





# **New International Tax Arrangements (Participation Exemption and Other Measures) Act 2004**

**No. 96, 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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**No. 96, 2004**

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

*[Assented to 29 June 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *New International Tax Arrangements  
(Participation Exemption and Other Measures) Act 2004*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	29 June 2004
2. Schedule 1	The day on which this Act receives the Royal Assent.	29 June 2004
3. Schedule 2, items 1 to 83	The day on which this Act receives the Royal Assent.	29 June 2004
4. Schedule 2, item 84	The later of: (a) the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Part 9 of Schedule 2 to the <i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i> .	29 June 2004
5. Schedule 2, items 85 to 141	The day on which this Act receives the Royal Assent.	29 June 2004
6. Schedule 3	The day on which this Act receives the Royal Assent.	29 June 2004

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—CGT concession: active foreign companies

### *Income Tax Assessment Act 1997*

#### 1 Application

The amendments made by this Schedule apply in relation to a CGT event happening on or after 1 April 2004.

#### 2 Section 102-30 (after table item 11)

Insert:

12	A company	The capital gain or capital loss a company makes from a CGT event that happened to a share in a company that is a foreign resident may be reduced.	Subdivision 768-G
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#### 3 Before Division 775

Insert:

### Division 768—Exempt foreign income and gains

#### Table of Subdivisions

768-G	Reduction in capital gains and losses arising from CGT events in relation to non-portfolio interests in active foreign companies
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### Subdivision 768-G—Reduction in capital gains and losses arising from CGT events in relation to non-portfolio interests in active foreign companies

#### Guide to Subdivision 768-G

#### 768-500 What this Subdivision is about

If:
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- (a) a company has a capital gain or capital loss arising from a CGT event that happens in relation to a share in a foreign company; and
- (b) the company holds a direct voting percentage of 10% or more in the foreign company for a certain period before the CGT event happens;
- the gain or loss is reduced by a percentage that reflects the degree to which the assets of the foreign company are used in an active business.

## Table of sections

### Operative provisions

- 768-505 Reducing a capital gain or loss from certain CGT events in relation to non-portfolio interests

### Active foreign business asset percentage

- 768-510 Active foreign business asset percentage
- 768-515 Choices to apply market value method or book value method
- 768-520 Market value method—choice made under subsection 768-515(1)
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- 768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies
- 768-535 Modified rules for foreign wholly-owned groups

### Types of assets of a foreign company

- 768-540 Active foreign business assets of a foreign company
- 768-545 Assets included in the total assets of a foreign company

### Voting percentages in a company

- 768-550 Direct voting percentage in a company
- 768-555 Indirect voting percentage in a company
- 768-560 Total voting percentage in a company

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

## Operative provisions

### 768-505 Reducing a capital gain or loss from certain CGT events in relation to non-portfolio interests

- (1) The \*capital gain or \*capital loss a company (the *holding company*) makes from a \*CGT event that happened at a particular time (the *time of the CGT event*) to a \*share in a company (the *foreign disposal company*) that is a foreign resident is reduced if:
  - (a) the holding company held a \*direct voting percentage of 10% or more in the foreign disposal company throughout a 12 month period that:
    - (i) began no earlier than 24 months before the time of the CGT event; and
    - (ii) ended no later than that time; and
  - (b) the share is *not*:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); and
  - (c) the CGT event is CGT event A1, B1, C2, E1, E2, G3, J1, K4, K6, K10 or K11.
- (2) The gain or loss is reduced by the \*active foreign business asset percentage (see sections 768-510, 768-530 and 768-535) of the foreign disposal company in relation to the holding company at the time of the CGT event.

## Active foreign business asset percentage

### 768-510 Active foreign business asset percentage

- (1) The *active foreign business asset percentage* of a company (the *foreign company*) that is a foreign resident, in relation to the holding company mentioned in section 768-505, at the time of the CGT event mentioned in that section, is worked out in accordance with this section.

#### *Market value method*

- (2) Work out that percentage under section 768-520 if:
-

- (a) the holding company has made a choice under subsection 768-515(1) in relation to the foreign company for that time; and
- (b) there is sufficient evidence of the \*market value at that time of:
  - (i) all \*assets included in the total assets of the foreign company at that time; and
  - (ii) all \*active foreign business assets of the foreign company at that time.

*Book value method*

- (3) Work out that percentage under section 768-525 if:
  - (a) the holding company has made a choice under subsection 768-515(2) in relation to the foreign company for that time; and
  - (b) there are \*recognised company accounts of the foreign company for a period that ends no later than that time, but no more than 12 months before that time; and
  - (c) if the foreign company was in existence before the start of the period mentioned in paragraph (b)—there are recognised company accounts of the foreign company for a period that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in paragraph (b).

*Default method*

- (4) Otherwise, that percentage is:
  - (a) 100% (if this section is being applied for the purposes of section 768-505 to reduce a \*capital loss of the holding company); or
  - (b) zero (in any other case).

**768-515 Choices to apply market value method or book value method**

*Choice for market value method*

- (1) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-520.

*Choice for book value method*

- (2) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-525.

*Method of making choice*

- (3) The way an entity making a choice under subsection (1) or (2) prepares its \*income tax return is sufficient evidence of the making of the choice.

Note: If an entity does not make a choice under subsection (1) or (2), it will work out the active foreign business asset percentage of the foreign company in accordance with the default method in subsection 768-510(4).

**768-520 Market value method—choice made under subsection 768-515(1)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

*Method statement*

- Step 1.* Work out the \*market value at that time of all \*assets included in the total assets of the foreign company at that time.
- Step 2.* Work out the \*market value (see subsection (2)) at that time of all \*active foreign business assets of the foreign company at that time.
- Step 3.* Divide the result of step 2 by the result of step 1.
- Step 4.* Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5.* The *active foreign business asset percentage* is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or

(c) if the result of step 4 is 90% or more—100%.

Note 1: If the foreign company is a foreign life insurance company or a foreign general insurance company, the result of step 2 is modified under section 768-530.

Note 2: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

(2) If, at the time of the CGT event:

(a) an \*active foreign business asset of the foreign company is a \*share in another company (the *subsidiary company*); and

(b) the subsidiary company is a foreign resident;

then, in working out the \*market value of all \*active foreign business assets of the foreign company at that time for the purposes of step 2 of the method statement in subsection (1), treat the \*market value of the share at that time according to the following table.

<b>Market value of a share in subsidiary company</b>		
<b>Item</b>	<b>If:</b>	<b>treat the market value of the share as:</b>
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's *market value at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

**768-525 Book value method—choice made under subsection  
768-515(2)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

*Method statement*

- Step 1.* Work out the foreign company's average value of total assets at that time under subsection (2).
- Step 2.* Work out the foreign company's average value of active foreign business assets at that time under subsection (3).
- Step 3.* Divide the result of step 2 by the result of step 1.
- Step 4.* Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5.* The *active foreign business asset percentage* is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or
  - (c) if the result of step 4 is 90% or more—100%.

Note: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

- (2) The foreign company's *average value of total assets* at the time of the CGT event is worked out in this way.

