; and

(c) the asset is, ignoring that subsection:

(i) the partner's interest in an asset of the partnership consisting of a liability of a member of the group owed to the partnership; or

(ii) the partner's share of a liability of the partnership owed to a member of the group.

(2) The asset's *tax cost is set at the leaving time at a *tax cost setting amount equal to the *market value of the asset.

713-265 Partnership leaves group—adjustments to leaving partner's allocable cost amount

(1) This section has effect in working out the group's *allocable cost amount for a partner in the partnership, if the partner ceases to be a *subsidiary member of the group at the leaving time.

(2) Section 711-35 operates as if:

(a) a deduction to which the partnership becomes entitled (the ***partnership deduction***) were a deduction to which the partner becomes entitled, to the extent of the partner's individual share of the partnership deduction; and

(b) the deduction to which the partner becomes entitled were of the same kind as the partnership deduction.

Note: These kinds of deductions include acquired deductions and owned deductions (within the meaning of section 711-35).

(3) Section 711-40 operates as if a liability owed by *members of the group to the partnership at the leaving time were a liability owed by members of the group to the partner at that time, to the extent of the partner's individual share of the liability.

(4) If:

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

(b) for that reason, the partnership liability is not an accounting liability of the partner at the leaving time for the purposes of section 711-45;

then section 711-45 operates as if the partnership liability were an accounting liability of the partner at the leaving time, to the extent of the partner's individual share of the partnership liability.

713-270 Partnership leaves group—certain partnership cost setting interests treated as having been acquired before 20 September 1985

(1) This section applies if any of the assets of the partnership at the leaving time has a *pre-CGT factor under section 713-245.

(2) Apply section 711-65 (simple case where assets have a pre-CGT factor) as if:

(a) the *pre-CGT factor were a pre-CGT factor under section 705-125; and

(b) instead of applying to *membership interests in the partnership, section 711-65 applied to *partnership cost setting interests that relate to the asset of the partnership; and

(c) if the pre-CGT factor for the asset is 1, the number of those partnership cost setting interests worked out under subsection (2) of that section were all of those partnership cost setting interests; and

(d) if the pre-CGT factor for the asset is less than 1, each partnership cost setting interest (the ***actual interest***) consisted of 2 separate partnership cost setting interests that relate to the asset, as follows:

(i) one partnership cost setting interest, comprised of the fraction of the actual interest that equals the pre-CGT factor, with a pre-CGT factor of 1 for the purposes of paragraph (c) of this subsection;

(ii) the other partnership cost setting interest, equal to the remainder of the actual interest, that is not one of the number of partnership cost setting interests that is worked out under subsection (2) of that section.

(3) Apply section 711-70 (multiple exit case where assets have a pre-CGT factor) as if:

(a) a reference in that section to *membership interests in an entity, where that entity is the partnership, were a reference to *partnership cost setting interests that relate to the assets of the partnership; and

(b) the requirement in subsection (4) of that section to apply subsections 711-65(3) to (6) in relation to a particular entity were, where the entity is the partnership, a requirement to apply subsection (2) of this section.

Part 6—Cost base and reduced cost base for allocable cost amount purposes

Income Tax Assessment Act 1997

33 After subsection 705-65(5A)

Insert:

(5B) For the purposes of working out the *cost base or *reduced cost base of a *membership interest under subsection (1), if:

(a) either or both of the following things happen after the joining time:

(i) money is paid, or becomes required to be paid, in respect of *acquiring the membership interest;

(ii) property is given, or becomes required to be given, in respect of acquiring the membership interest; and

(b) because the thing happened after the joining time, it was not taken into account in working out the first element of the cost base or reduced cost base of the membership interest;

Note: This would be the case if the money was only to be paid etc. if a contingency happened after the joining time.

the thing is nevertheless so taken into account, and taken always to have been so taken into account.

Part 7—MEC groups and transitional entities

Income Tax (Transitional Provisions) Act 1997

34 After section 719-160

Insert:

719-161 Modified effect of section 701-1

(1) This section applies if a consolidated group mentioned in section 701-1 of this Act is a MEC group.

(2) Paragraphs 701-1(2)(b) and (3)(b) of this Act have effect as if a reference in those paragraphs to the future head company were a reference to any entity that became a member of the group as an eligible tier-1 company at the time the MEC group came into existence.

(3) An entity is a ***transitional entity*** for the purposes of paragraph 701-1(3)(b) of this Act if:

(a) the entity and one or more other entities were members of a potential MEC group as eligible tier-1 companies, throughout the period:

(i) beginning just before 1 July 2003; and

(ii) ending just before a time (the ***rolldown time***) before the MEC group came into existence; and

Note: The other entity (or one of the other entities) could be the future head company.

(b) the entity satisfied either of these conditions at the rolldown time:

(i) the entity was a wholly-owned subsidiary of any of those other entities;

(ii) the entity would be covered by subparagraph (i), if it were assumed that all of the membership interests that were beneficially owned by any of those other entities at that time were owned by a single one of those other entities; and

(c) the entity continued to satisfy either of the conditions mentioned in paragraph (b) at all times throughout the period:
  (i) beginning just after the rolldown time; and
  (ii) ending when the MEC group came into existence; and
(d) the other entities remained members of the potential MEC group as eligible tier-1 companies, throughout the period:
  (i) beginning just before 1 July 2003; and
  (ii) ending when the MEC group came into existence; and
(e) the other entities were members of the MEC group when it came into existence, as eligible tier-1 companies.

Part 8—Foreign losses

Income Tax Assessment Act 1936

35 Paragraph 160AFD(6)(b)

Repeal the paragraph, substitute:

(b) if that loss were a tax loss of the taxpayer for the year of income for which the taxpayer incurred that loss, the taxpayer could not deduct it for the particular year of income because of Subdivision 165-A or 175-A of the *Income Tax Assessment Act 1997*;

Income Tax Assessment Act 1997

36 Subsection 707-205(1)

Omit "*tax loss or *net capital loss", substitute "loss of any *sort".

37 Application

The amendments made by this Part apply for assessments for the year of income including 1 July 2002 and later years of income.

Part 9—International tax

Division 1—Elections about valuing interests in FIFs held as trading stock

Income Tax Assessment Act 1997

38 Section 717-275

Omit "Part X1 of the *Income Tax Assessment Act 1936*", substitute "Part XI of the *Income Tax Assessment Act 1936* and Division 70 of the *Income Tax Assessment Act 1997*".

39 Paragraph 717-280(a)

After "selections", insert "made under Parts X and XI of the *Income Tax Assessment Act 1936* or the joining entity's election made under subsection 70-70(2) of the *Income Tax Assessment Act 1997*".

40 At the end of section 717-280

Add:

; and (c) that section 701-5 (the entry history rule) does not prevent the head company from making an election under subsection 70-70(2).

41 Section 717-285

After "*1936*", insert ", or an election made by the joining entity under subsection 70-70(2) of the *Income Tax Assessment Act 1997*,".

42 At the end of Subdivision 717-F

Add:

717-292 Entry history rule does not affect when head company may elect to value trading stock at market value

Section 701-5 (the entry history rule) does not affect the time limit set by subsection 70-70(3) for the *head company of the group to make an election under subsection 70-70(2).

Note: Subsection 70-70(2) lets the head company elect to value at market value interests in a FIF that are trading stock of the head company.

Example: The head company did not hold as trading stock an interest in any FIF before the joining time. At that time, the single entity rule caused the head company to start holding as trading stock an interest in a FIF that the joining entity had earlier held as trading stock.

Subsection 70-70(3) and this section let the head company make an election under subsection 70-70(2) before lodging its income tax return for the first income year that:

(a) ends after that time; and

(b) is an income year in which a notional accounting period for the FIF ends.

43 Section 717-300

Omit "Part X1 of the *Income Tax Assessment Act 1936*", substitute "Part XI of the *Income Tax Assessment Act 1936* and Division 70 of the *Income Tax Assessment Act 1997*".

44 Paragraph 717-305(a)

After "selections", insert "made under Parts X and XI of the *Income Tax Assessment Act 1936* or the head company's election made under subsection 70-70(2) of the *Income Tax Assessment Act 1997*".

45 At the end of section 717-305

Add:

; and (c) that section 701-40 (the exit history rule) does not prevent the leaving entity from making an election under subsection 70-70(2).

46 Section 717-310

After "*1936*", insert ", or an election made by the head company under subsection 70-70(2) of the *Income Tax Assessment Act 1997*,".

47 Section 717-310

Omit "election" (last occurring), substitute "declaration, election, choice or selection".

48 Section 717-310 (note)

Omit "would otherwise have had", substitute "might otherwise have".

49 At the end of Subdivision 717-G

Add:

717-320 Exit history rule does not affect when leaving entity may elect to value trading stock at market value

Section 701-40 (the exit history rule) does not affect the time limit set by subsection 70-70(3) for the leaving entity to make an election under subsection 70-70(2).

Note: Subsection 70-70(2) lets the leaving entity elect to value at market value interests in a FIF that are trading stock of the entity.

Example: At the leaving time the single entity rule stopped applying to the leaving entity, causing it to start holding as trading stock an interest in a FIF that the head company of the group had earlier held as trading stock. The leaving entity had not held an interest in any FIF as trading stock before becoming a subsidiary member of the group.

Subsection 70-70(3) and this section let that entity make an election under subsection 70-70(2) before lodging its income tax return for the first income year that:

(a) ends after the leaving time; and

(b) is an income year in which a notional accounting period for the FIF ends.

Division 2—Foreign dividend accounts

Income Tax Assessment Act 1997

50 After section 719-900

Insert:

719-903 Special rules for certain FDA credits and FDA debits

(1) The objects of this section are:

(a) to let *FDA credits arise for the *provisional head company of a *MEC group under paragraph 128TA(1)(b) of the *Income Tax Assessment Act 1936*; and

(b) to ensure that an *FDA debit of the appropriate amount arises under section 128TB of that Act for an Australian-taxable dividend amount.

Note: Paragraph 128TA(1)(b) of the *Income Tax Assessment Act 1936* gives a resident company an FDA credit when a non-portfolio dividend is paid to the company, if the company is taken, for the purposes of Division 18 (about foreign tax credits) of Part III of that Act, to have paid and been personally liable for foreign tax on the dividend.

(2) This section operates if (ignoring section 717-515) a non-portfolio dividend (as defined in section 317 of the *Income Tax Assessment Act 1936*) is paid to a company (the ***dividend recipient***) at a time (the ***payment time***) when the dividend recipient is a *member of a *MEC group in an income year (the ***payment year***).

(3) If the conditions in subsection (4) are met, paragraph 128TA(1)(b) of the *Income Tax Assessment Act 1936* operates as if the *provisional head company of the group at the payment time were, for the purposes of Division 18 of Part III of that Act, taken to have paid and been personally liable for foreign tax in respect of the dividend.

