





# **Taxation Laws Amendment Act (No. 1) 2004**

**No. 101, 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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# **Taxation Laws Amendment Act (No. 1) 2004**

**No. 101, 2004**

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

[Assented to 30 June 2004]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Taxation Laws Amendment Act (No. 1) 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, on the day or at the time specified in column 2 of the table.

<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 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	30 June 2004
2. Schedule 1	The day on which this Act receives the Royal Assent	30 June 2004
3. Schedule 2	30 June 2003	
4. Schedule 3	1 July 2003	
5. Schedule 4	The day after this Act receives the Royal Assent	1 July 2004
6. Schedule 5	Immediately after the commencement of Schedule 16 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	
7. Schedule 6	The day on which this Act receives the Royal Assent	30 June 2004
8. Schedule 7	Immediately after the commencement of Part 1 of Schedule 10 to the <i>Taxation Laws Amendment Act (No. 6) 2003</i>	
9. Schedules 8 and 9	The day on which this Act receives the Royal Assent	30 June 2004
10. Schedule 10	The day on which this Act receives the Royal Assent	30 June 2004
11. Schedule 11, Part 1	Immediately after the commencement of item 51 of Schedule 5 to the <i>Taxation Laws Amendment Act (No. 2) 1999</i>	
12. Schedule 11, Part 2	Immediately after the commencement of item 21 of Schedule 12 to the <i>A New Tax System (Tax Administration) Act 1999</i>	

<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>
13. Schedule 11, Part 3	Immediately after the start of 30 June 2000	
14. Schedule 11, Part 4	Immediately after the start of 1 July 2000	
15. Schedule 11, Part 5	Immediately after the commencement of item 61 of Schedule 1 to the <i>Taxation Laws Amendment Act (No. 3) 2001</i>	
16. Schedule 11, Part 6	Immediately after the start of 1 July 2001	
17. Schedule 11, Part 7	The day on which this Act receives the Royal Assent	30 June 2004
18. Schedule 11, Part 8	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the start of the day on which the <i>Taxation Laws Amendment Act (No. 4) 2003</i> receives the Royal Assent	

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

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

### 3 Schedule(s)

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

### 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act (other than item 38 of Schedule 10, so far as that item

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**T T T T**

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provides for the insertion of sections 830-15 and 830-20 into the  
*Income Tax (Transitional Provisions) Act 1997*.

## Schedule 1—Second World War payments

### Part 1—Amendments

#### *Income Tax Assessment Act 1936*

##### **1 After section 23AK**

Insert:

##### **23AL Exemption of certain Second World War payments**

- (1) A payment is exempt from income tax if:
- (a) the payment is received by an individual who is a resident of Australia; and
  - (b) the payment is received from a source in a foreign country; and
  - (c) the payment is not received directly or indirectly from an associate (within the meaning of section 318) of the recipient; and
  - (d) the payment is in connection with:
    - (i) any wrong or injury; or
    - (ii) any loss of, or damage to, property; or
    - (iii) any other detriment;that is suffered by the recipient or another individual as a result of:
    - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
    - (v) persecution by any other enemy of the Commonwealth during the Second World War; or
    - (vi) persecution by an enemy-associated regime during the Second World War; or
    - (vii) flight from persecution mentioned in subparagraph (iv), (v) or (vi); or
    - (viii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany; or

- (ix) participation in a resistance movement during the Second World War against forces of any other enemy of the Commonwealth.

*Duration of Second World War*

- (2) For the purposes of subsection (1), the duration of the Second World War includes:
  - (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War.

*Enemy-associated regime*

- (3) For the purposes of subsection (1), a regime is an **enemy-associated regime** if, and only if, it was:
  - (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or
  - (e) surrounded by;either or both of the following:
  - (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.

*Legal personal representative etc.*

- (4) Subsection (1) applies to a payment received by the legal personal representative of an individual in a corresponding way to the way in which that subsection would have applied if the payment had been received by the individual.
- (5) Subsection (1) applies to a payment received by:
  - (a) the legal personal representative of a deceased individual; or
  - (b) the trustee of a trust established by the will of a deceased individual;in a corresponding way to the way in which that subsection would have applied if:
  - (c) the individual had not died; and
  - (d) the payment had been received by the individual.