*Method statement*

- Step 1.* Work out the sum of the values (see subsection (5)) of every \*asset included in the total assets of the foreign company at the end of the most recent period:
- (a) that ends no later than that time, but no more than 12 months before that time; and

<p>(b) for which the foreign company has *recognised company accounts.</p> <p><i>Step 2.</i> Work out the sum of the values (see subsection (5)) of every *asset included in the total assets of the foreign company at the end of the most recent period:</p> <p>(a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and</p> <p>(b) for which the foreign company has *recognised company accounts.</p> <p>Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.</p> <p><i>Step 3.</i> Work out the sum of the results of steps 1 and 2, and divide that sum by 2.</p>
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- (3) The foreign company's ***average value of active foreign business assets*** at that time is worked out in this way.

<p><i>Method statement</i></p> <p><i>Step 1.</i> Work out the sum of the values (see subsections (4) and (5)) of every *active foreign business asset of the foreign company at the end of the most recent period:</p> <p>(a) that ends no later than that time, but no more than 12 months before that time; and</p> <p>(b) for which the foreign company has *recognised company accounts.</p> <p><i>Step 2.</i> Work out the sum of the values (see subsections (4) and (5)) of every *active foreign business asset of the foreign company at the end of the most recent period:</p> <p>(a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and</p>
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(b) for which the foreign company has \*recognised company accounts.

Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.

*Step 3.* Work out the sum of the results of steps 1 and 2, and divide that sum by 2.

Note: If the foreign company is a foreign life insurance company or a foreign general insurance company, the results of steps 1 and 2 are modified under section 768-530.

- (4) If an \*active foreign business asset of the foreign company is a \*share in another company (the *subsidiary company*) that is a foreign resident, then, for the purposes of steps 1 and 2 of the method statement in subsection (3), treat the value of the share at a particular time according to the following table.

**Value of a share in subsidiary company**

<b>Item</b>	<b>If:</b>	<b>treat the value of the share as:</b>
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's value (see subsection (5)) at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

- (5) For the purposes of this section, the value of an asset of a foreign company at the end of a period is taken to be:
- (a) the value of the asset as shown in the \*recognised company accounts of the foreign company for that period; or

(b) if the value of the asset is *not* shown in the recognised company accounts of the foreign company for that period—zero.

- (6) The result of:
- (a) step 2 of the method statement in subsection (2); and
  - (b) step 2 of the method statement in subsection (3);
- is taken to be zero if the foreign company does not have \*recognised company accounts for a period mentioned in those steps.

Note: This will only be the case if the foreign company was not in existence before the start of the period mentioned in step 1 of those method statements (see paragraph 768-510(3)(c)).

**768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies**

- (1) If the foreign company is a \*foreign life insurance company or a \*foreign general insurance company, work out its \*active foreign business asset percentage according to section 768-510, but with the modifications set out in subsections (2) and (3).
- (2) Treat a reference in the following provisions to a period as a reference to a \*statutory accounting period of the foreign company:
  - (a) paragraphs 768-510(3)(b) and (c);
  - (b) section 768-525.
- (3) Apply the modifications set out in the following table.

**Modifications for foreign life insurance companies and foreign general insurance companies**

<b>Item</b>	<b>The result of this step:</b>	<b>is increased by the amount applicable under subsection (4) for this statutory accounting period:</b>
1	step 2 of the method statement in subsection 768-520(1)	the most recent *statutory accounting period of the foreign company ending at or before the time mentioned in that step

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**Modifications for foreign life insurance companies and foreign general insurance companies**

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<b>Item</b>	<b>The result of this step:</b>	<b>is increased by the amount applicable under subsection (4) for this statutory accounting period:</b>
2	step 1 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)
3	step 2 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)

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- (4) The amount applicable under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Value of non-active foreign business assets} \times \frac{\text{Active insurance amount}}{\text{Total insurance assets}}$$

where:

**active insurance amount** means:

- (a) if the foreign company is a \*foreign life insurance company—the untainted policy liabilities (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
- (b) if the foreign company is a \*foreign general insurance company—the active general insurance amount worked out under subsection (5) for the statutory accounting period.

**total insurance assets** means:

- (a) if the foreign company is a \*foreign life insurance company—the total assets (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
  - (b) if the foreign company is a \*foreign general insurance company—the total assets (within the meaning of subsection 446(4) of that Act) of the foreign company for the statutory accounting period.
-

*value of non-active foreign business assets* means:

- (a) for the purposes of item 1 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-520(1); and
  - (ii) the result of step 2 of that method statement (apart from this section); or
- (b) for the purposes of item 2 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-525(2); and
  - (ii) the result of step 1 of the method statement in subsection 768-525(3) (apart from this section); or
- (c) for the purposes of item 3 of the table in subsection (3)—the difference between:
  - (i) the result of step 2 of the method statement in subsection 768-525(2); and
  - (ii) the result of step 2 of the method statement in subsection 768-525(3) (apart from this section).

*Active insurance amount for foreign general insurance company*

- (5) The active general insurance amount under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Total general insurance assets} - \text{Net assets} - \text{Tainted outstanding claims} + \text{Solvency amount}$$

where:

*net assets* means the net assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

*solvency amount* means the solvency amount (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

*tainted outstanding claims* means the tainted outstanding claims (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

*total general insurance assets* means the total assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

### **768-535 Modified rules for foreign wholly-owned groups**

- (1) This section applies if:
  - (a) for the purposes of section 768-505, it is necessary to work out the \*active foreign business asset percentage of a company (the *top foreign company*) in relation to the holding company mentioned in that section, at the time of the CGT event mentioned in that section; and
  - (b) the top foreign company is *not*:
    - (i) an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a \*foreign life insurance company; or
    - (iii) a \*foreign general insurance company; and
  - (c) for the purposes of section 768-505, it is also necessary (apart from this section) to work out the active foreign business asset percentage at that time of 1 or more other companies in relation to the holding company, at that time, where:
    - (i) the top foreign company and 1 or more of those other companies (the *subsidiary foreign companies*) are members of a \*wholly-owned group; and
    - (ii) each of the subsidiary foreign companies is a \*100% subsidiary of the top foreign company.
- (2) The holding company may choose to work out the \*active foreign business asset percentage of the top foreign company in accordance with subsections (4) and (6).
- (3) The way an entity making a choice under subsection (2) prepares its \*income tax return is sufficient evidence of the making of the choice.
- (4) If the holding company has made a choice under subsection (2), the provisions mentioned in subsection (5) operate, for the purposes of section 768-505, as if each subsidiary foreign company were a part of the top foreign company, rather than a separate entity.

Note 1: This subsection means that certain assets are not treated as active foreign business assets, or as assets included in the total assets, of any of the subsidiary foreign companies or of the top foreign company. For example:

- (a) a share owned by one of those companies in another of those companies; and
- (b) a debt owed by one of those companies to another of those companies.

Note 2: If an asset (other than an asset mentioned in Note 1) is actually an active foreign business asset, or an asset included in the total assets, of a subsidiary foreign company, it is treated under this subsection as an active foreign business asset, or as an asset included in the total assets, of the top foreign company.