(4) The conditions are:

(a) an amount of the dividend is included in the assessable income of the *head company of the group for the payment year; and

(b) the dividend recipient paid and was personally liable for that foreign tax (whether or not the dividend recipient was a *member of the group when paying that foreign tax).

(5) If the *provisional head company of the group at the payment time is *not* the *head company of the group for the payment year, section 128TB of the *Income Tax Assessment Act 1936* operates in relation to the existence and amount of the Australian-taxable dividend amount as if the dividend had been paid to the head company.

Note: For the purposes of working out the existence and amount of the Australian-taxable dividend amount, the head company is taken to have paid and been personally liable for foreign tax in respect of the dividend. See section 717-10 (applying because of section 719-2).

(6) Subdivision 717-J (about *foreign dividend accounts), as it applies in relation to the *members of the group in accordance with sections 719-2 and 719-900, operates subject to this section.

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

51 At the end of item 12 of Schedule 9

Add:

(5) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to a dividend or a non-share dividend that:

(a) is paid by a company (the ***paying company***) after 30 June 2002; and

(b) is paid to a company that:

(i) is related (within the meaning of subsection 51AE(16) of that Act) to the paying company; and

(ii) is a member of a consolidated group or MEC group.

(6) A term used in paragraph (5)(a) or (b) and defined in the *Income Tax Assessment Act 1997* has the same meaning in that paragraph as it has in that Act.

(7) To avoid doubt, the amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply to a dividend or a non-share dividend if they apply to it under subitem (5), even if they would not apply to it under subitem (1) or (3).

Division 3—Foreign tax credits

Income Tax Assessment Act 1997

52 Subparagraph 717-15(1)(b)(i)

After "before", insert "or at".

53 Application of amendment of subparagraph 717-15(1)(b)(i)

The amendment of subparagraph 717-15(1)(b)(i) of the *Income Tax Assessment Act 1997* made by this Division applies to consolidated groups that come into existence on or after 1 July 2004.

54 Paragraph 717-15(2)(b)

Repeal the paragraph.

55 Subsection 717-15(3) (example)

Repeal the example.

56 After section 717-20

Insert:

717-22 Excess foreign tax credits from non-membership period ending before head company's income year starts

(1) This section operates for the purposes of section 160AFE of the *Income Tax Assessment Act 1936* in relation to an income year (the ***first use year***) of the *head company of a *consolidated group and later income years of the head company if:

(a) an entity (the ***joining entity***) becomes a *subsidiary member of the group at a time (the ***joining time***) that is before or at the start of the head company's first use year but after the start of the same income year of the joining entity (because that income year starts at different times for the head company and the joining entity); and

(b) the joining entity has *excess foreign tax credits (the ***transfer credits***) from the non-membership period described in section 701-30 that starts at the start of that income year of the joining entity and ends just before the joining time.

Note: Under section 701-30, the non-membership period is treated like an income year.

(2) For those purposes relating to an income year shown in an item of the table, the *head company of the group is taken to have the amount of the transfer credits shown in the item from its earlier income year shown in the item included in its other *excess foreign tax credits (if any) from that earlier income year.

Head company's transfer credits

	For this income year:	The head company is taken to have this amount of the transfer credits:	From this earlier income year:
1	The first use year	The full amount of the transfer credits	The income year just before the first use year
2	An income year after the first use year	The amount of the transfer credits not yet applied under section 160AFE of the *Income Tax Assessment Act 1936*	The first use year

(3) Subsection (2) also has effect for the purposes of a subsequent operation of this section.

(4) This section operates separately in relation to each class of foreign income (within the meaning of the *Income Tax Assessment Act 1936*) identified in subsection 160AF(7) of that Act, as if:

(a) the *head company's foreign income of that class for an income year were the whole of the head company's foreign income for that year; and

(b) the joining entity's foreign income of that class for the non-membership period were the whole of the joining entity's foreign income for the period.

717-28 Excess foreign tax credits lost on joining consolidated group

(1) For the purposes of section 160AFE of the *Income Tax Assessment Act 1936* in relation to an income year ending after the time an entity becomes a *subsidiary member of a *consolidated group, the entity is taken not to have any *excess foreign tax credits from an income year, or non-membership period described in section 701-30, that ended before or at that time.

(2) Subsection (1) does not affect the operation of section 160AFE of the *Income Tax Assessment Act 1936* in accordance with section 717-15 or 717-22.

Part 10—Liability for payment of tax where head company fails to pay on time

Income Tax Assessment Act 1997

57 Subsection 721-10(2) (table items 10, 15 and 20)

Repeal the items, substitute:

10	subsection 214-150(1) of the *Income Tax Assessment Act 1997* (franking tax)	the income year to which the *franking tax relates
15	subsection 214-150(2) of the *Income Tax Assessment Act 1997* (franking tax—part year assessment)	the particular period mentioned in subsection 214-70(1) to which the *franking tax relates
20	subsection 214-150(3) of the *Income Tax Assessment Act 1997* (franking tax—amended assessments otherwise than because of deficit deferral)	the income year (or particular period mentioned in subsection 214-70(1)) to which the *franking tax relates
22	subsection 214-150(4) of the *Income Tax Assessment Act 1997* (franking tax—deficit deferral)	the income year (or particular period mentioned in subsection 214-70(1)) to which the *franking deficit tax relates

58 At the end of section 721-10

Add:

(3) Item 30 of the table in subsection (2) is taken not to include a *PAYG instalment of the *head company if the Commissioner gave the head company its *initial head company instalment rate after the end of the *instalment quarter of the head company to which the PAYG instalment relates.

59 After subsection 721-15(3)

Insert:

(3A) Subsection (1) is taken never to have made a particular contributing member jointly and severally liable to pay the group liability if:

(a) the group liability was taken never to have been covered by the tax sharing agreement because of subsection 721-25(3); and

Note: Subsection 721-25(3) provides for this to happen if the Commissioner did not receive a copy of the tax sharing agreement within 14 days after the Commissioner gave the head company the notice under that subsection.

(b) the Commissioner gave the contributing member written notice of the group liability under subsection (5); and

(c) apart from the operation of subsection 721-25(3), the contributing member left the group clear of the group liability in accordance with section 721-35; and

(d) the contributing member gave the Commissioner a copy of the tax sharing agreement (that is, the relevant agreement mentioned in paragraph 721-25(1)(a)) in the *approved form; and

(e) if the Commissioner gave the contributing member written notice of the group liability under subsection (5) (ignoring subsection 721-17(2))—the contributing member gave that copy of the agreement to the Commissioner within 14 days after that notice was given.

60 After subsection 721-25(1)

Insert:

(1A) The requirement in paragraph (1)(c) is taken to be satisfied if:

(a) the group liability is a *tax-related liability mentioned in item 25 of the table in subsection 721-10(2) in relation to an income year; and

(b) before, at or after the head company's due time, the *head company of the group became entitled to either or both of the following:

(i) a credit under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* for that income year;

(ii) a credit under section 45-865 in Schedule 1 to that Act for that income year; and

(c) just before the head company's due time, the contribution amounts for each of the TSA contributing members in relation to the group liability, as determined under the agreement, represented a reasonable allocation among the

head company and the TSA contributing members of the difference between:

(i) the total amount of the group liability; and

(ii) the amount of the credit, or the sum of the credits, mentioned in paragraph (b).

(1B) Despite subsections (1) and (1A), the group liability is *not* covered by a tax sharing agreement for the purposes of this Division if, apart from this subsection, the requirements in those subsections in relation to the group liability would be satisfied in relation to 2 or more agreements.

61 Subsections 721-25(2) and (3)

Omit "Despite subsection (1)", substitute "Despite subsections (1) and (1A)".

Part 11—Technical amendment of cost base and reduced cost base calculation

Income Tax Assessment Act 1997

62 At the end of section 110-25

Add:

Assume a CGT event for purposes of working out cost base at a particular time

(12) If:

(a) it is necessary to work out the *cost base at a particular time; and

(b) a *CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

Note 1: For example, in order to apply subsection (5) of this section or subsection 110-37(1), it is necessary for there to be a CGT event.

Note 2: The assumption that a CGT event happens does not have any consequence beyond that stated. For example, it does *not* mean that the asset is afterwards to be treated as having been acquired at the particular time with a first element of cost base equal to all of its former cost base elements.

63 At the end of section 110-55

Add:

Assume a CGT event for purposes of working out reduced cost base at a particular time

(10) If:

(a) it is necessary to work out the *reduced cost base at a particular time; and

(b) a *CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the reduced cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

64 Application

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

Part 12—Financial Corporations (Transfer of Assets and Liabilities) Act 1993

65 At the end of Division 1 of Part 3

Add:

14A Modified operation of this Part in relation to transfers from subsidiary members of consolidated groups etc.

Object

(1) The object of this section is to modify the operation of other provisions of this Part in relation to a transfer of an asset or liability from a subsidiary member of a consolidated group or MEC group to a receiving corporation so that, where appropriate:

(a) relevant provisions affect the income tax position of the head company of the group in relation to the transfer; and

(b) the effect of the relevant provisions on the income tax position of the receiving corporation is worked out by reference to income tax attributes of the head company, including ones it has because of the following provisions of the *Income Tax Assessment Act 1997*:

(i) section 701-1 (the ***single entity rule***);

(ii) section 701-5 (the ***entry history rule***);

(iii) section 701-10 (the ***head company tax cost setting rule***).

Note 1: The single entity rule has the effect that a subsidiary member of a consolidated group or MEC group is taken to be part of the head company.

Note 2: The entry history rule treats things that happened in relation to an entity before it became a subsidiary member of a consolidated group or MEC group as having happened in relation to the head company.

Note 3: The head company tax cost setting rule sets the amount taken to be the cost to the head company of assets that became assets of the head company because of the single entity rule when an entity became a subsidiary member of the consolidated group or MEC group.

Circumstances in which this section has effect

(2) This section modifies the way in which a provision of this Part (except this Division) operates in relation to a transfer of an asset or liability from a financial corporation that (ignoring the single entity rule) is a subsidiary member of a consolidated group or MEC group to the receiving corporation.

Modified operation of the provision

(3) If the head company of the group is not a financial corporation, the provision operates in relation to the head company in the way in which it would operate in relation to the transferring corporation apart from this subsection.

Note: This ensures that, even though the head company is not the transferring corporation (because it is not a financial corporation), the provision operates as though it were. On this basis, the provision may affect the head company and/or the receiving corporation.

(4) So far as the provision affects the receiving corporation, it does so on the basis that the single entity rule, the entry history rule and the head company tax cost setting rule affect the head company of the group.