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***Income Tax Assessment Act 1997***

**2 Section 11-15 (table row relating to foreign aspects of income taxation)**

Before:

resistance fighter and victim of wartime persecution,  
pension and etc. of ..... **23(kca)**

insert:

resistance fighter and victim of wartime persecution,  
payments to ..... **23AL**

**3 At the end of section 118-37**

Add:

- (5) A \*capital gain or \*capital loss you make as a result of receiving a payment or property is disregarded if:
- (a) you are an individual who is an Australian resident; and
  - (b) you receive the payment or property from a source in a foreign country; and
  - (c) you do not receive the payment or property directly or indirectly from an \*associate of yours; and
  - (d) the payment or property you receive is in connection with:
    - (i) any wrong or injury; or
    - (ii) any loss of, or damage to, property; or
    - (iii) any other detriment;that you, or another individual, suffered as a result of:
    - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
    - (v) persecution by any other enemy of the Commonwealth during the Second World War; or
    - (vi) persecution by an enemy-associated regime during the Second World War; or
    - (vii) flight from persecution mentioned in subparagraph (iv), (v) or (vi); or
    - (viii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany; or

- (ix) participation in a resistance movement during the Second World War against forces of any other enemy of the Commonwealth.
- (6) For the purposes of subsection (5), the duration of the Second World War includes:
  - (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War.
- (7) For the purposes of subsection (5), a regime is an **enemy-associated regime** if, and only if, it was:
  - (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or
  - (e) surrounded by;either or both of the following:
  - (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.
- (8) Subsection (5) applies to a payment or property received by the \*legal personal representative of an individual in a corresponding way to the way in which that subsection would have applied if the payment or property had been received by the individual.
- (9) Subsection (5) applies to a payment or property received by:
  - (a) the \*legal personal representative of a deceased individual; or
  - (b) the trustee of a trust established by the will of a deceased individual;in a corresponding way to the way in which that subsection would have applied if:
  - (c) the individual had not died; and
  - (d) the payment or property had been received by the individual.

## **Part 2—Application of amendments**

### **4 Application of amendments**

The amendments made by this Schedule apply to assessments for the 2001-2002 income year and later income years.

## Schedule 2—Specific gift recipients

### *Income Tax Assessment Act 1997*

#### **1 Subsection 30-25(2) (at the end of the table)**

Add:

2.2.28	Australian-American Educational Foundation	the gift must be made after 30 April 2003
2.2.29	The Australian Literacy and Numeracy Foundation Limited	the gift must be made after 11 October 2002
2.2.30	The Constitution Education Fund	the gift must be made after 20 June 2003

#### **2 Subsection 30-45(2) (at the end of the table)**

Add:

4.2.21	Crime Stoppers Western Australia Limited	the gift must be made after 31 October 2002
4.2.22	New South Wales Crime Stoppers Limited	the gift must be made after 31 October 2002
4.2.23	Crime Stoppers Tasmania	the gift must be made after 28 November 2002
4.2.24	Crime Stoppers Queensland Limited	the gift must be made after 23 January 2003
4.2.25	Crime Stoppers Australia Ltd	the gift must be made after 4 June 2003
4.2.26	Alcohol Education and Rehabilitation Foundation Limited	the gift must be made after 5 June 2003

#### **3 Subsection 30-70(2) (table item 8.2.2)**

After “28 February 1999”, insert “and before 4 February 2003”.

## Schedule 3—Gifts and covenants

### *Income Tax Assessment Act 1997*

#### **2 Subsection 30-5(4B)**

Repeal the subsection, substitute:

- (4B) Subdivision 30-DB allows you to spread deductions for certain gifts and covenants over up to 5 income years.