- (5) For the purposes of subsection (4), the provisions are:
  - (a) section 768-540 (active foreign business assets of a foreign company); and
  - (b) section 768-545 (assets included in the total assets of a foreign company).
- (6) If the holding company has made a choice under subsection (2), then for the purposes of sections 768-510 and 768-525, treat the \*recognised consolidated accounts of the top foreign company and all of the subsidiary foreign companies as the \*recognised company accounts of the top foreign company.

## **Types of assets of a foreign company**

### **768-540 Active foreign business assets of a foreign company**

- (1) An asset is, at a particular time, an *active foreign business asset* of a company (the *foreign company*) that is a foreign resident if, at that time:
  - (a) the asset is an \*asset included in the total assets of the company; and
  - (b) the asset satisfies any of these conditions:
    - (i) the asset is used, or held ready for use, by the company in the course of carrying on a \*business;
    - (ii) the asset is goodwill;
    - (iii) the asset is a \*share; and
  - (c) the asset is *not* a \*CGT asset that has the \*necessary connection with Australia, disregarding the operation of

- paragraph (b) of item 5 and paragraph (b) of item 6 of the table in section 136-25; and
- (d) the asset is *not* covered by subsection (2); and
  - (e) if the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business—the asset is *not* covered under subsection (4).
- (2) An asset is covered by this subsection if it is:
- (a) a financial instrument (other than a \*share or a trade debt); or
  - (b) either:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); or
  - (c) an interest in a trust or \*partnership; or
  - (d) a \*life insurance policy; or
  - (e) a right or option in respect of:
    - (i) a financial instrument; or
    - (ii) an interest in a company, trust or partnership; or
    - (iii) a life insurance policy; or
  - (f) cash or cash equivalent; or
  - (g) an asset whose main use in the course of carrying on the \*business mentioned in subparagraph (1)(b)(i) is to \*derive interest, an \*annuity, rent, \*royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the foreign company so that its \*market value has been substantially enhanced; or
    - (ii) its main use for deriving rent was only temporary.
- (3) If, at the time mentioned in subsection (1), the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part), subsection (2) operates as if:
- (a) paragraphs (2)(a) and (f) were omitted; and

- (b) paragraph (2)(g) did not contain a reference to interest, an \*annuity or foreign exchange gains; and
- (c) subparagraph (2)(e)(i) were omitted and the following subparagraph were substituted:
  - (i) a financial instrument, other than an asset mentioned in paragraph 450(1)(b) of the *Income Tax Assessment Act 1936*; or
- (4) The asset is covered under this subsection if:
  - (a) all of these conditions are satisfied:
    - (i) the asset is an asset mentioned in subparagraph 450(4)(b)(i) or (ii) of the *Income Tax Assessment Act 1936*;
    - (ii) the asset was acquired from another entity;
    - (iii) either of the conditions mentioned in subparagraph 450(6)(c)(i) and (ii) of the *Income Tax Assessment Act 1936* were satisfied in relation to the other entity at the time of the acquisition; or
  - (b) both of these conditions are satisfied:
    - (i) the asset relates to a debt to which factoring income (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of the foreign company relates;
    - (ii) the condition in paragraph 450(8)(b) of the *Income Tax Assessment Act 1936* is satisfied in relation to the debt.

#### **768-545 Assets included in the total assets of a foreign company**

- (1) At a particular time, an asset is an ***asset included in the total assets*** of a company (the ***foreign company***) that is a foreign resident if:
    - (a) the asset is a \*CGT asset at that time; and
    - (b) the foreign company owns the asset at that time; and
    - (c) if at that time the foreign company is *not* an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part)—the asset is *not* a foreign company derivative asset covered by subsection (2).
  - (2) An asset is a foreign company derivative asset covered by this subsection if:
-

- (a) the asset is an \*arrangement covered by subsection (3), unless the regulations declare the asset *not* to be a foreign company derivative asset covered by this subsection; or
  - (b) the regulations declare the asset to be a foreign company derivative asset covered by this subsection.
- (3) An \*arrangement is covered by this subsection if:
- (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and
  - (b) that future time is not less than the number of days, prescribed by regulations made for the purposes of paragraph 761D(1)(b) of the *Corporations Act 2001*, after the day on which the arrangement is entered into; and
  - (c) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:
    - (i) an asset;
    - (ii) a rate (including an interest rate or exchange rate);
    - (iii) an index;
    - (iv) a commodity; and
  - (d) subsection (4) does not apply in relation to the arrangement.
- (4) An \*arrangement under which one person has an obligation to buy, and another person has an obligation to sell, property is not an arrangement covered by subsection (3) merely because the arrangement provides for the consideration to be varied by reference to a general inflation index such as the Consumer Price Index.

## Voting percentages in a company

### 768-550 Direct voting percentage in a company

- (1) An entity's *direct voting percentage* at a particular time in a company is:
    - (a) if the entity has a voting interest (within the meaning of section 160AFB of the *Income Tax Assessment Act 1936*) in
-

the foreign company at that time amounting to a percentage of the voting power (within the meaning of that section) of the company—that percentage; or

- (b) otherwise—zero.
- (2) In applying section 160AFB of the *Income Tax Assessment Act 1936* for the purposes of subsection (1) of this section, assume that:
- (a) the entity is a company; and
- (b) the entity is not the beneficial owner of a \*share in the company if a trust or \*partnership is interposed between the entity and the company.

### **768-555 Indirect voting percentage in a company**

- (1) An entity's *indirect voting percentage* at a particular time in a company (the *subsidiary company*) is worked out by multiplying:
- (a) the entity's \*direct voting percentage (if any) in another company (the *intermediate company*) at that time;
- by:
- (b) the sum of:
- (i) the intermediate company's direct voting percentage (if any) in the subsidiary company at that time; and
- (ii) the intermediate company's indirect voting percentage (if any) in the subsidiary company at that time (as worked out under one or more other applications of this section).
- (2) If there is more than one intermediate company to which subsection (1) applies at that time, the entity's *indirect voting percentage* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate companies.

### **768-560 Total voting percentage in a company**

An entity's *total voting percentage* at a particular time in a company is the sum of:

- (a) the entity's \*direct voting percentage in the company at that time; and
- (b) the entity's \*indirect voting percentage in the company at that time.

**4 Subsection 960-60(1) (paragraph (a) in the cell at table item 4, column headed “with effect from the start of...”)**

Omit “statutory accounting period (within the meaning of Part X of the *Income Act Assessment Act 1936*)”, substitute “\*statutory accounting period”.

**5 Section 960-65 (subparagraph (a)(i) in the cell at table item 4, column headed “the choice is a *backdated startup choice* if...”)**

Omit “statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*)”, substitute “\*statutory accounting period”.

**6 Section 960-65 (subparagraph (b)(i) in the cell at table item 4, column headed “the choice is a *backdated startup choice* if...”)**

Omit “(within the meaning of Part X of the *Income Tax Assessment Act 1936*)”.

**7 Subsection 960-70(3)**

Omit “statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*)”, substitute “\*statutory accounting period”.

**8 Subsection 960-80(1) (paragraph (b) in the cell at table item 4, column headed “In this case...”)**

Omit “statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*)”, substitute “\*statutory accounting period”.