Note 1: This subsection ensures that, where the effect of the provision on the receiving corporation depends on the transferring corporation, the results of those rules in relation to the head company are taken into account in determining the effect of the provision on the receiving corporation. Some examples of this are as follows:

(a) the head company tax cost setting rule affects subsection 15(3) and section 18 by setting the head company's cost base for assets an entity brought into the group when the entity became a subsidiary member of the group;

(b) the entry history rule affects paragraph 16(3)(d) by treating the head company as having been paid, for assuming a liability that was brought into the group by an entity becoming a subsidiary member, the amount paid to the entity for assuming the liability;

(c) the entry history rule affects subsections 17(1) and 22(4) and table item 1 in subsection 22(1) by treating the head company as having included in its assessable income amounts included in the assessable income of an entity that later became a subsidiary member of the group;

(d) the entry history rule affects subsections 17(1) and (2) and 22(4) by treating deductions allowable to an entity before becoming a subsidiary member of the group as having been allowable to the head company.

Note 2: This subsection also ensures that, if the head company is a financial corporation, the receiving corporation is affected by the provision operating in relation to the head company of the group as the transferring corporation (because the single entity rule operates to treat the subsidiary member of the group as part of the head company, so the transfer is treated as being from that company).

Provisions whose operation is not modified

(5) To avoid doubt, this section does not affect the operation of the following provisions:

(a) section 20;

(b) section 23;

(c) Division 8.

66 Application

The amendment of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* made by this Part applies for assessments for the year of income including 1 July 2002 and later years of income.

Part 13—Privatised assets

Income Tax Assessment Act 1997

67 After section 705-45

Insert:

705-47 Reduction in tax cost setting amount for some privatised assets

Object

(1) The object of this section is to limit appropriately the amount the *head company of the joined group can deduct for a *depreciating asset it starts to *hold because the joining entity becomes a *subsidiary member of the group, by reference to the direct or indirect effect of the following provisions on the amount the joining entity could deduct for the asset:

(a) section 61A of the *Income Tax Assessment Act 1936* (about depreciation deductions for tax-exempt entities that become taxable);

(b) Subdivision 57-I or 57-J in Schedule 2D to the *Income Tax Assessment Act 1936* (about depreciation deductions and *capital allowances for tax-exempt entities that become taxable);

(c) Division 58 of this Act (as that Division applies to a transition time or acquisition time mentioned in that Division before, on or after 1 July 2001).

Reduction of tax cost setting amount

(2) The *tax cost setting amount for a *depreciating asset is reduced to the joining entity's *terminating value for the asset if:

(a) at a time before the joining entity became a *subsidiary member of the joined group, the asset was *held by an entity (whether the joining entity or another entity) that, at that time, was:

(i) an *exempt Australian government agency; or

(ii) another entity whose *ordinary income and *statutory income were exempt from income tax; and

(b) any of the following provisions directly or indirectly affected the amount the joining entity could deduct for the asset:

(i) section 61A of the *Income Tax Assessment Act 1936* (about depreciation deductions for tax-exempt entities that become taxable);

(ii) Subdivision 57-I or 57-J in Schedule 2D to the *Income Tax Assessment Act 1936* (about depreciation deductions and *capital allowances for tax-exempt entities that become taxable);

(iii) Division 58 of this Act (as that Division applies to a transition time or acquisition time mentioned in that Division before, on or after 1 July 2001); and

(c) apart from this section, the tax cost setting amount for the asset would *exceed* the joining entity's terminating value for the asset.

Note 1: Unlike the position with a reduction in tax cost setting amount under section 705-40, the amount of the reduction is not re-allocated among other assets.

Note 2: Section 61A of, or Subdivision 57-I or 57-J in Schedule 2D to, the *Income Tax Assessment Act 1936* or Division 58 of this Act may, for example, have *indirectly* affected the amount the joining entity could deduct for the asset because:

(a) that section, Subdivision or Division affected the amount that could be deducted by an entity that held the asset before the joining entity and that effect extended to the joining entity because of a previous application of this subsection, roll-over relief or section 701-40 (the exit history rule); or

(b) this subsection affected the amount the joining entity could deduct for the asset (either directly or because of section 701-40).

Note 3: Subsection (2) has effect even if, just before the joining time, the joining entity was:

(a) an exempt Australian government agency; or

(b) another entity whose ordinary income and statutory income were exempt from income tax.

This is because section 715-900 causes Division 58 to apply as if, just before the joining time, the joining entity's ordinary income or statutory income had become assessable income to some extent.

Exception to reduction of tax cost setting amount

(3) Subsection (2) does not apply if:

(a) just before the joining time, the joining entity was neither an *exempt Australian government agency nor another entity whose *ordinary income and *statutory income were exempt from income tax; and

(b) a condition in subsection (4) or (5) is met in relation to the period (the ***pre-joining taxable period***) between the last time for which the condition in paragraph (2)(a) is met and the joining time.

(4) One condition for subsection (2) not to apply is that an amount was included in an entity's assessable income, or an entity could deduct an amount, because of a *balancing adjustment event that occurred for the asset during the pre-joining taxable period.

(5) Another condition for subsection (2) not to apply is that:

(a) for at least some of the pre-joining taxable period, the asset was *held by the *head company of a *consolidated group (the ***earlier group***) for the period (the ***earlier group period***):

(i) starting when (and because) an entity that had previously held the asset became a *subsidiary member of the earlier group or when the asset started to be held by that company because of an asset sale situation described in subsection 58-5(4) involving a *member of the earlier group as the purchaser mentioned in that subsection; and

(ii) ending when (and because) an entity ceased to be a subsidiary member of the earlier group or when the earlier group ceased to exist; and

(b) the company that was the head company of the earlier group just before the end of the earlier group period was *not*:

(i) an *associate of the head company of the joined group just before the joining time; or

(ii) the same company as the head company of the joined group; and

(c) the earlier group period was at least 24 months.

68 Section 705-55 (heading)

Repeal the heading, substitute:

705-55 Order of application of sections 705-40, 705-45, 705-47 and 705-50

69 Subparagraph 705-55(b)(iii)

Repeal the subparagraph, substitute:

(iii) third, section 705-47;

(iv) fourth, section 705-50.

70 Paragraph 705-57(2)(d)

After "705-45", insert ", 705-47".

71 Subsections 705-57(6) and 705-59(7)

After "705-45", insert ", 705-47".

72 At the end of section 711-25

Add:

Increase in step 1 amount for certain former privatised assets

(3) If:

(a) the *head company of the old group *holds a *depreciating asset at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and

(b) the asset's *tax cost was set at the *tax cost setting amount when an entity (whether the leaving entity or another entity) became a *subsidiary member of the old group; and

(c) the tax cost setting amount for the asset was reduced because of section 705-47 (which is about certain assets that were *privatised assets);

the amount of the reduction is added to the step 1 amount.

Increase in step 1 amount for certain privatised assets

(4) If:

(a) the *head company of the old group *holds a *depreciating asset at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and

(b) the first element of the *cost of the asset was worked out by reference to subsection 58-70(5) because a *member of the old group acquired the asset as described in subsection 58-5(4) on or after 1 July 2002; and

(c) the amount of the first element of the cost of the asset is *less* than the amount it would have been apart from item 11 of the table in subsection 40-180(2) (which makes subsection 58-70(5) relevant to working out that element);

the difference between the amounts is added to the step 1 amount.

73 Subsection 713-240(3)

Omit "and 705-45", substitute ", 705-45 and 705-47".

74 At the end of Division 715

Add:

[The next Subdivision is Subdivision 715-V.]

Subdivision 715-V—Entity ceasing to be exempt from income tax on becoming subsidiary member of consolidated group

Table of sections

715-900 Transition time taken to be just before joining time

715-900 Transition time taken to be just before joining time

(1) This section has effect if:

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

(b) the entity's *ordinary income and *statutory income were not (to any extent) assessable income just before the joining time.

(2) Division 57 in Schedule 2D to the *Income Tax Assessment Act 1936* and Division 58 of this Act have effect as if the entity's *ordinary income or *statutory income had become to some extent assessable income just before the joining time.

Note 1: Those Divisions deal with entities whose ordinary income and statutory income were previously exempt from income tax.

Note 2: The operation of Division 58 just before the joining time can affect the basis on which the tax cost is set for a depreciating asset that becomes an asset of the head company of the consolidated group at the joining time because of section 701-1 (the single entity rule). That Division provides the basis for working out under Division 40 the asset's adjustable value, which:

(a) can affect the tax cost setting amount for the asset under section 705-50; and

(b) is the entity's terminating value for the asset, which in turn can affect the tax cost setting amount for the asset under sections 705-40, 705-45, 705-47 and 705-50.

Income Tax (Transitional Provisions) Act 1997

75 At the end of Division 701

Add:

701-50 Increased allocable cost amount for leaving entity if it takes privatised asset brought into group by chosen transitional entity

Application

(1) This section provides for an addition to the step 1 amount for working out under section 711-20 of the *Income Tax Assessment Act 1997* the allocable cost amount for an entity (the ***leaving entity***) that ceases to be a subsidiary member of the transitional group at a time (the ***leaving time***), if:

(a) the head company of the group holds an asset at the leaving time because the leaving entity is taken by subsection 701-1(1) of that Act to be a part of the head company; and

(b) the head company started to hold the asset because of that subsection when a chosen transitional entity became a subsidiary member of the group.

If entity sale situation affected asset's cost for chosen transitional entity

(2) If:

(a) at a time before the chosen transitional entity became a subsidiary member of the transitional group:

(i) all of that entity's ordinary income and statutory income was not assessable income; and

(ii) that entity held the asset; and

(b) just after that time, some or all of that entity's ordinary income and statutory income became assessable income because another entity that later became a member of the transitional group purchased all the membership interests in the entity; and

(c) the amount of the purchase price reasonably attributable to the asset exceeded the amount worked out under subsection (3);

the excess is added to the step 1 amount.

(3) Work out the amount for the purposes of paragraph (2)(c) using the following table:

Amount for paragraph (2)(c)

	If, because of the circumstances described in paragraphs (2)(a) and (b):	**The amount is:**
1	One of the following provisions applied to the entity: (a) section 61A of the *Income Tax Assessment Act 1936*; (b) Subdivision 57-I in Schedule 2D to the *Income Tax Assessment Act 1936*; (c) former subsection 58-20(4) of the *Income Tax Assessment Act 1997*	The difference between: (a) the amount treated as being the cost of the asset under that provision; and (b) the total amount treated under that provision as being the deductions for depreciation of the asset before the transition time mentioned in that provision
2	One of the following subsections of the *Income Tax Assessment Act 1997* applied to the entity: (a) former subsection 58-20(5); (b) 58-70(3)	The amount treated as being the cost, or the first element of the cost, of the asset under that subsection

If asset sale situation affected asset's cost for chosen transitional entity

(4) If:

(a) on or after 4 August 1997, an entity (whether the chosen transitional entity or another entity) acquired the asset in connection with the acquisition of a business from the tax

exempt vendor (within the meaning of those terms given by Division 58 of the *Income Tax Assessment Act 1997*, as that Division applied to the acquisition); and

(b) because of the acquisition, that Division directly or indirectly affected how much the chosen transitional entity could deduct for the asset; and

(c) that effect was partly due to the amount described in an item of the table being worked out for that entity directly or indirectly by reference to a provision of that Division specified in the item; and

(d) that amount is less than it would have been apart from that provision;

the difference is added to the step 1 amount.