#### **57 Subdivisions 30-DB to 30-DE**

Repeal the Subdivisions, substitute:

### **Subdivision 30-DB—Spreading certain gift and covenant deductions over up to 5 income years**

#### **Guide to Subdivision 30-DB**

#### **30-246 What this Subdivision is about**

This Subdivision allows you to elect to spread deductions for certain gifts and covenants over up to 5 income years. There are some different requirements for environmental, heritage and cultural property gifts and conservation covenants.

#### **Table of sections**

##### **Operative provisions**

- 30-247 Gifts and covenants for which elections can be made
- 30-248 Making an election
- 30-249 Effect of election
- 30-249A Requirements—environmental property gifts
- 30-249B Requirements—heritage property gifts
- 30-249C Requirements—certain cultural property gifts
- 30-249D Requirements—conservation covenants

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

## Operative provisions

### 30-247 Gifts and covenants for which elections can be made

- (1) An election under this Subdivision may be made for a gift, made on or after 1 July 2003, that is:
  - (a) a gift of:
    - (i) money; or
    - (ii) property valued by the Commissioner at more than \$5,000;  
made to a fund, authority or institution covered by item 1 or 2 of the table in section 30-15; or
  - (b) a gift that is covered by item 4, 5 or 6 of the table in section 30-15.
- (2) An election under this Subdivision may also be made for entering into a \*conservation covenant, under Division 31, on or after 1 July 2003.

### 30-248 Making an election

- (1) If you can deduct an amount:
  - (a) under this Division for a gift covered by subsection 30-247(1); or
  - (b) under Division 31 for entering into a \*conservation covenant covered by subsection 30-247(2);you may make a written election to spread that deduction over the current income year and up to 4 of the immediately following income years.
- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift or entered into the covenant.
- (4) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return.

- (5) Unless section 30-249A, 30-249B or 30-249C applies, the election and any variation must be in the \*approved form.

Note: Sections 30-249A, 30-249B and 30-249C provide for the form of elections and variations for gifts covered by those sections.

### **30-249 Effect of election**

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.
- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift in the income year in which you made the gift or entered into the covenant.

### **30-249A Requirements—environmental property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by section 30-55.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Environment Secretary.

### **30-249B Requirements—heritage property gifts**

- (1) This section applies if you make an election for a gift of property made to a fund, authority or institution covered by item 6 of the table in section 30-15.
- (2) You must give a copy of the election to the \*Heritage Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Heritage Secretary before you lodge your \*income tax return for the first income year to which the variation applies.

- (4) The election and any variation must be in a form approved in writing by the \*Heritage Secretary.

**30-249C Requirements—certain cultural property gifts**

- (1) This section applies if you make an election for a gift covered by item 4 or 5 of the table in section 30-15.
- (2) You must give a copy of the election to the \*Arts Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (3) If you vary the election, you must give a copy of the variation to the \*Arts Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (4) The election and any variation must be in a form approved in writing by the \*Arts Secretary.

**30-249D Requirements—conservation covenants**

- (1) This section applies if you make an election for a \*conservation covenant.
- (2) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you entered the covenant.
- (3) If you vary the election, you must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.

**61 Subsection 30-315(2) (cell at table item 112AA, column headed “Provision”)**

Repeal the cell, substitute:

Subdivision 30-DB

**63 Subsection 31-5(3) (note)**

Omit “30-DE”, substitute “30-DB”.

**72 Transitional—Division 30 of the *Income Tax Assessment Act 1997***

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- (1) Despite the amendments made by this Schedule, Division 30 of the *Income Tax Assessment Act 1997* continues to apply, in relation to gifts made before 1 July 2003, as if those amendments had not been made.
- (2) Despite the amendments made by this Schedule, Subdivision 30DE of the *Income Tax Assessment Act 1997* continues to apply, in relation to covenants entered into under Division 31 of that Act before 1 July 2003, as if those amendments had not been made.

## **Schedule 4—Amendment of the Crimes (Taxation Offences) Act 1980**

### **Part 1—Clarifying application of Parts I and II of that Act**

#### *Crimes (Taxation Offences) Act 1980*

##### **1 Paragraph 3(2)(a)**

Before “sales tax” (wherever occurring), insert “old”.