**9 Subsection 960-90(1) (cell at table item 4, column headed “you may withdraw your choice with effect from immediately after the end of...”)**

Omit “statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*)”, substitute “\*statutory accounting period”.

**10 Subsection 995-1(1)**

Insert:

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*active foreign business asset* of a company that is a foreign resident has the meaning given by section 768-540.

**11 Subsection 995-1(1)**

Insert:

*active foreign business asset percentage* of a company has the meaning given by section 768-510.

**12 Subsection 995-1(1)**

Insert:

*asset included in the total assets* of a company that is a foreign resident has the meaning given by section 768-545.

**13 Subsection 995-1(1)**

Insert:

*direct voting percentage* in a company has the meaning given by section 768-550.

**14 Subsection 995-1(1)**

Insert:

*foreign general insurance company* means a company that is a foreign resident, and whose sole or principal business is \*insurance business.

**15 Subsection 995-1(1)**

Insert:

*foreign life insurance company* means a company that is a foreign resident, and whose sole or principal business is life insurance.

**16 Subsection 995-1(1)**

Insert:

*indirect voting percentage* in a company has the meaning given by section 768-555.

**17 Subsection 995-1(1)**

Insert:

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***recognised company accounts***, for a period, of a company that is a foreign resident means:

- (a) accounts that are prepared in relation to the company for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or
- (b) if there are no such accounts for the period—accounts that:
  - (i) are prepared in relation to the company for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the company.

### **18 Subsection 995-1(1)**

Insert:

***recognised consolidated accounts***, for a period, of 2 or more companies that are foreign residents means:

- (a) consolidated accounts that are prepared in relation to those companies for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or
- (b) if there are no such accounts for the period—consolidated accounts that:
  - (i) are prepared in relation to those companies for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the companies on a consolidated basis.

### **19 Subsection 995-1(1)**

Insert:

***statutory accounting period*** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

### **20 Subsection 995-1(1)**

Insert:

***total voting percentage*** in a company has the meaning given by section 768-560.

## **Schedule 2—Foreign branch income, non-portfolio dividends and listed countries**

### **Part 1—Foreign branch income exemption**

#### *Income Tax Assessment Act 1936*

##### **1 Section 23AH**

Repeal the section, substitute:

##### **23AH Foreign branch income of Australian companies not assessable**

###### *Objects*

- (1) The objects of this section are:
  - (a) to ensure that active foreign branch income derived by a resident company, and capital gains made by a resident company in disposing of non-tainted assets used in deriving foreign branch income, are not assessable income or exempt income of the company; and
  - (b) to include in the assessable income of a resident company that part of its income and capital gains derived through a branch in a foreign country that is comparable to the amounts that would be included in an attributable taxpayer's assessable income for income and capital gains derived by a CFC resident in the same foreign country; and
  - (c) to get the same outcomes where one or more partnerships or trusts are interposed between a resident company and a foreign branch.

###### *Foreign branch income not assessable*

- (2) Subject to this section, foreign income derived by a company, at a time when the company is a resident in carrying on a business, at or through a PE of the company in a listed country or unlisted country is not assessable income, and is not exempt income, of the company.

*Foreign capital gains and losses disregarded*

- (3) Subject to this section, a capital gain from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:
- (a) the gain is made by a company that is a resident; and
  - (b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or through a PE of the company in a listed country or unlisted country; and
  - (c) the asset does not have the necessary connection with Australia.
- (4) Subject to this section, a capital loss from a CGT event happening to a CGT asset is disregarded for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997* if:
- (a) the loss is made by a company that is a resident; and
  - (b) the company used the asset wholly or mainly for the purpose of producing foreign income in carrying on a business at or through a PE of the company in a listed country or unlisted country; and
  - (c) had the loss been a gain, it would be disregarded under subsection (3).

*Exceptions: listed country PE*

- (5) Subsection (2) does not apply to foreign income derived by the company if:
- (a) the PE is in a listed country; and
  - (b) the PE does not pass the active income test (see subsection (12)); and
  - (c) the foreign income is both:
    - (i) adjusted tainted income (see subsection (13)); and
    - (ii) eligible designated concession income in relation to a listed country.
- (6) Subsection (3) or (4) does not apply to a capital gain or capital loss if:
- (a) the PE is in a listed country; and

- (b) for a capital gain—the gain is from a tainted asset and is eligible designated concession income in relation to a listed country; and
- (c) for a capital loss—the loss is from a tainted asset and would be eligible designated concession income in relation to a listed country if it were a capital gain.

*Exceptions: unlisted country PE*

- (7) Subsection (2) does not apply to foreign income derived by the company if:
  - (a) the PE is in an unlisted country; and
  - (b) the PE does not pass the active income test (see subsection (12)); and
  - (c) the foreign income is adjusted tainted income (see subsection (13)).
- (8) Subsection (3) or (4) does not apply to a capital gain or capital loss if:
  - (a) the PE is in an unlisted country; and
  - (b) the gain or loss is from a tainted asset.

*Income derived in disposing of a business*

- (9) This section applies to foreign income derived by an entity in the course of disposing, in whole or in part, of a business carried on in a listed country or unlisted country at or through a PE of the entity in the listed country or unlisted country as if the foreign income had been derived in carrying on that business.

*Interposed partnerships or trusts*

- (10) This section applies to any indirect interest (through one or more partnerships or trust estates) of a company in foreign income derived by a partnership or trustee through a PE of the partnership or trustee in a listed country or unlisted country as if that indirect interest were foreign income derived by the company through a PE of the company in that country.
  - (11) This section applies to any indirect interest (through one or more partnerships or trust estates) of a company in a capital gain or capital loss made in relation to an asset of a partnership, or made by a trustee, in carrying on a business at or through a PE of the
-

partnership or trustee in a listed country or unlisted country as if that indirect interest were a capital gain or capital loss made by the company through a PE of the company in that country.

*Active income test*

- (12) A PE of an entity passes the **active income test** for a year of income if the entity would have passed the active income test in section 432 if:
- (a) the assumptions in subsection (14) were made; and
  - (b) subsections 432(2) and (3) and 446(2) and paragraphs 432(1)(b) and (e) and 447(1)(b), (d) and (f) had not been enacted.

*Adjusted tainted income*

- (13) For the purposes of this section, the **adjusted tainted income** of a PE of an entity is income or other amounts that would be adjusted tainted income of the entity for the purposes of Part X if:
- (a) the assumptions in subsection (14) were made; and
  - (b) subsection 446(2) and paragraphs 447(1)(b), (d) and (f) had not been enacted.

*Assumptions for subsections (12) and (13)*

- (14) The assumptions referred to in paragraphs (12)(a) and (13)(a) are:
- (a) except in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b), the only income or other amounts derived by the entity were the income derived in carrying on business at or through the PE; and
  - (b) the entity's statutory accounting periods were the same as the entity's years of income; and
  - (c) in applying paragraphs 447(1)(a), (c) and (e) and 450(6)(c), (7)(d) and (8)(b):
    - (i) the part of the entity's operations that consists of the business carried on at or through the PE were a company (the **PE company**); and
    - (ii) the remaining part of the entity's operations were a separate company (the **HQ company**); and
    - (iii) the PE company and the HQ company had carried out the transactions that they would have carried out if the

- PE company were engaged in the same or similar activities as the PE under the same or similar conditions as the PE and were dealing wholly independently with the HQ company; and
- (iv) any income derived by the HQ company were disregarded; and
  - (d) if the entity is an AFI entity (within the meaning of subsection 326(2))—the entity were an AFI subsidiary; and
  - (e) in applying paragraphs 447(1)(a), (c) and (e), the HQ company were an associate of the PE company.