Amounts and provisions for different dates of acquisition

	Date of the acquisition	Amount	Provision of Division 58 of the *Income Tax Assessment Act 1997* applying to the acquisition and the working out of the amount
1	Before 1 July 2001	Cost of the asset	Former section 58-160
2	Before 1 July 2001	Cost of the asset	Former section 58-220
3	After 30 June 2001	First element of the cost of the asset	Subsection 58-70(5)

Note 1: As originally enacted, Division 58 of the *Income Tax Assessment Act 1997* applied to acquisitions on or after 4 August 1997. That Act was later amended to replace Division 58, with the replacement Division 58 applying to acquisitions on or after 1 July 2001.

Note 2: Division 58 of the *Income Tax Assessment Act 1997* may, for example, have *indirectly* affected how much the chosen transitional entity could deduct for the asset because:

(a) that Division affected the amount that could be deducted by an entity that held the asset before the chosen transitional entity; and

(b) that effect extended to the chosen transitional entity because of roll-over relief.

76 After section 702-1

Insert:

702-4 Extended operation of subsection 40-285(3)

(1) This section applies in relation to a balancing adjustment event that occurs:

(a) for a depreciating asset held by an entity (the ***final entity***); and

(b) after the asset became an asset of the head company of a consolidated group because of section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* applying when an entity became a subsidiary member of the group.

It does not matter whether or not the final entity is the same as the head company or the entity mentioned in paragraph (b).

Note: The final entity will be different from the head company if an entity (the ***leaving entity***) took the asset with it when leaving the group, whether or not the leaving entity brought the asset into another consolidated group before the asset came to be held by the final entity.

(2) The final entity is entitled to a further deduction under subsection 40-285(3) of this Act for the balancing adjustment event if the final entity would have been entitled to the deduction apart from paragraph 701-55(2)(a) of the *Income Tax Assessment Act 1997* operating at any time before the event occurred.

Note: The final entity will be entitled to the deduction apart from paragraph 701-55(2)(a) of the *Income Tax Assessment Act 1997* only if the entity is treated as having depreciated the asset under former Division 42 of that Act, because of section 701-5 (the entry history rule) of that Act and perhaps also section 701-40 (the exit history rule) of that Act.

(3) However, the final entity is not entitled to the deduction if, at a time before the balancing adjustment event occurred:

(a) the asset became the asset of the head company of a consolidated group because of section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* applying when an entity (the ***joining entity***) became a subsidiary member of the group; and

(b) the tax cost setting amount for the asset was more than the joining entity's terminating value for the asset.

It does not matter whether or not the change in status of the asset described in paragraph (a) of this subsection is the same change as the change in status of the asset described in paragraph (1)(b).

Note: In some cases, section 705-47 of the *Income Tax Assessment Act 1997* reduces the tax cost setting amount for a depreciating asset to the joining entity's terminating value for the asset, so that subsection (3)

of this section will not prevent the final entity from getting the further deduction under subsection 40-285(3) of this Act.

Schedule 3—Venture capital

Income Tax Assessment Act 1936

1 Subsection 6(1) (definition of *limited partner*)

Repeal the definition, substitute:

> ***limited partner*** has the same meaning as in the *Income Tax Assessment Act 1997*.

2 Subsection 6(1) (definition of *limited partnership*)

Repeal the definition, substitute:

> ***limited partnership*** has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Subsection 6(1) (definition of *partnership*)

Repeal the definition, substitute:

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

Income Tax Assessment Act 1997

4 Subsection 995-1(1) (definition of *limited partnership*)

Repeal the definition, substitute:

> ***limited partnership*** means:
>
> (a) an association of persons (other than a company) carrying on business as partners or in receipt of *ordinary income or *statutory income jointly, where the liability of at least one of those persons is limited; or
>
> (b) an association of persons (other than one referred to in paragraph (a)) with legal personality separate from those persons that was formed solely for the purpose of becoming a *VCLP, an *AFOF or a *VCMP and to carry on activities that are carried on by a body of that kind.

5 Subsection 995-1(1) (definition of *partnership*)

Repeal the definition, substitute:

partnership means:

(a) an association of persons (other than a company or a *limited partnership) carrying on business as partners or in receipt of *ordinary income or *statutory income jointly; or

(b) a limited partnership.

6 Application

The amendments made by this Schedule apply to things done on or after 2 December 2003.

7 Transitional

(1) This item applies to a limited partnership:

(a) that was formed as a legal entity on or after 2 December 2003 and before the day on which this Act received the Royal Assent; and

(b) in respect of which an application has been made to the PDF Board for registration as a VCLP or an AFOF under the *Venture Capital Act 2002*; and

(c) that could not be registered or conditionally registered as a VCLP or an AFOF before the day on which this Act received the Royal Assent only because it has a legal personality separate from that of its members.

(2) If the PDF Board decided, before the day on which this Act received the Royal Assent, that it would have registered or conditionally registered a limited partnership to which this item applies as a VCLP or an AFOF under the *Venture Capital Act 2002* had this Act received the Royal Assent before that decision was made:

(a) the PDF Board is taken to have granted registration or conditional registration of the limited partnership as a VCLP or an AFOF under that Act on the day on which that decision was made; and

(b) that registration is taken to have been in force for the purposes of section 13-10 of that Act from that day.

Schedule 4—FBT housing benefits

Fringe Benefits Tax Assessment Act 1986

1 At the end of subsection 135X(3)

Add:

; (f) whether a year of tax that is a base year of tax for the purposes of section 26 is to continue to be treated as a base year of tax.

2 Application

The amendment made by this Schedule applies in respect of the FBT year beginning on 1 April 2001 and in respect of all later FBT years.

Schedule 5—CGT event K6 and demergers

Income Tax Assessment Act 1997

1 After subsection 104-230(9)

Insert:

(9A) Paragraph (9)(a) applies to a case where:

(a) the company referred to in subsection (2) is a *demerged entity; and

(b) *shares in the demerged entity do not satisfy the test referred to in that paragraph; and

(c) the demerger happened not more than 5 years before the other CGT event happened;

as if shares in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country at all times when some of the shares in the *head entity of the *demerger group were so listed.

Example: Louise owns shares in a company which has been listed for 3 years. The company is the head entity of a demerger group. As part of a demerger, she receives new interests in a demerged entity. The demerged entity then lists in its own right.

Since the head entity was listed for only 3 years, the demerged entity must remain listed for 2 years before Louise's new interests become eligible for the exception from CGT event K6.

(9B) Paragraph (9)(b) applies to a case where:

(a) the trust referred to in subsection (2) is a *demerged entity and a unit trust; and

(b) units in the demerged entity do not satisfy the test referred to in that paragraph; and

(c) the demerger happened not more than 5 years before the other CGT event happened;

as if units in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country, or were ordinarily available to the public for subscription or purchase, at all times when some of the units in the *head entity of the *demerger group were so listed or available.

2 Application

The amendment made by this Schedule applies to shares or units acquired under a demerger on or after 1 July 2002.

Schedule 6—Deductions for United Medical Protection Limited support payments

Income Tax Assessment Act 1997

1 Section 12-5 (table)

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

United Medical Protection Limited support payments	
.....	25-105

2 Before Division 26

Insert:

25-105 Deductions for United Medical Protection Limited support payments

(1) You can deduct an amount that you pay for the income year in which you pay it to the extent that it consists of a *United Medical Protection Limited support payment.

(2) A ***United Medical Protection Limited support payment*** is an amount payable under Division 1 of Part 3 of the *Medical Indemnity Act 2002*.

(3) You cannot deduct an amount under this section if you can deduct it under any other provision of this Act.

3 Subsection 995-1(1)

Insert:

United Medical Protection Limited support payment has the meaning given by section 25-105.

4 Application

The amendments made by this Schedule apply to amounts paid on or after 1 July 2003.

Schedule 7—Compulsory third party insurance

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

1 At the end of section 78-40

Add:

(2) Paragraph (1)(c) does not apply to a payment by another entity in relation to which an *increasing adjustment arises under section 80-30 or 80-70 (which are about settlement sharing arrangements).

2 Paragraph 79-10(2)(c)

After "the operator", insert "became or".

3 Subsection 79-15(4)

Repeal the subsection, substitute:

(4) The *operator may, in writing, elect that, from the start of a specified *financial year, any *decreasing adjustment in relation to all payments or supplies:

(a) that are made during the financial year; and

(b) to which paragraphs (1)(a), (b), (c) and (d) apply;

are to be worked out using the applicable *average input tax credit fraction.

4 After subsection 79-25(2)

Insert:

(2A) Subsection (2) does not apply if the cover under the *insurance policy commenced before 1 July 2003 (whether or not all or part of the premium on the policy was paid before that day).

5 Paragraph 79-50(2)(a)

After "premium", insert "to the *operator".

6 At the end of section 79-70

Add:

(2) Paragraph (1)(c) does not apply to a payment by another entity in relation to which an *increasing adjustment arises under section 80-30 or 80-70 (which are about settlement sharing arrangements).

(3) This section does not apply in relation to a payment or supply that the operator receives in settlement of a claim under an *insurance policy that the operator entered into, as the entity insured, in relation to any liability to make a *CTP compensation or ancillary payment or supply.

7 Paragraph 79-90(a)

Repeal the paragraph, substitute:

(a) in compliance with a judgment or order of a court relating to a claim for compensation under a *compulsory third party scheme, an entity makes a payment of *money, makes a supply, or makes both a payment of money and a supply; and

8 At the end of section 79-90

Add:

(2) If:

(a) in compliance with a judgment or order of a court relating to a claim by an *operator of a compulsory third party scheme exercising rights to recover from another entity in respect of a settlement made under the scheme, an entity makes a payment of *money, makes a supply, or makes both a payment of money and a supply; and

(b) had the payment or supply been made in the absence of such a judgment or order, it would have been a settlement of a claim made in exercising rights to recover from another entity in respect of a settlement made under the scheme;

the payment or supply is treated as having been made in settlement of the operator's claim made in exercising those rights.

9 Subsection 79-95(2) (after paragraph (b) of the definition of *applicable average input tax credit fraction*)

Insert:

; or (c) if the payment or supply is a payment or supply to which section 79-15 applies—the accident or other incident to which the claim relates happened.

10 Subsection 79-95(3) (formula in step 3 of the method statement)

Repeal the formula, substitute:

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

11 Paragraph 80-5(1)(b)

Omit "owners or drivers", substitute "persons".