##### **2 Paragraphs 13(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **3 Paragraphs 14(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **4 Paragraphs 15(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **5 Paragraphs 16(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **6 Paragraphs 17(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **7 Paragraphs 18(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **8 Paragraphs 19(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **9 Paragraphs 20(1)(a), (b) and (d)**

Before “sales tax”, insert “old”.

##### **10 Application**

Each amendment made by this Part applies in relation to acts and omissions happening after this Part commences.

## **Part 2—Application of the Criminal Code**

### *Crimes (Taxation Offences) Act 1980*

#### **11 Paragraphs 3(2)(a) and (b)**

Omit “purpose, or a purpose,”, substitute “intention”.

#### **12 Subsection 5(1)**

Omit “for the purpose, or for purposes which include the purpose,”, substitute “with the intention”.

#### **13 Paragraph 5(2)(a)**

Omit “for the purpose, or for purposes which include the purpose,”, substitute “with the intention”.

#### **14 At the end of section 5**

Add:

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

#### **15 Subsection 6(1)**

Omit “for the purpose, or for purposes which include the purpose,”, substitute “with the intention”.

#### **16 Paragraph 6(2)(a)**

Omit “for the purpose, or for purposes which include the purpose,”, substitute “with the intention”.

#### **17 At the end of section 6**

Add:

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

#### **18 At the end of subsections 7(1) and (2)**

Add:

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

**19 Paragraph 7(3)(b)**

Omit “for the purpose, or for purposes which include the purpose”, substitute “with the intention”.

**20 At the end of section 8**

Add:

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

**21 Subsection 9(1)**

Repeal the subsection.

Note: The heading to section 9 is altered by omitting “**Penalties**” and substituting “**Prosecutions and convictions**”.

**22 Subsections 13(2), 14(2), 15(2), 16(2), 17(2), 18(2), 19(2) and 20(2)**

Omit “purpose, or a purpose,” (wherever occurring), substitute “intention”.

**23 Application**

Each amendment made by this Part applies in relation to acts and omissions happening after this Part commences.

## **Schedule 5—Consolidation: transitional foreign loss makers**

### ***Income Tax (Transitional Provisions) Act 1997***

#### **1 After Division 701C**

Insert:

#### **Division 701D—Transitional foreign loss makers**

##### **Table of Subdivisions**

701D-A Object of this Division

701D-B Membership rules allowing transitional foreign loss makers to remain outside consolidated group

##### **Subdivision 701D-A—Object of this Division**

###### **Table of sections**

701D-1 Object of this Division

###### **701D-1 Object of this Division**

- (1) The object of this Division is to allow an entity that is a potential subsidiary member of a consolidated group to utilise an overall foreign loss during a transitional period, rather than have the head company utilise the loss subject to the restrictions in Subdivision 707-C of the *Income Tax Assessment Act 1997*.
- (2) Therefore, this Division allows the head company to prevent the entity from being a subsidiary member of the group, for a transitional period.

*[The next section is section 701D-10.]*

## **Subdivision 701D-B—Rules allowing transitional foreign loss makers to remain outside consolidated group**

### **Table of sections**

- 701D-10 Transitional foreign loss maker not member of group if certain conditions satisfied
- 701D-15 Choice to apply transitional rules to entity

### **701D-10 Transitional foreign loss maker not member of group if certain conditions satisfied**

- (1) The *Income Tax Assessment Act 1997* and this Act have effect as if an entity (the *transitional foreign loss maker*) is not a subsidiary member of a consolidated group at a particular time (the *transitional time*) if:
- (a) the group came into existence at a particular time (the *formation time*) before 1 July 2004; and
  - (b) apart from this section, the transitional foreign loss maker would be a subsidiary member of the group at the transitional time; and
  - (c) the transitional time is not later than 3 years after the formation time; and
  - (d) the head company of the group has made a choice under section 701D-15 to apply this section to the transitional foreign loss maker; and
  - (e) the continuous ownership condition in subsection (2) is satisfied; and
  - (f) the foreign loss condition in subsection (3) is satisfied; and
  - (g) the no-subsidiary condition in subsection (4) is satisfied.