*Definitions*

- (15) In this section:

***company*** does not include a company in the capacity of a trustee.

***double tax agreement*** has the same meaning as in Part X.

***eligible designated concession income*** has the same meaning as in Part X.

***foreign income*** includes an amount that:

- (a) apart from this section, would be included in assessable income under a provision of this Act other than Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (CGT); and
- (b) is derived from sources in a listed country or unlisted country.

***listed country*** has the same meaning as in Part X.

***permanent establishment***, or ***PE***, in relation to a listed country or unlisted country:

- (a) if there is a double tax agreement in relation to that country—has the same meaning as in the double tax agreement; or
- (b) in any other case—has the meaning given by subsection 6(1).

***statutory accounting period*** has the same meaning as in Part X.

***tainted asset*** has the same meaning as in Part X.

***unlisted country*** has the same meaning as in Part X.

## 2 Subsection 63D(1)

Repeal the subsection, substitute:

- (1) Subject to section 63F, if:
- (a) apart from this section and section 63F, a deduction would be allowable to a taxpayer:
    - (i) under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* in respect of the writing off of a debt as bad; or
    - (ii) under section 63E of this Act in respect of a debt/equity swap in relation to a debt; and
  - (b) the debt was created or acquired in the ordinary course of a money-lending business of the taxpayer who carries on that business; and
  - (c) during any part or parts (the *foreign country branch period*) of the period since the debt was so created or acquired (the *debt holding period*), it is the case that, if income had been derived by the taxpayer in respect of the debt, the income would not, because of section 23AH of this Act, have been included in the assessable income of the taxpayer;

then only a proportion of the deduction is allowable, being the proportion calculated using the formula:

$$\frac{\text{Debt holding period} - \text{Foreign country branch period}}{\text{Eligible debt term}}$$

where:

***debt holding period*** means the number of days in the debt holding period.

***eligible debt term*** means:

- (a) where the debt was acquired from a person other than an associate, within the meaning of section 318 of this Act—the number of days in the debt holding period; or
- (b) in any other case—the number of days in the period beginning on the day on which the debt was created (whether by the taxpayer or another person) and ending at the end of the day on which it was written off.

***foreign country branch period*** means the number of days in the foreign country branch period.

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Note: The heading to section 63D is replaced by the heading “**Bad debts etc. of money-lenders not allowable deductions where attributable to listed country or unlisted country branches**”.

### **3 Subsection 63D(2)**

Omit “paragraph (1)(e)”, substitute “paragraph (b) of the definition of *eligible debt term* in subsection (1).

## **Part 2—Non-portfolio dividend exemption: main amendments**

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

#### **4 Section 23AJ**

Repeal the section, substitute:

#### **23AJ Certain non-portfolio dividends from foreign countries not assessable**

A non-portfolio dividend (as defined in section 317) paid to a company is not assessable income, and is not exempt income, of the company if:

- (a) the company is an Australian resident and does not receive the dividend in the capacity of a trustee; and
- (b) the company that paid the dividend is not a Part X Australian resident (as defined in that section).

#### **5 Paragraph 389(a)**

Omit “, 23AJ”.

#### **6 Paragraphs 402(2)(c), (d) and (da)**

Repeal the paragraphs.

#### **7 Section 403**

Repeal the section, substitute:

#### **403 Additional notional exempt income—unlisted country CFC**

If the eligible CFC is a resident of an unlisted country at the end of the eligible period, the notional exempt income of the eligible CFC in relation to the eligible period includes income or profits derived by the eligible CFC in the eligible period in or in connection with carrying on business in a listed country at or through a permanent establishment of the eligible CFC in that listed country, where the income or profits are not eligible designated concession income in relation to any listed country in relation to the eligible period.

## **8 Sections 458 and 459**

Repeal the sections.

## **Part 3—Non-portfolio dividend exemption: consequential amendments**

### *Income Tax Assessment Act 1936*

#### **9 Subsection 6AB(1)**

Omit “458, 459,”.

#### **10 Subparagraph 6AB(2)(a)(iii)**

Repeal the subparagraph.

#### **11 Subparagraph 6AB(2)(b)(iii)**

Repeal the subparagraph.

#### **12 Subsection 6AB(3A)**

Omit “160AFCC,”.

#### **13 Paragraph 6AB(3A)(a)**

Omit “458, 459,”.

#### **14 Subsection 6AC(2)**

Repeal the subsection.

#### **15 Subsection 6AC(5)**

Repeal the subsection.

#### **16 Subparagraphs 47A(2)(a)(ii), (iii) and (iv)**

Repeal the subparagraphs, substitute:

- (ii) by virtue of subsection (1), the whole or a part of the distribution payment would, apart from section 23AI or 23AJ, be included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44; and

#### **17 Subsection 47A(2)**

Omit “, section 365 and Division 6 of Part X”, substitute “and section 365”.

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**18 Paragraph 47A(7)(b)**

Repeal the paragraph, substitute:

- (b) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly (through one or more interposed companies, partnerships or trusts), the payment of a dividend that is, or would be, non-assessable non-exempt income under section 23AJ (in whole or in part); or

**19 Paragraphs 47A(16)(b), (17)(b) and (18)(b)**

Omit “, 458 or 459”.

**20 Subparagraph 102AAU(1)(c)(vi)**

Repeal the subparagraph.

**21 Subsection 102AAW(1)**

Omit “458, 459”.

**22 Section 102AAZF**

Omit “, 457, 458 or 459”, substitute “or 457”.

**23 Subsection 103(1) (subparagraph (b)(iii) of the definition of *the distributable income*)**

Omit “(including taxes deemed by section 160AFC to have been paid)”.

**24 Section 128SA**

Repeal the section, substitute:

**128SA Amount of a dividend**

For the purposes of this Subdivision, in determining the amount of a dividend paid to a resident company, any foreign tax paid or payable by the company in respect of the dividend, where the company was or is personally liable for the tax, is to be deducted.

**25 Subsections 128TA(1) and (2)**

Repeal the subsections, substitute:

*Conditions for credit*

- (1) A *foreign dividend account credit* or *FDA credit* arises for a resident company if a dividend that is non-assessable non-exempt income under section 23AJ is paid to the company.

*Amount of credit*

- (2) The amount of credit is so much of the dividend as is non-assessable non-exempt income under section 23AJ.

**26 Subparagraph 128TB(1)(b)(ii)**

Omit “disregarded; or”, substitute “disregarded.”.

**27 Paragraphs 128TB(1)(c) and (d)**

Repeal the paragraphs.

**28 Subsection 128TB(2)**

Repeal the subsection.

**29 Paragraph 128TB(3)(b)**

Omit “disregarded; or”, substitute “disregarded.”.