12 Paragraph 80-40(1)(b)

Omit "driver", substitute "person".

13 Subparagraph 80-80(1)(b)(ii)

Omit "owners or drivers", substitute "persons".

14 Application

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting on or after 1 July 2000.

Schedule 8—Public ambulance services

Fringe Benefits Tax Assessment Act 1986

1 Subsection 5B(1E) (after paragraph (c) of step 2 of the method statement)

Insert:

(ca) the employer provides public ambulance services or services that support those services and the employee is predominantly involved in connection with the provision of those services; or

2 Subsection 5B(1E) (step 2 of the method statement)

After "paragraph (c)", insert ", (ca)".

3 Subsection 57A(3)

Repeal the subsection, substitute:

(3) A benefit provided in respect of the employment of an employee is an exempt benefit if:

(a) the employer of the employee is a public hospital; or

(b) the employer provides public ambulance services or services that support those services and the employee is predominantly involved in connection with the provision of those services.

Note: The heading to section 57A is altered by omitting "**and some hospitals**" and substituting "**, some hospitals and public ambulance services**".

4 Section 135M

After "certain hospitals,", insert "public ambulance services,".

5 Subsection 135Q(1) (note)

Omit "and employers of employees connected with certain hospitals", substitute ", employers of employees connected with certain hospitals and employers of employees connected with public ambulance services".

6 Subsection 140(1A)

After "subsection (1C)", insert ", (1CA)".

7 After subsection 140(1C)

Insert:

(1CA) Subsection (1A) also applies in relation to an employee:

(a) whose employer provides public ambulance services or services that support those services; and

(b) who is predominantly involved in connection with the provision of those services.

8 Application

The amendments made by items 1 to 7 apply in respect of the FBT year beginning on 1 April 2004 and in respect of all later FBT years.

Income Tax Assessment Act 1997

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

Add:

1.1.7	a public ambulance service	none
1.1.8	a public fund established and maintained for the purpose of providing money for the provision of public ambulance services	none

10 Subsection 30-315(2) (after table item 92)

Insert:

92A	Public ambulance services	items 1.1.7 and 1.1.8

11 Application

The amendments made by items 9 and 10 apply to gifts made on or after 1 April 2004.

Schedule 9—Overseas superannuation payments

Income Tax Assessment Act 1936

1 Subsection 27A(1) (subparagraph (e)(iv) of the definition of *undeducted contributions*)

Repeal the subparagraph, substitute:

(iv) no deductions are allowable or have been allowed to the taxpayer or to the other person in respect of the contributions;

but does not include so much of the ETP as is attributable to an amount paid from an eligible non-resident non-complying superannuation fund to a complying superannuation fund, to the extent that the amount has been treated as a taxable contribution under paragraph 274(10)(c) or (d).

2 Section 27CAA

Repeal the section, substitute:

27CAA Assessable income to include component of lump sum payment from an eligible non-resident non-complying superannuation fund

(1) If:

(a) a payment (the ***relevant payment***) of a lump sum (including a payment made because a superannuation pension or annuity is commuted) is made from a fund that is an eligible non-resident non-complying superannuation fund (the ***paying fund***) in relation to a taxpayer; and

(b) the relevant payment is not an exempt resident foreign termination payment or an exempt non-resident foreign termination payment; and

(c) the relevant payment is not made to another eligible non-resident non-complying superannuation fund; and

(d) had the paying fund been a superannuation fund, the relevant payment would, apart from paragraph (ma) of the definition

of ***eligible termination payment***, have been an eligible termination payment; and

(e) the amount worked out under the formula in subsection (2) is a positive amount;

then, subject to subsection (4), the taxpayer's assessable income for the year of income includes the amount worked out under that formula.

(2) For the purposes of subsection (1), the formula is:

$$\left[\left[\text{Payment day entitlement} - \left(\text{Accumulated entitlement} + \text{Additional contributions}\right)\right] \times \frac{\text{Resident days}}{\text{Total days}}\right] + \text{Previously exempt amounts}$$

where:

accumulated entitlement means:

(a) the amount properly payable to the taxpayer out of the paying fund on the day immediately before the relevant day for the relevant payment; or

(b) if the relevant payment is not the first payment from the paying fund in relation to the taxpayer to be covered by this section—the amount properly payable to the taxpayer out of the paying fund immediately after the most recent such payment.

additional contributions means so much of the payment day entitlement as represents:

(a) either:

(i) contributions paid by the taxpayer, or an employer of the taxpayer, on or after the relevant day for the relevant payment; or

(ii) if the relevant payment is not the first payment from the paying fund in relation to the taxpayer to be covered by this section—contributions paid by the taxpayer, or an employer of the taxpayer, after the most recent such payment; and

(b) either:

(i) amounts transferred into the paying fund from another eligible non-resident non-complying superannuation fund on or after the relevant day for the relevant payment; or

(ii) if the relevant payment is not the first payment from the paying fund in relation to the taxpayer to be covered by this section—amounts transferred into the paying fund from another eligible non-resident non-complying superannuation fund, after the most recent such payment.

payment day entitlement means the amount that is properly payable to the taxpayer out of the paying fund on the day on which the relevant payment is made, before any deduction is made from that amount.

previously exempt amounts means the sum of each of the amounts in respect of the relevant payment worked out under section 27CAB.

relevant day, for a relevant payment, means the later of:

(a) the day on which the taxpayer became a member of the paying fund; and

(b) the first day during the period to which the relevant payment relates on which the taxpayer became a resident of Australia.

resident days means the total number of days on which the taxpayer is a resident of Australia in the period from and including the relevant day for the relevant payment, up to and including the day on which the payment was made.

total days means the total number of days in the period from and including the relevant day for the relevant payment, up to and including the day on which the payment was made.

(3) If:

(a) the relevant payment is paid to a complying superannuation fund; and

(b) immediately after it is paid, the taxpayer no longer has an interest in the paying fund;

the taxpayer may elect that the whole or a part of the amount worked out under the formula in subsection (2) (but not exceeding

the amount of the relevant payment) is to be treated as a taxable contribution by the complying superannuation fund.

(4) If the taxpayer makes an election under subsection (3), then the amount included in the taxpayer's assessable income under subsection (1) is reduced by the amount covered by the election.

(5) An election under subsection (3):

(a) must be in writing; and

(b) must comply with any requirements specified in the regulations.

(6) Subject to paragraph (1)(c), subsection 27A(3) applies for the purposes of this section in a corresponding way to the way in which it applies for the purposes of the definition of ***eligible termination payment*** in subsection 27A(1).

27CAB Working out the previously exempt amounts for the purposes of a relevant payment under section 27CAA

(1) For the purposes of section 27CAA, an amount is a ***previously exempt amount*** in respect of a relevant payment if:

(a) the payment day entitlement in respect of the relevant payment, or part of that payment day entitlement, is attributable to the amount; and

(b) the amount relates to a payment (the ***previously exempt payment***) made from a fund that is an eligible non-resident non-complying superannuation fund in relation to a taxpayer; and

(c) the amount would have been included in the taxpayer's assessable income under subsection 27CAA(1) but for the payment having been made to another eligible non-resident non-complying superannuation fund.

(2) The previously exempt amount in respect of a previously exempt payment is the amount of the previously exempt payment that would have been included in the taxpayer's assessable income by the application of the formula in subsection 27CAA(2) (except the part of the formula that requires the addition of previously exempt amounts).

(3) In this section:

payment day entitlement has the same meaning as in subsection 27CAA(2).

relevant payment has the same meaning as in subsection 27CAA(2).

3 Subsection 267(1)

Insert:

eligible non-resident non-complying superannuation fund has the same meaning as in Subdivision AA of Division 2 of Part III.

4 At the end of subsection 274(10)

Add:

; (d) if an amount is transferred from an eligible non-resident non-complying superannuation fund to a complying superannuation fund in relation to a taxpayer—so much of the amount as is specified in an election made by the taxpayer under subsection 27CAA(3).

5 After Division 17

Insert:

Division 17A—Deduction for overseas superannuation transfers

533B Deduction for overseas superannuation transfers

(1) If:

(a) a taxpayer has an interest in a FIF that is an eligible non-resident non-complying superannuation fund (the ***paying fund***); and

(b) the paying fund transfers an amount to a complying superannuation fund in respect of the taxpayer; and

(c) the taxpayer elects under subsection 27CAA(3) that the amount, or part of the amount, is to be treated as a taxable contribution of the complying superannuation fund; and

(d) immediately before the transfer happens, there is a FIF attribution surplus for the paying fund under section 604 in relation to the taxpayer;

then the taxpayer is entitled to a deduction, for the year of income in which the transfer happened, for the lesser of:

(e) the FIF attribution surplus; and

(f) the amount covered by the taxpayer's election.

(2) In this section:

complying superannuation fund has the same meaning as in Part IX.

eligible non-resident non-complying superannuation fund has the same meaning as in Subdivision AA of Division 2 of Part III.

6 After section 607

Insert:

607AA Additional FIF attribution debit—deduction for overseas superannuation transfers

(1) If a taxpayer is entitled to a deduction under section 533B, a FIF attribution debit also arises for a FIF attribution account entity (referred to in section 533B as the paying fund) in relation to the taxpayer.

(2) The amount of the FIF attribution debit is the amount of the deduction.

(3) The FIF attribution debit arises immediately after the time that the taxpayer becomes entitled to the deduction.

7 Application

The amendments made by this Schedule apply to payments made on or after 1 July 2004.

Schedule 10—Franked distributions received through certain partnerships and trustees

Part 1—Amendments commencing on 1 July 2000

Income Tax Assessment Act 1936

1 At the end of section 160APHBF

Add:

(6) An exempt institution whose exempt status is disregarded under subsection 160ARDAB(1) cannot be a ***prescribed person*** in relation to a company under this section.

2 At the end of section 160APHBG

Add:

(10) An exempt institution whose exempt status is disregarded under subsection 160ARDAB(1) cannot be taken to be a ***prescribed person*** in relation to a company under this section.

Part 2—Amendments commencing on 29 June 2002

Income Tax Assessment Act 1997

3 Paragraph 204-30(6)(b)

Omit "207-40", substitute "207-35".

4 Section 205-15 (table item 4)

Omit "through a *partnership or trust", substitute "through a partnership or the trustee of a trust".

5 Subsections 207-5(3), (4) and (5)

Repeal the subsections, substitute:

(3) If a franked distribution is made to a member that is a partnership or the trustee of a trust, an amount equal to the franking credit on the distribution is also included in the member's assessable income as mentioned in paragraph (1)(a).

(4) However, a tax offset in relation to that distribution is only available to an entity (who may be a partner, beneficiary or a trustee) if the distribution flows indirectly to it and does not flow indirectly through it to another entity. The tax offset is equal to its share of the franking credit on the distribution.