#### *Continuous ownership condition*

- (2) The continuous ownership condition is satisfied if the transitional foreign loss maker was a wholly-owned subsidiary of the entity that became the head company of the group throughout the period:
- (a) beginning at the start of 1 July 2002; and
  - (b) ending at the transitional time.

*Foreign loss condition*

- (3) The foreign loss condition is satisfied if:
- (a) the transitional foreign loss maker incurred an overall foreign loss (as defined in section 160AFD of the *Income Tax Assessment Act 1936*) in respect of the 2001-02 income year or an earlier income year; and
  - (b) the amount of the overall foreign loss has not been fully taken into account under one or more applications of section 160AFD of the *Income Tax Assessment Act 1936* to the transitional foreign loss maker in relation to an income year or income years ending before the transitional time; and
  - (c) assuming that the transitional foreign loss maker had become a subsidiary member of a consolidated group at the formation time, as a result all or part of the overall foreign loss would have been transferred at that time to the head company of the group under Division 707 of the *Income Tax Assessment Act 1997*.

*No-subsidiary condition*

- (4) The no-subsidiary condition is satisfied if, at the transitional time:
- (a) the transitional foreign loss maker does not hold any membership interests in any other entity; or
  - (b) both of the following conditions are satisfied:
    - (i) the transitional foreign loss maker holds one or more membership interests in one or more other entities;
    - (ii) assuming that the head company of the group (rather than the transitional foreign loss maker) held that interest or those interests, none of those other entities would be a subsidiary member of the group.

*Transitional foreign loss maker stays in consolidatable group*

- (5) To avoid doubt, subsection (1) does not prevent the transitional foreign loss maker from being a member of a consolidatable group at the transitional time for the purposes of:
- (a) paragraph 126-50(6)(b) of the *Income Tax Assessment Act 1997*; and
  - (b) paragraphs 170-5(2A)(b) and 170-105(2A)(b) of that Act; and

(c) subparagraph 820-599(2)(c)(iii) of that Act.

**701D-15 Choice to apply transitional rules to entity**

- (1) The head company of a consolidated group may make a choice in the approved form to apply section 701D-10 to another entity.
- (2) However, the head company cannot make that choice if subsection 701D-10(1) previously prevented the entity from being a subsidiary member of a consolidated group.
- (3) The choice must be made by the later of:
  - (a) the end of the period described in subsection 703-50(3) of the *Income Tax Assessment Act 1997* for giving the Commissioner the choice under section 703-50 of that Act that the group is taken to be consolidated; and
  - (b) 30 days after the *Taxation Laws Amendment Act (No. 1) 2004* received the Royal Assent.
- (4) The choice cannot be revoked.

**2 After paragraph 707-325(1)(c)**

Insert:

- (ca) neither the real loss-maker nor the value donor has been, at any time before the initial transfer time, a transitional foreign loss maker prevented by subsection 701D-10(1) from being a subsidiary member of a consolidated group; and

**3 After paragraph 707-350(1)(d)**

Insert:

- (da) the real loss-maker has not been, at any time before the initial transfer time, a transitional foreign loss maker prevented by subsection 701D-10(1) from being a subsidiary member of a consolidated group; and

**4 At the end of Subdivision 719-B**

Add:

**719-15 Modified effect of subsection 701D-10(2)**

- (1) This section applies if the group mentioned in subsection 701D-10(2) of this Act is a MEC group.
- (2) For the purposes of that subsection, in determining whether an entity was at a particular time (the *ownership time*) a wholly-owned subsidiary of the entity that became the head company of the group (the *head entity*), make the assumption in subsection (3).
- (3) The assumption is that the head entity owned at the ownership time each membership interest covered by subsection (4).
- (4) A membership interest is covered by this subsection if it was beneficially owned at the ownership time by any entity that became an eligible tier-1 company of the group at the formation time.