**30 Paragraphs 128TB(3)(c) and (d)**

Repeal the paragraphs.

**31 Paragraphs 128TB(4)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) in a paragraph (1)(b) case—when the expenditure is incurred.

**32 Subsection 160AE(1) (definition of *exempting profits*)**

Repeal the definition.

**33 Subsection 160AE(1) (definition of *exempting profits percentage*)**

Repeal the definition.

**34 Subsection 160AE(1) (definition of *exempting receipt*)**

Repeal the definition.

**35 Subsection 160AE(1) (definition of *non-exempting profits*)**

Repeal the definition.

**36 Subsection 160AEA(1) (paragraph (n) of the definition of *passive income*)**

Omit “458, 459,”.

**37 Section 160AFC**

Repeal the section.

**38 Section 160AFCB**

Repeal the section, substitute:

**160AFCB Foreign tax in respect of amounts assessable under section 457**

If:

- (a) an amount (the *section 457 amount*) is included in the assessable income of a taxpayer, being a company, of a year of income under section 457 as a result of a change of residence at a particular time (the *residence-change time*) by a CFC; and
- (b) at the residence-change time, the CFC was related to the taxpayer;

the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the section 457 amount, in the year of income, an amount of foreign tax equal to the total foreign tax and Australian tax paid by the CFC that is attributable to the section 457 amount.

**39 Section 160AFCC**

Repeal the section.

**40 Subsection 160AFCD(2) (definition of *DT or direct tax*)**

Omit “and section 160AFC”.

**41 Subsection 160AFCD(2) (definition of *UT or underlying tax*)**

Repeal the definition, substitute:

*UT* or *underlying tax*, where the taxpayer is a company and the attribution account payment is a non-portfolio dividend, means the amount by which the section 23AI non-assessable part would have been greater if:

- (a) the attribution account entity had not paid any foreign tax on its profits; and
- (b) any other attribution account entity, in relation to which the taxpayer has an attribution debit for an attribution account payment that is a non-portfolio dividend, had not paid any foreign tax on its profits; and
- (c) each of those attribution account entities had distributed the same percentage of its distributable profits as was actually distributed.

#### **42 Subsection 160AFCJ(4) (definition of *DT* or *direct tax*)**

Omit “and section 160AFC”.

#### **43 Subsection 160AFCJ(4) (definition of *UT* or *underlying tax*)**

Repeal the definition, substitute:

*UT* or *underlying tax* means:

- (a) any foreign tax that, disregarding this section, the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, under subparagraph 6AB(3)(a)(ii); or
- (b) where the taxpayer is a company and the FIF attribution account payment is a non-portfolio dividend, the amount by which the section 23AK non-assessable part would have been greater if:
  - (i) the FIF attribution account entity had not paid any foreign tax on its profits; and
  - (ii) any other FIF attribution account entity, in relation to which the taxpayer has a FIF attribution debit for a FIF attribution account payment that is a non-portfolio dividend, had not paid any foreign tax on its profits; and
  - (iii) each of those FIF attribution account entities had distributed the same percentage of its distributable profits as was actually distributed.

#### **44 Subsection 160AO(4)**

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Repeal the subsection.

**45 Paragraphs 316(1)(b) and (c)**

Repeal the paragraphs, substitute:

(b) certain changes of residence by a CFC (section 457).

**46 Paragraph 316(2)(f)**

Repeal the paragraph.

**47 Section 317 (definition of *exempting profits*)**

Repeal the definition.

**48 Section 317 (definition of *exempting profits percentage*)**

Repeal the definition.

**49 Section 317 (definition of *exempting receipt*)**

Repeal the definition.

**50 Subsection 356(4A)**

Omit “(except in so far as that subsection has effect for the purposes of section 459)”.

**51 Paragraph 371(1)(c)**

Repeal the paragraph.

**52 Subsection 371(3)**

Repeal the subsection.

**53 Paragraph 371(5)(c)**

Repeal the paragraph.

**54 Subsection 371(6)**

Omit “, 457 or 458”, substitute “or 457”.

**55 Subsection 372(3)**

Repeal the subsection.

**56 Paragraphs 375(1)(c) and (d)**

Repeal the paragraphs.

**57 Division 6 of Part X**

Repeal the Division.

**58 Paragraph 384(2)(aa)**

Repeal the paragraph.

**59 Subparagraph 384(2)(d)(ia)**

Repeal the subparagraph.

**60 Subsection 386(1)**

Omit “and 385”, substitute “, 385 and 457”.

**61 Paragraph 387(1)(c)**

Repeal the paragraph.

**62 Paragraph 387(1)(d)**

Omit “, or of the grossed-up 458 component of the dividend, as the case requires,”.

**63 Subsection 387(1)**

Omit “, or of the grossed-up 458 component of the dividend, as the case requires” (last occurring).

**64 Subsection 387(2) (definition of *grossed-up 458 component*)**

Repeal the definition.

**65 Paragraph 389(a)**

Omit “458, 459,”.

**66 Subsection 392(2)**

Repeal the subsection.

**67 Subsections 393(2) and (3)**

Repeal the subsections.

**68 Subsection 399(2) (definition of *excluded modifications*)**

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Omit “paragraphs 402(2)(c) and 403(b) and”.

**69 Paragraph 423(2)(d)**

Omit “section 458 or 459”, substitute “section 456”.

**70 Paragraphs 436(1)(e) and (f)**

Repeal the paragraphs, substitute:

- (e) a non-portfolio dividend paid to the company by a company that is a resident of a listed country or unlisted country;

**71 Subsection 457(2) (formula)**

Repeal the formula, substitute:

Attribution percent × Adjusted distributable profits

**72 Subsection 457(2) (definition of *Adjusted distributable profits*)**

Repeal the definition, substitute:

*Adjusted distributable profits* means:

- (a) if paragraph (1)(c) applies—the amount that would be the CFC’s distributable profits at the residence-change time if:
  - (i) the CFC’s only income were its adjusted tainted income (excluding any non-portfolio dividends) if all the CFC’s tainted assets were disposed of at that time for a consideration equal to their market value; and
  - (ii) the CFC’s only expenses were expenses related to income covered by subparagraph (i); or
- (b) if paragraph (1)(d) applies—the amount that would be the CFC’s distributable profits at the residence-change time if:
  - (i) the CFC’s only income were its adjusted tainted income (excluding any non-portfolio dividends); and
  - (ii) the CFC’s only expenses were expenses related to income covered by subparagraph (i).

**73 Subsection 457(2) (definition of *Attribution surplus*)**

Repeal the definition.

**74 Paragraph 459A(1)(a)**

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Omit “, 457, 458 or 459”, substitute “or 457”.

**75 Subparagraphs 459A(1)(c)(iii) and (iv)**

Repeal the subparagraphs.

**76 Subsection 460(1)**

Omit “458, 459”.

**77 Sections 463 and 464**

Repeal the sections.

**78 Subsections 465(1) and (2)**

Omit “463, 464”.

**79 Paragraphs 467(a) and (b)**

Omit “or 462A, subsection 463(1), (2), (3) or (4) or 464(1), (2) or (3) or section 464A”, substitute “, 462A or 464A”.