Note: That share is a notional amount and the entity can have that share without actually receiving any of that franking credit or distribution.

(5) There are exceptions to both the general rule mentioned in subsection (1) and the special rule mentioned in subsection (4). Basically, these exceptions are created:

(a) where the relevant entity would not have paid tax on the distribution or a share of the distribution (see Subdivisions 207-D and 207-E); and

(b) where there is a manipulation of the imputation system in a manner that is not permitted under the income tax law (see Subdivision 207-F).

6 Subsections 207-15(2) and (3)

Repeal the subsections (including the notes), substitute:

(2) This Subdivision does not apply to:

(a) a partnership or trustee to whom a *franked distribution is made (except a partnership or trustee that is a *corporate tax entity, or a trustee of a trust that is a *complying superannuation entity, when the distribution is made); or

(b) an entity to whom a franked distribution *flows indirectly.

Note: Subject to the other provisions in this Division, Subdivision 207-B applies to an entity excluded from the application of this Subdivision because of this subsection.

(3) This Subdivision applies subject to Subdivisions 207-C, 207-D, 207-E and 207-F.

Note 1: Subdivision 207-C sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution.

Note 2: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 3: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 4: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

7 Subdivision 207-B

Repeal the Subdivision, substitute:

Subdivision 207-B—Franked distribution received through certain partnerships and trustees

Guide to Subdivision 207-B

207-25 What this Subdivision is about

This Subdivision deals with an entity that receives a benefit of a franked distribution where:

(a) the distribution is made to a partnership or the trustee of a trust; and

(b) the benefit is received either directly or through other interposed partnerships or trusts.

The distribution is regarded as flowing indirectly to the entity under this Subdivision.

On the basis of a notional amount of the entity's share of the distribution, the entity may be entitled to have an amount included in its assessable income and/or a tax offset under this Subdivision.

Table of sections

Gross-up and tax offset

207-30 Applying this Subdivision
207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee
207-45 Tax offset—distribution flows indirectly to an entity

Key concepts

207-50 When a franked distribution flows indirectly to or through an entity
207-55 Share of a franked distribution
207-57 Share of the franking credit on a franked distribution

[This is the end of the Guide.]

Gross-up and tax offset

207-30 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-D, 207-E and 207-F.

Note 1: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 2: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 3: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee

Additional amount of assessable income

(1) If:

(a) a *franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and

(b) the entity is not a *corporate tax entity when the distribution is made; and

(c) if the entity is the trustee of a trust—the trust is not a *complying superannuation entity when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the *franking credit on the distribution.

(2) The amount is in addition to any other amount included in that assessable income in relation to the distribution under any other provision of this Act.

Note: The amount will affect the income tax liability of a partner in the partnership, or a beneficiary or the trustee of the trust: see Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936.*

Allocation of the additional amount of assessable income

(3) Despite any provisions in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*, if:

(a) a *franked distribution is made, or *flows indirectly, to a partnership or the trustee of a trust in an income year; and

(b) the assessable income of the partnership or trust for that year includes an amount (the ***franking credit amount***) that is all or a part of the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) the distribution flows indirectly to an entity that is a partner in the partnership, or a beneficiary or that trustee of the trust; and

(d) the entity has an amount of assessable income for that year that is attributable to all or a part of the distribution;

then, the entity's assessable income for that year also includes so much of the franking credit amount as is equal to its *share of the *franking credit on the distribution.

Example: A franked distribution of $70 is made to the trustee of a trust in an income year. The trust also has $100 of assessable income from other sources. Under subsection (1), the trust's assessable income includes an additional amount of $30 (which is the franking credit on the distribution). The trust has a net income of $200 for that income year.

There are 2 beneficiaries of the trust, P and Q, who are presently entitled to the trust's income. Under the trust deed, P is entitled to all of the franked distribution and Q is entitled to all other income.

The distribution flows indirectly to P (as P is entitled to a share of that net income and has a 100% share of the distribution under section 207-55). P therefore has an amount of assessable income that is equal to its share of the distribution. Under this subsection, P's assessable income also includes the full amount of the franking credit (as P's share of the franking credit on the distribution is $30 under section 207-57). Q's share of the net income therefore does not include any of the franking credit.

207-45 Tax offset—distribution flows indirectly to an entity

An entity to whom a *franked distribution *flows indirectly in an income year is entitled to a *tax offset for that income year that is equal to its *share of the *franking credit on the distribution, if it is:

(a) an individual; or

(b) a *corporate tax entity when the distribution flows indirectly to it; or

(c) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or

(d) the trustee of an eligible entity within the meaning of Part IX of that Act in relation to that income year.

Note 1: Certain superannuation funds, ADFs and PSTs are eligible entities within the meaning of Part IX of the *Income Tax Assessment Act 1936*.

Note 2: The entities covered by this section are the ultimate recipients of the distribution because the distribution does not flow indirectly through them to other entities. As a result they are also the ultimate taxpayers in respect of the distribution and are given the tax offset to acknowledge the income tax that has already been paid on the profits underlying the distribution.

Key concepts

207-50 When a franked distribution flows indirectly to or through an entity

(1) For the purposes of this Subdivision, this section sets out the only circumstances in which a *franked distribution:

(a) ***flows indirectly*** to an entity (subsection (2), (3) or (4)); or

(b) ***flows indirectly*** through an entity (subsection (5)).

Partners

(2) A *franked distribution ***flows indirectly*** to a partner in a partnership in an income year if, and only if:

(a) during that income year, the distribution is made to the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and

(b) the partner has an individual interest:

(i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or

(ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;

(whether or not that individual interest becomes assessable income in the hands of the partner); and

(c) the partner's *share of the distribution under section 207-55 is a positive amount (whether or not the partner actually receives any of that share).

Beneficiaries

(3) A *franked distribution ***flows indirectly*** to a beneficiary of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and

(b) the beneficiary has this amount for that income year (the ***share amount***):

(i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or

(ii) an individual interest in the trust's net income for that income year that is covered by paragraph 98A(1)(a) or (b), or paragraph 100(1)(a) or (b), of that Act;

(whether or not the share amount becomes assessable income in the hands of the beneficiary); and

(c) the beneficiary's *share of the distribution under section 207-55 is a positive amount (whether or not the beneficiary actually receives any of that share).

Trustees

(4) A *franked distribution ***flows indirectly*** to the trustee of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and

(b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the ***share amount***) that is:

(i) a share of the trust's *net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or

(ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;

(whether or not the share amount becomes assessable income in the hands of the trustee); and

(c) the trustee's *share of the distribution under section 207-55 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom a franked distribution flows indirectly under this subsection is entitled to a tax offset under section 207-45 and the distribution does not flow indirectly through the trustee to another entity.

(5) A *franked distribution ***flows indirectly*** through an entity (the ***first entity***) to another entity if, and only if:

(a) the other entity is the focal entity in an item of the table in section 207-55 in relation to the distribution; and

(b) that focal entity's *share of the distribution is based on the first entity's share of the distribution as an intermediary entity in that or another item of the table.

Example: A franked distribution of $140 is made to a partnership. An amount equal to the franking credit on the distribution ($60) is included in the partnership's assessable income under section 207-35. Because the partnership has losses of $300 from other sources, it has a partnership loss of $100 for the income year.

The partnership has 2 equal partners. One partner is the trustee of a trust and the other partner is an individual. The distribution flows indirectly to each partner under subsection (2). Each partner has a share of the partnership loss ($50), a share of the distribution under sections 207-55 ($70) and a share of the franking credit under section 207-57 ($30).

The individual partner is allowed a tax offset of $30 under section 207-45.

Because the trust has $100 of income from other sources, it has a net income of $50 for that income year ($100 minus the share of the partnership loss of $50).

The trust has one individual as a beneficiary, to whom the distribution flows indirectly under subsection (3). The beneficiary's share of the franked distribution is $70 under sections 207-55 and its share of the franking credit is $30 under section 207-57. The beneficiary is therefore allowed a tax offset of $30 under section 207-45.

207-55 Share of a franked distribution

Object of section

(1) The object of this section is to ensure that:

(a) the amount of a *franked distribution made to a partnership or the trustee of a trust is allocated notionally amongst entities who derive benefits from that distribution; and

(b) that allocation corresponds with the way in which those benefits were derived.

Note: An entity can derive a benefit from the distribution (and therefore has a share of the distribution) without actually receiving any of the distribution: see subsection (2) of this section and the example at the end of section 207-50.

(2) An entity's ***share*** of a *franked distribution is an amount notionally allocated to the entity as its share of the distribution, whether or not the entity actually receives any of that distribution.

(3) That amount is equal to the entity's ***share*** of the distribution as the focal entity in column 3 of an item of the table.

Note: An entity's share of the distribution is based on the share of the distribution of each preceding intermediary entity through which the distribution flows, starting from the intermediary entity to whom the distribution is made.

This means that in some cases (see items 2 and 4), more than one item of the table will need to be applied to work out the share of the distribution of an ultimate recipient of the distribution.

Share **of a franked distribution**

Item	Column 1 **For this intermediary entity and this focal entity**:	Column 2 **The intermediary entity's share of the franked distribution is:**	Column 3 **The focal entity's share of the franked distribution is:**
1	a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if: (a) a *franked distribution is made to the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount of the franked distribution	so much of the franked distribution as is taken into account in working out the amount of that individual interest

***Share* of a franked distribution**			
Item	**Column 1** **For this intermediary entity and this focal entity**:	**Column 2** **The intermediary entity's share of the franked distribution is:**	**Column 3** **The focal entity's share of the franked distribution is:**
2	a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if: (a) a *franked distribution *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances
3	the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if: (a) a *franked distribution is made to the trustee; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	(a) if the trust has a positive amount of *net income for that year—the amount of the franked distribution; or (b) otherwise—nil	so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount

***Share* of a franked distribution**			
Item	**Column 1** **For this intermediary entity and this focal entity**:	**Column 2** **The intermediary entity's share of the franked distribution is:**	**Column 3** **The focal entity's share of the franked distribution is:**
4	the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if: (a) a *franked distribution *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4)	the amount worked out under column 3 of: (a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or (b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances

Note: In item 3 or 4, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

207-57 Share of the franking credit on a franked distribution

(1) An entity's ***share*** of a *franking credit on a *franked distribution is an amount notionally allocated to the entity as its share of that credit, whether or not the entity actually receives any of that credit or distribution.

(2) Work out that amount as follows:

$$\text{Amount of the *franking credit on the *franked distribution} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

8 Subdivision 207-D

Repeal the Subdivision, substitute:

Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed

Guide to Subdivision 207-D

207-80 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where a franked distribution (or a share of it) is, or would be, exempt income or an amount that is neither assessable income nor exempt income in the relevant entity's hands (and therefore would not be taxed in any case).