**80 Subparagraph 530(1)(d)(ii)**

Omit “paragraph 402(2)(c) or 403(b) or section 404”, substitute “section 23AJ or 404”.

***Income Tax Assessment Act 1997***

**81 Subsection 116-85(1) (table item 3)**

Repeal the item, substitute:

- 3      The company or \*CFC is taken, under section 47A of the *Income Tax Assessment Act 1936*, to have paid you a dividend in relation to that event and some or all of the dividend is included in your assessable income under section 44 of that Act

**82 Subsection 116-85(3)**

Repeal the subsection.

**83 Subsection 717-510(4)**

Repeal the subsection (including the note).

**84 Subsection 719-903(5)**

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Repeal the subsection (including the note).

## Part 4—Listed countries: main amendments

### *Income Tax Assessment Act 1936*

#### **85 Subsection 320(1) (definition of *broad-exemption listed country*)**

Repeal the definition.

#### **86 Subsection 320(1) (definition of *limited-exemption listed country*)**

Repeal the definition.

#### **87 Subsection 320(1) (definition of *listed country*)**

Repeal the definition, substitute:

*listed country* means a foreign country, or a part of a foreign country, that is declared by the regulations to be a listed country for the purposes of this Part.

#### **88 Subsection 320(1) (definition of *non-broad exemption listed country*)**

Repeal the definition.

#### **89 Subsection 320(1)**

Insert:

*section 404 country* means a foreign country, or a part of a foreign country, that is declared by the regulations to be a section 404 country for the purposes of this Part.

#### **90 Section 404**

After “listed country” (wherever occurring), insert “or a section 404 country”.

Note: The heading to section 404 is replaced by the heading “**Additional notional exempt income—listed or section 404 country CFC**”.

## **Part 5—Listed countries: consequential amendments**

### *Income Tax Assessment Act 1936*

#### **91 Section 102AAB (definition of *Broad-exemption listed country*)**

Repeal the definition.

#### **92 Section 102AAB (definition of *broad-exemption listed country trust estate*)**

Repeal the definition.

#### **93 Section 102AAB**

Insert:

*listed country* has the same meaning as in Part X.

#### **94 Section 102AAB**

Insert:

*listed country trust estate* has the same meaning as in Part X.

#### **95 Section 102AAB (definition of *non-broad-exemption listed country*)**

Repeal the definition.

#### **96 Section 102AAB (definition of *tax law*)**

Omit “a broad-exemption listed country or a non-broad-exemption listed country”, substitute “a listed country or an unlisted country”.

#### **97 Section 102AAB**

Insert:

*unlisted country* has the same meaning as in Part X.

#### **98 Section 102AAC**

Repeal the section, substitute:

**102AAC Each listed country and unlisted country to be treated as a separate foreign country**

For the purposes of the application of section 6AB to this Division, each listed country and each unlisted country is to be treated as a separate foreign country.

**99 Section 102AAE**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**100 Sub-subparagraph 102AAE(1)(b)(ii)(A)**

Omit “broad-exemption listed countries”, substitute “listed countries”.

Note: The heading to section 102AAE is replaced by the heading “**Listed country trust estates**”.

**101 Section 102AAM**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**102 Subsections 102AAU(1), (3) and (4)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**103 Subsection 102AAU(6)**

Omit “*broad-exemption listed country trust amount*” (first occurring), substitute “*listed country trust amount*”.

**104 Subsection 102AAU(6) (formula)**

Repeal the formula, substitute:

$$\text{Taxed amount} \times \frac{\text{Listed country trust amount}}{\text{Net income}}$$

**105 Subsection 102AAU(6) (definition of *Broad-exemption listed country trust amount*)**

Repeal the definition.

**106 Subsection 102AAU(6)**

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Insert:

*Listed country trust amount* means the number of dollars in the listed country trust amount.

**107 Section 102AAZE**

Omit “broad-exemption listed country trust estate”, substitute “listed country trust estate”.

**108 Section 317 (definition of *accruals tax law*)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**109 Section 317 (definition of *broad-exemption listed country*)**

Repeal the definition.

**110 Section 317 (definition of *designated concession income*)**

Omit “broad-exemption listed country”, substitute “listed country”.

**111 Section 317 (definition of *eligible designated concession income*)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**112 Section 317 (definition of *limited-exemption listed country*)**

Repeal the definition.

**113 Section 317 (definition of *non-broad-exemption listed country*)**

Repeal the definition.

**114 Section 317 (paragraphs (c) and (d) of the definition of *tainted rental income*)**

Repeal the paragraphs, substitute:

- (c) a lease of land, except where the following conditions are satisfied:

- (i) the land is situated in a listed country or in an unlisted country;
- (ii) at all times during the period when the income accrued, the company was a resident of that country;
- (d) a lease of land where the following conditions are satisfied:
  - (i) the land is situated in a listed country or in an unlisted country;
  - (ii) at all times during the period when the income accrued, the company was a resident of that country;
  - (iii) it is not the case that a substantial part of the income is attributable to the provision of labour-intensive property management services in connection with the land, being services provided by directors or employees of the company;

### **115 Section 332**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

Note: The heading to section 332 is replaced by the heading “**Companies that are residents of listed countries**”.

### **116 Section 332A**

Omit “limited-exemption listed country” (wherever occurring), substitute “section 404 country”.

Note: The heading to section 332A is replaced by the heading “**Companies that are residents of section 404 countries**”.

### **117 Paragraph 332A(2)(c)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

### **118 Subsection 384(1)**

Omit “a non-broad-exemption listed country”, substitute “an unlisted country”.

Note: The heading to section 384 is replaced by the heading “**Additional assumption for unlisted country CFC**”.

### **119 Subsections 385(1) and (2)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

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Note: The heading to section 385 is replaced by the heading “**Additional assumption for listed country CFC**”.

**120 Subsection 385(2A)**

Repeal the subsection, substitute:

- (2A) For the purposes of sub-subparagraphs (2)(a)(ii)(C) and (2)(d)(ii)(C), income or other amounts pass the test set out in this subsection if both:
- (a) the income or other amounts are adjusted tainted income (within the meaning of section 386); and
  - (b) the income or other amounts are not subject to tax in the listed country or in any other listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period.

**121 Paragraph 400(aa)**

Omit “broad-exemption listed country”, substitute “listed country”.

**122 Paragraph 418A(1)(a)**

Omit “broad-exemption listed or a non-broad-exemption listed country”, substitute “listed country or an unlisted country”.

Note: The heading to section 418A is replaced by the heading “**Effect of change of residence from Australia to listed or unlisted country**”.

**123 Subsection 419(1) (table)**

Repeal the table, substitute:

<b>Additional requirements</b>			
<b>Item</b>	<b>The originating CFC's residency status</b>	<b>The recipient company's residency status</b>	<b>This requirement must be satisfied</b>
1	A resident of a listed country at the time of the trigger event	Either: (a) a resident of that listed country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is
2	A resident of a listed country at the time of the trigger event	A resident of a particular unlisted country at that time	The asset must have been used (just before that time) in connection with a permanent establishment of the originating CFC in any unlisted country at or through which the originating CFC carried on business just before that time
3	A resident of an unlisted country at the time of the trigger event	Either: (a) a resident of an unlisted country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is

#### **124 Subsection 431(4)**

Omit "broad-exemption listed country" (wherever occurring), substitute "listed country".

#### **125 Paragraph 431(4)(b)**

Omit "a non-broad-exemption listed country", substitute "an unlisted country".

#### **126 Paragraph 431(4A)(a)**

Omit “broad-exemption listed country”, substitute “listed country”.

**127 Subparagraph 431(4A)(c)(i)**

Omit “a non-broad-exemption listed country”, substitute “an unlisted country”.

**128 Paragraph 431(4B)(a)**

Omit “a non-broad-exemption listed country”, substitute “an unlisted country”.

**129 Subparagraph 431(4B)(e)(i)**

Omit “broad-exemption listed country”, substitute “listed country”.

**130 Paragraph 431(4C)(a)**

Omit “a non-broad-exemption listed country”, substitute “an unlisted country”.

**131 Paragraph 431(4C)(c)**

Omit “broad-exemption listed country”, substitute “listed country”.

**132 Paragraph 432(1)(b)**

Omit “broad-exemption listed country nor”, substitute “listed country nor”.

**133 Paragraph 432(1)(b)**

Omit “non-broad-exemption listed country”, substitute “unlisted country”.

**134 Paragraph 432(1)(e)**

Omit “broad-exemption listed country, or of a particular non-broad-exemption listed country”, substitute “listed country, or of a particular unlisted country”.

**135 Paragraph 436(1)(b)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

**136 Subparagraph 437(1)(c)(iii)**

Omit “broad-exemption listed country or particular non-broad-exemption listed country”, substitute “listed country or particular unlisted country”.

**137 Subparagraph 437(2)(c)(ii)**

Omit “broad-exemption listed country, or of a particular non-broad-exemption listed country”, substitute “listed country, or of a particular unlisted country”.

**138 Paragraph 456A(1)(c)**

Omit “broad-exemption listed country” (wherever occurring), substitute “listed country”.

***Income Tax Assessment Act 1997***

**139 Paragraph 215-10(1)(c)**

Omit “broad-exemption listed country (within the meaning of Part X of the *Income Tax Assessment Act 1936*)”, substitute “\*listed country”.

## **Part 6—Application of amendments**

### **140 Application of amendments**

- (1) The amendments made by Part 1 of this Schedule apply to income years starting on or after 1 July 2004.
- (2) The amendments made by Parts 2 and 3 of this Schedule apply to dividends paid after 30 June 2004.
- (3) The amendments made by Parts 4 and 5 of this Schedule apply to income years and statutory accounting periods starting on or after 1 July 2004.

## Part 7—Transitional

### 141 Transitional

From 1 July 2004 until regulations are made after the commencement of this item declaring foreign countries or parts of foreign countries to be listed countries or section 404 countries for the purposes of Part X of the *Income Tax Assessment Act 1936*, that Act has effect as if:

- (a) each foreign country or part of a foreign country that, immediately before the commencement of this item, was a broad-exemption listed country for the purposes of that Part of that Act were a *listed country* for the purposes of that Part of that Act; and
- (b) each foreign country or part of a foreign country that, immediately before the commencement of this item, was a limited-exemption listed country for the purposes of that Part of that Act were a *section 404 country* for the purposes of that Part of that Act.

## Schedule 3—Tainted services income

### Part 1—Amendments

#### *Income Tax Assessment Act 1936*

##### **1 Paragraph 448(1)(a)**

Repeal the paragraph, substitute:

- (a) income (other than premium income) from the provision of services by the company to an entity, if:
  - (i) the entity was a Part X Australian resident at the time the income was derived; and
  - (ii) the services were not provided in connection with a business carried on by the entity at that time at or through a permanent establishment of the entity in a listed or unlisted country;

##### **2 Paragraph 448(1)(c)**

Repeal the paragraph, substitute:

- (c) income consisting of life assurance premiums in respect of a life assurance policy if, at the time the policy was entered into, the owner of the policy was a Part X Australian resident;

##### **3 Subparagraph 448(1)(d)(i)**

Repeal the subparagraph, substitute:

- (i) any insured person was a Part X Australian resident, and the policy was not entered into in connection with a business carried on by the person at or through a permanent establishment of the person in a listed or unlisted country;

##### **4 Paragraph 448(1)(e)**

Repeal the paragraph, substitute:

- (e) income consisting of premiums in respect of reinsurance, if:
  - (i) the insurer whose risks are directly covered by the reinsurance was a Part X Australian resident at the time the policy was entered into; and

- (ii) the policy was not entered into in connection with a business carried on by the insurer at that time at or through a permanent establishment of the insurer in a listed or unlisted country;
- (f) income consisting of premiums in respect of reinsurance, if:
  - (i) the insurer whose risks are directly covered by the reinsurance was not a Part X Australian resident at the time the policy was entered into; and
  - (ii) the policy was entered into in connection with a business carried on by the insurer at that time at or through a permanent establishment of the insurer in Australia;
- (g) income of the company covered by subsection (1A).

## **5 After subsection 448(1)**

Insert:

- (1A) Income of the company is covered by this subsection if:
  - (a) it is income from the provision of services by the company to an entity under a scheme (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (b) the entity is an associate of the company; and
  - (c) those services are received by another entity; and
  - (d) the other entity satisfies either of these requirements:
    - (i) the other entity was a Part X Australian resident at the time the income was derived, and the services were not received in connection with a business carried on by the other entity at that time at or through a permanent establishment of the other entity in a listed or unlisted country;
    - (ii) the other entity was not a Part X Australian resident at the time the income was derived, and the services were received in connection with a business carried on by the other entity at that time at or through a permanent establishment of the other entity in Australia; and
  - (e) the income would be tainted services income if:
    - (i) this section did not include paragraph (1)(g) or this subsection; and
    - (ii) the income were from the provision of those services by the company to the other entity; and

- (f) a reasonable person would conclude (having regard to all the circumstances) that the scheme was entered into or carried out for a purpose, other than an incidental purpose, of enabling entities satisfying the requirements of subparagraph (d)(i) or (ii) to receive those services.

**6 Subsection 448(6A)**

Repeal the subsection.

**7 Subparagraph 450(6)(c)(i)**

Repeal the subparagraph, substitute:

- (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;

**8 Subparagraph 450(7)(d)(i)**

Repeal the subparagraph, substitute:

- (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;

**9 Subparagraph 450(8)(b)(i)**

Repeal the subparagraph, substitute:

- (i) the entity was a Part X Australian resident, and the acquisition or disposal was not in connection with a business carried on by the entity at or through a permanent establishment of the entity in a listed or unlisted country;

## **Part 2—Application**

### **10 Application**

- (1) The amendments made by this Schedule apply in relation to statutory accounting periods beginning on or after 1 July 2004.
- (2) To avoid doubt, the statutory accounting periods mentioned in subitem (1) include years of income that are assumed to be statutory accounting periods for the purposes of section 23AH of the *Income Tax Assessment Act 1936*.

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*[Minister's second reading speech made in—  
House of Representatives on 1 April 2004  
Senate on 18 June 2004]*

(53/04)