Table of sections

Operative provisions

207-85 Applying this Subdivision
207-90 Distribution that is made to an entity
207-95 Distribution that flows indirectly to an entity

Operative provisions

207-85 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-E and 207-F.

Note 1: Subdivision 207-E sets out exceptions to the rules in this Subdivision.

Note 2: Where both this Subdivision and Subdivision 207-F apply to an entity, the application of this Subdivision is subject to the rules in Subdivision 207-F: see subsections 207-145(3) and 207-150(7) and (8).

207-90 Distribution that is made to an entity

Whole of distribution not assessable

(1) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) the distribution is *exempt income or an amount that is neither assessable income nor exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20; and

(e) the entity is not entitled to a *tax offset under this Division because of the distribution.

Part of distribution not assessable

(2) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) a part of the distribution (the ***relevant part***) is *exempt income or an amount that is neither assessable income nor exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the distribution is taken to have been reduced by the relevant part; and

(e) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Relevant part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

207-95 Distribution that flows indirectly to an entity

Whole of share of distribution not assessable

(1) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) the entity's *share of the distribution would, in its hands, be *exempt income or an amount that is neither assessable income nor exempt income (whether or not it had actually received that share);

then, for the purposes of this Act:

(c) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(d) the entity is not entitled to a *tax offset under this Division because of the distribution; and

(e) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: This section can therefore apply, for example, where the entity is a partner in a partnership that has a partnership loss and the entity does not actually receive any of the distribution.

Partner

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

Beneficiary

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:

(a) its share amount in relation to the distribution that is mentioned in that subsection; and

(b) its *share of the *franking credit on the distribution.

Trustee

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:

(a) that share amount; and

(b) its *share of the *franking credit on the distribution.

Example: A franked distribution of $70 is made to a partnership.

Under section 207-35, an additional amount of $30 is included in the partnership's assessable income because of the distribution.

The partnership has 2 equal partners, X and Y. X is a non-resident individual whose share of partnership's net income for the income year is $50 (share of distribution of $35 and share of franking credit of $15). That share of distribution is not assessable income and not exempt income under section 128D of the *Income Tax Assessment Act 1936*.

X's assessable income of $15 (share of franking credit) is reduced to nil because of the deduction of $15 under subsection (2). Because of subsection (1), X is not entitled to a tax offset under section 207-45.

Part of share of distribution not assessable

(5) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) a part of the entity's *share of the distribution (the ***relevant part***) would, in its hands, be *exempt income or an amount that is neither assessable income nor exempt income (whether or not it had actually received that part);

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

$$\frac{\text{Relevant part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the relevant part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Subdivision because of the distribution—the amount of the tax offset is to be worked out as follows:

Entity's *share of the *franking credit on the *franked distribution apart from this section	–	Amount worked out under subsection (5)

9 Subdivision 207-E (heading)

Repeal the heading, substitute:

Subdivision 207-E—Exceptions to the rules in Subdivision 207-D

10 Section 207-105

Repeal the section, substitute:

207-105 What this Subdivision is about

> Subdivision 207-D does not apply to certain exempt institutions, trusts and life insurance companies as set out in this Subdivision. Such an entity may be entitled to a tax offset under this Subdivision in relation to a franked distribution.

11 Sections 207-110, 207-115, 207-120 and 207-125

Repeal the sections, substitute:

207-110 Exceptions to sections 207-90 and 207-95

(1) This section applies to an entity to whom a *franked distribution is made, or *flows indirectly, in any of the following circumstances:

(a) the entity is an *exempt institution that is eligible for a refund and the distribution does not flow indirectly to the entity as a partner in a partnership under subsection 207-50(2);

(b) the distribution is, or the entity's *share of the distribution would have been, this kind of income in its hands:

(i) *exempt income under section 282B, 283 or 297B of the *Income Tax Assessment Act 1936* (certain income derived by an eligible entity within the meaning of Part IX of that Act); or

(ii) an amount that is neither assessable income nor exempt income under paragraph 320-37(1)(a) (segregated

exempt assets of a life insurance company) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act.

(2) The following have effect in relation to the entity:

(a) section 207-90 or 207-95 (as appropriate) does not apply to the entity;

(b) if the entity would, apart from section 207-90 or 207-95, be entitled to a *tax offset under section 207-20 or 207-45 in relation to the distribution—the entity is entitled to that tax offset;

(c) if the entity would not be entitled to such a tax offset, the entity is entitled to a tax offset under this section that is equal to:

(i) if the distribution is made to the entity—the *franking credit on the distribution; or

(ii) if the distribution *flows indirectly to the entity—the entity's *share of the franking credit on the distribution;

(d) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: Paragraph (2)(c) only applies to an exempt institution that is eligible for a refund and that is not entitled to a tax offset under section 207-20 or 207-45. An entity covered by paragraph (1)(b) will, in all cases, be entitled to a tax offset under section 207-20 or 207-45.

12 Before section 207-130

Insert:

Exempt institutions

13 Section 207-140

Repeal the section, substitute:

207-140 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

14 Sections 207-145 and 207-150

Repeal the sections, substitute:

207-145 Distribution that is made to an entity

Whole of distribution manipulated

(1) If a *franked distribution is made to an entity in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is made as part of a *dividend stripping operation;

then, for the purposes of this Act:

(e) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20 or 207-35; and

(f) the entity is not entitled to a *tax offset under this Subdivision because of the distribution; and

(g) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Part of share of distribution manipulated

(2) If:

(a) a *franked distribution is made to an entity; and

(b) the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, for the purposes of this Act:

(c) the amount of the distribution is taken to have been reduced by the specified part; and

(d) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Specified part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

Example: A franked distribution of $70 is made to the trustee of a trust. Apart from this section, the franking credit on the distribution ($30) would be included in the assessable income of the trust under section 207-35.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for the trustee in respect of $49 of the distribution.

Under this subsection, the amount included in the assessable income of the trust under section 207-35 because of the distribution is reduced from $30 to $9.

If there is a beneficiary of the trust that is presently entitled to the trust's income, the amount of the distribution that flows indirectly to the beneficiary is reduced from $70 to $21 under this subsection.

What happens if both subsection 207-90(2) and subsection (2) of this section would apply

(3) If, apart from this subsection, both subsection 207-90(2) and subsection (2) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsection 207-90(2) first; and

(b) apply subsection (2) of this section on the basis that the amount of the *franked distribution had been reduced under subsection 207-90(2).

207-150 Distribution that flows indirectly to an entity

Whole of share of distribution manipulated

(1) If a *franked distribution *flows indirectly to an entity in an income year in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is treated as an interest payment for the entity under section 207-160 of this Act;

(e) the distribution is made as part of a *dividend stripping operation;

then, for the purposes of this Act:

(f) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(g) the entity is not entitled to a *tax offset under this Subdivision because of the distribution; and

(h) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Partner

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

Beneficiary

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:

(a) its share amount in relation to the distribution that is mentioned in that subsection; and

(b) its *share of the *franking credit on the distribution.

Trustee

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:

(a) that share amount; and

(b) its *share of the *franking credit on the distribution.

Part of share of distribution manipulated

(5) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

$$\frac{\text{Specified part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the specified part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Subdivision because of the distribution—the amount of the tax offset is to be worked out as follows:

Entity's *share of the *franking credit on the *franked distribution apart from this section – Amount worked out under subsection (5)

Example: X is a partner in a partnership to which a franked distribution of $140 is made. The franking credit on the distribution ($60) is included in the assessable income of the partnership under section 207-35. X's share of the distribution is $70 and its share of the franking credit on the distribution is $30.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for X in respect of $42 of the distribution.

Under subsection (5), X will be allowed a deduction of $18.

X is the trustee of a trust and the distribution will flow indirectly through X to beneficiaries of the trust. For the purposes of working out a beneficiary's share of the distribution and its share of the franking credit, X's share of the franked distribution is reduced to $28 under this subsection.

What happens if both subsection 207-95(1) and subsection (1) of this section would apply

(7) If, apart from this subsection, both subsection 207-95(1) and subsection (1) of this section would apply to an entity in relation to a *franked distribution, then:

(a) subsection (1) of this section applies to the entity; but

(b) subsection 207-95(1) does not apply to the entity.

What happens if both subsection 207-95(5) and subsection (5) of this section would apply

(8) If, apart from this subsection, both subsection 207-95(5) and subsection (5) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsections 207-95(5) and (6) first; and

(b) apply subsections (5) and (6) of this section on the basis that:

(i) the amount of the entity's *share of the *franking credit on the distribution had been reduced under subsection 207-95(5); and

(ii) the amount of the entity's *share of the distribution had been reduced under subsection 207-95(6).

15 Sections 207-160, 207-165 and 207-170

Repeal the sections, substitute:

207-160 Distribution that is treated as an interest payment

(1) For the purposes of this Subdivision, a *franked distribution is treated as an ***interest payment*** for an entity to whom the distribution *flows indirectly if:

(a) all or a part of the entity's individual interest or share amount in relation to the distribution that is mentioned in subsection 207-50(2), (3) or (4) could reasonably be regarded as the payment of interest on a loan, having regard to:

(i) the way in which that individual interest or share amount was calculated; and

(ii) the conditions applying to the payment or application of that individual interest or share amount; and

(iii) any other relevant matters; and

(b) the entity's interest in the last intermediary entity (see subsection (2)):

(i) was acquired, or was acquired for a period that was extended, at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; or

(ii) was acquired as part of a *financing arrangement for the entity (including an arrangement extending to an earlier arrangement) that was entered into at or after that time.

(2) The entity's interest in the last intermediary entity is:

(a) if the distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2)—the entity's interest in the partnership; or

(b) if the distribution flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3)—the entity's interest in the trust; or

(c) if the distribution flows indirectly to the entity as the trustee of a trust under subsection 207-50(4)—the entity's interest in the trust in respect of which the entity is liable to be assessed.

16 At the end of section 208-40

Add:

(6) An *exempt institution that is eligible for a refund cannot be a ***prescribed person*** in relation to a *corporate tax entity under this section.

17 At the end of section 208-45

Add:

(10) An *exempt institution that is eligible for a refund cannot be taken to be a ***prescribed person*** in relation to a *corporate tax entity under this section.

18 Section 208-175

Omit "section 207-35", substitute "section 207-50".

19 Section 208-180

Omit "section 207-55", substitute "sections 207-55 and 207-57".

20 Subsection 995-1(1) (paragraphs (a) and (b) of the definition of *flows indirectly*)

Repeal the paragraphs, substitute:

(a) subsections 207-50(2), (3) and (4) set out the circumstances in which a *franked distribution flows indirectly to an entity; and

(b) subsection 207-50(5) sets out the circumstances in which a franked distribution flows indirectly through an entity; and

21 Subsection 995-1(1)

Insert:

share of a *franked distribution has the meaning given by section 207-55.

22 Subsection 995-1(1) (paragraph (a) of the definition of *share*)

Omit "207-55", substitute "207-57".

Part 3—Amendments commencing on 30 June 2003

Income Tax Assessment Act 1997

23 Subsection 67-25(1B)

Repeal the subsection, substitute:

(1B) If:

(a) the trustee of a trust to whom a *franked distribution *flows indirectly under subsection 207-50(4) is entitled to a *tax offset under Division 207 for an income year because of the distribution; and

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

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

24 Section 207-80

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

25 Paragraph 207-90(1)(c)

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

26 Paragraph 207-90(2)(c)

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

27 Paragraph 207-95(1)(b)

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

28 Paragraph 207-95(5)(b)

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

29 Subparagraph 207-110(1)(b)(ii)

Omit "an amount that is neither assessable income nor exempt income", substitute "*non-assessable non-exempt income".

30 Paragraph 220-400(1)(b)

Repeal the paragraph, substitute:

(b) an amount is included in the recipient's assessable income for the income year under section 207-20, and the recipient is entitled to a *tax offset for the income year under that section or section 207-110; and

31 Paragraph 220-400(1)(c)

Omit "and".

32 Paragraph 220-400(1)(d)

Repeal the paragraph.

33 Subsection 220-400(2)

After "assessable income", insert "under section 207-20".

34 Subsection 220-400(3)

After "*tax offset", insert "under section 207-20".

35 Subsections 220-400(4) and (5)

Repeal the subsections, substitute:

What happens if certain provisions apply

(4) Subsections (2) and (3) do not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-90(1);

(b) subsection 207-90(2);

(c) subsection 207-145(1);

(d) subsection 207-145(2).

(5) If subsection 207-90(2) or 207-145(2) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the *franking credit on the distribution;

had been reduced by:

(b) so much of the supplementary dividend as does not exceed that amount of the franking credit.

Relationship with sections 207-20, 207-90 and 207-145

(6) Sections 207-20, 207-90 and 207-145 have effect subject to this section.

36 Section 220-405 (heading)

Repeal the heading, substitute:

220-405 Franked distribution and supplementary dividend flowing indirectly

37 Paragraph 220-405(1)(c)

Omit "section 207-50", substitute "section 207-45".

38 Paragraph 220-405(1)(d)

Omit "and".

39 Paragraph 220-405(1)(e)

Repeal the paragraph.

40 Subsections 220-405(2) to (8)

Repeal the subsections (including the notes), substitute:

Recipient that is a partner or beneficiary

(2) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(2) or (3), then:

(a) the recipient can deduct an amount for the income year that is equal to so much of its share of the supplementary dividend as does not exceed:

(i) if the distribution flows indirectly to the recipient under subsection 207-50(2)—the recipient's individual interest in relation to the distribution that is mentioned in that subsection; or

(ii) if the distribution flows indirectly to the recipient under subsection 207-50(3)—the recipient's share amount in

relation to the distribution that is mentioned in that subsection; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the deduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

Recipient that is a trustee

(3) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(4), then:

(a) the share amount mentioned in that subsection in relation to the distribution is reduced by so much of the recipient's share of the supplementary dividend as does not exceed that share amount; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the reduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

What happens if certain provisions apply

(4) Subsection (2) or (3) (as appropriate) does not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-95(1);

(b) subsection 207-95(5);

(c) subsection 207-150(1);

(d) subsection 207-150(5).

(5) If subsection 207-90(5) or 207-150(5) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the recipient's *share of the *franking credit on the distribution;

had been reduced by:

(b) so much of the recipient's share of the supplementary dividend as does not exceed the amount of that share of the franking credit.

When does a supplementary dividend flow to an entity?

(6) A supplementary dividend ***flows indirectly*** to an entity if it would have *flowed indirectly to the entity under subsection 207-50(2), (3) or (4), if:

(a) the dividend had been a *franked distribution; and

(b) a reference in that subsection to the entity's *share of the franked distribution had been a reference to the entity's share of the supplementary dividend.

Share of supplementary dividend

(7) The entity's ***share of the supplementary dividend*** is worked out as follows:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

(8) Nothing in this section has the effect of including in the entity's assessable income its share of the supplementary dividend.

Relationship with Subdivisions 207-B, 207-D, 207-E and 207-F

(9) Subdivisions 207-B, 207-D, 207-E and 207-F have effect subject to this section.

Part 4—Other amendments

Income Tax Assessment Act 1997

41 Subsection 219-15(2) (table item 6)

Omit "through a *partnership or trust", substitute "through a partnership or the trustee of a trust".

42 Subsection 220-410(2)

Repeal the subsection (including the note), substitute:

(2) The following provisions have effect subject to this section:

(a) items 3 and 4 of the table in section 205-15;

(b) items 5 and 6 of the table in section 219-15.

Note: Each of those items gives rise to a franking credit for a franked distribution if the recipient is entitled under Division 207 to a tax offset for the distribution. Those items provide that the amount of the credit equals the amount of that offset.

Part 5—Application and transitional provisions

43 Application provisions

(1) The amendments made by items 1 and 2 of this Schedule apply in relation to an exempt institution whose exempt status is disregarded under section 160ARDAB of the *Income Tax Assessment Act 1936* on or after 1 July 2000.

(2) Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by the following items of this Schedule apply to events that occur on or after 1 July 2002:

(a) items 3 to 23;

(b) item 29;

(c) item 41.

(3) The amendments made by items 24 to 28 of this Schedule apply to assessments for the 2003-04 income year and later income years.

(4) Subject to the rules on the application of Part 3-6 of the *Income Tax Assessment Act 1997* set out in the *Income Tax (Transitional Provisions) Act 1997*, the amendments made by the following items of this Schedule apply in relation to things happening on or after 1 April 2003:

(a) items 30 to 40;

(b) item 42.

44 Transitional provision

Subparagraph 207-110(1)(b)(ii) of the *Income Tax Assessment Act 1997* as amended by item 29 of this Schedule has effect during the period starting on 1 July 2002 and ending just before the start of the 2003-04 income year as if the reference in that subparagraph to an amount being non-assessable non-exempt income were a reference to the amount being neither assessable income nor exempt income.

Schedule 11—Technical corrections

Income Tax Assessment Act 1936

1 Subsection 160AFE(1)

Omit "160AF(1)(c)", substitute "160AF(1)(d)".

2 Subsection 160AFE(1)

Omit "160AF(1)(d)", substitute "160AF(1)(e)".

3 Subsection 160AFE(4)

Omit "160AF(1)(c)", substitute "160AF(1)(d)".

4 Subsection 160AFE(4)

Omit "160AF(1)(d)", substitute "160AF(1)(e)".

5 Application of amendments of section 160AFE

The application of the amendments of section 160AFE of the *Income Tax Assessment Act 1936* made by this Schedule is the same as the application of that section.

Note: For the application of that section, see items 2, 3, 5, 6 and 7 of Schedule 10 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*.

Schedule 12—Personal service business determinations

Part 1—Amendments applying from the 2000-2001 income year

Income Tax Assessment Act 1997

1 Subsection 87-60(3)

Repeal the subsection, substitute:

Matters about which the Commissioner must be satisfied

(3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B) and (5) are met.

First alternative—results, employment or business premises test met or reasonably expected to be met

(3A) The conditions in this subsection are that:

(a) the individual could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and

(b) the individual's *personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.

Second alternative—unusual circumstances prevented one of the personal services business tests from being met

(3B) The conditions in this subsection are that:

(a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, at least one of the 4 *personal services business tests; and

(b) the individual's *personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.

2 Subsection 87-60(4)

Omit "subparagraph (3)(a)(ii)", substitute "paragraph (3B)(a)".

3 Subsection 87-60(4)

Omit "that subparagraph", substitute "that paragraph".

4 At the end of section 87-60

Add:

Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances

(5) The conditions in this subsection are that:

(a) the individual could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and

(b) because of unusual circumstances applying to the individual in the income year, 80% or more of the individual's *personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its *associates); and

(c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting activities that met the unrelated clients test under section 87-20.

5 Subsection 87-65(3)

Repeal the subsection, substitute:

Matters about which the Commissioner must be satisfied

(3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B) and (5) are met.

First alternative——results, employment or business premises test met or reasonably expected to be met

(3A) The conditions in this subsection are that:

(a) the entity could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and

(b) the individual's *personal services income included in the entity's *ordinary income or *statutory income could reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.

Second alternative—unusual circumstances prevented one of the personal services business tests from being met

(3B) The conditions in this subsection are that:

(a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, at least one of the 4 *personal services business tests; and

(b) the individual's *personal services income included in the entity's *ordinary income or *statutory income could reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.

6 Subsection 87-65(4)

Omit "subparagraph (3)(a)(ii)", substitute "paragraph (3B)(a)".

7 Subsection 87-65(4)

Omit "that subparagraph", substitute "that paragraph".

8 At the end of section 87-65

Add:

Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances

(5) The conditions in this subsection are that:

(a) the entity could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and

(b) because of unusual circumstances applying to the entity in the income year, 80% or more of the individual's *personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's *ordinary income or *statutory income could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its *associates); and

(c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

9 Application

The amendments made by this Part apply to assessments for the 2000-2001 income year and each subsequent income year.

Part 2—Amendments applying from the income year after the income year in which this Act receives the Royal Assent

Income Tax Assessment Act 1997

10 Subsection 87-60(3)

Omit "and (5)", substitute ", (5) and (6)".

11 Paragraph 87-60(3B)(a)

Omit "at least one of the 4 *personal services business tests", substitute "the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests".

Note: The heading to subsection 87-60(3B) is replaced by the heading "*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*".

12 At the end of section 87-60

Add:

Fourth alternative—unrelated clients test not met because of unusual circumstances

(6) The conditions in this subsection are that:

(a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and

(b) if 80% or more of the individual's *personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its *associates)—that is the case only because of unusual circumstances applying to the individual in the income year; and

(c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting

activities that met the unrelated clients test under section 87-20.

13 Subsection 87-65(3)

Omit "and (5)", substitute ", (5) and (6)".

14 Paragraph 87-65(3B)(a)

Omit "at least one of the 4 *personal services business tests", substitute "the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests".

Note: The heading to subsection 87-65(3B) is replaced by the heading "*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*".

15 At the end of section 87-65

Add:

Fourth alternative—unrelated clients test not met because of unusual circumstances

(6) The conditions in this subsection are that:

(a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and

(b) if 80% or more of the individual's *personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's *ordinary income or *statutory income could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its *associates)—that is the case only because of unusual circumstances applying to the entity in the income year; and

(c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

16 Application

The amendments made by this Part apply to assessments for the income year after the income year in which this Act receives the Royal Assent and each subsequent income year.

[*Minister's second reading speech made in—*
House of Representatives on 1 April 2004
Senate on 15 June 2004]

(50/04)