## **Schedule 6—Goods and services tax: interaction with consolidation regime**

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

#### **1 At the end of Division 110**

Add:

#### **110-15 Supplies under operation of consolidated group regime**

- (1) A supply is not a \*taxable supply to the extent that it occurs because of the operation of these provisions:
  - (a) Part 3-90 of the \*ITAA 1997;
  - (b) Part 3-90 of the *Income Tax (Transitional Provisions) Act 1997*.
- (2) Without limiting the scope of subsection (1), for the purposes of that subsection, the operation mentioned in that subsection includes an operation that results from:
  - (a) a choice made under the provisions mentioned in that subsection; or
  - (b) any other voluntary action provided for by those provisions.
- (3) This section has effect despite section 9-5 (which is about what are taxable supplies).

#### **110-20 Tax sharing agreements—entering into agreement etc.**

- (1) This section applies if:
  - (a) an entity makes a supply because it enters into or becomes a party to an agreement; and
  - (b) the agreement satisfies the requirements of subsections 721-25(1) and (2) of the \*ITAA 1997 in relation to an existing or future \*group liability of the \*head company of a \*consolidated group or \*MEC group.
- (2) The supply is not a \*taxable supply to the extent that it relates to the fact that the agreement satisfies those requirements.

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

### **110-25 Tax sharing agreements—leaving group clear of group liability**

- (1) A supply made to a \*TSA contributing member of a \*consolidated group or a \*MEC group is not a \*taxable supply if:

- (a) the supply is a release from an obligation relating to a \*contribution amount in relation to a \*group liability of the \*head company of the group; and

Example: The obligation could be a contractual obligation created by the agreement under which the contribution amount was determined.

- (b) the TSA contributing member has, for the purposes of subsection 721-30(3) of the \*ITAA 1997, left the group clear of the group liability.

Note: See section 721-35 of the ITAA 1997 for when a TSA contributing member has left a group clear of the group liability.

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

### **110-30 Tax funding agreements**

- (1) This section applies if:

- (a) an entity makes a supply because it enters into or becomes a party to a written agreement; and
- (b) the agreement deals with the distribution of economic burdens and benefits directly related to \*tax-related liabilities mentioned in subsection 721-10(2) of the \*ITAA 1997 of the \*head company of a \*consolidated group or \*MEC group, among \*members and former members of the group; and
- (c) if the group is not in existence when the entity enters into or becomes a party to the agreement—the agreement contemplates that the parties to the agreement will become members of the group when it does come into existence; and
- (d) the agreement complies with the requirements (if any) set out in the regulations.

- (2) The supply is not a \*taxable supply to the extent that it relates to the fact that the agreement deals with the distribution mentioned in paragraph (1)(b).
- (3) Without limiting paragraph (1)(b), the agreement deals with the distribution mentioned in that paragraph if it includes one or more of the following kinds of provisions:
  - (a) provisions for \*members or former members of the group to contribute towards payment of \*tax-related liabilities mentioned in subsection 721-10(2) of the \*ITAA 1997 of the \*head company of the group;
  - (b) provisions for payments to be made to a member or former member of the group in recognition of activities or attributes of that member that have the effect of reducing the amount of those liabilities.
- (4) This section has effect despite section 9-5 (which is about what are taxable supplies).

## 2 Section 195-1

Insert:

*consolidated group* has the meaning given by section 703-5 of the \*ITAA 1997.

## 3 Section 195-1

Insert:

*contribution amount* has the meaning given by paragraph 721-25(1)(b) of the \*ITAA 1997.

## 4 Section 195-1

Insert:

*group liability* of a \*head company of a \*consolidated group or a \*MEC group has the meaning given by paragraph 721-10(1)(a) of the \*ITAA 1997.

## 5 Section 195-1

Insert:

*head company* of a \*consolidated group or a \*MEC group has the meaning given by subsection 995-1(1) of the \*ITAA 1997.

**6 Section 195-1**

Insert:

*MEC group* has the meaning given by section 719-5 of the \*ITAA 1997.

**7 Section 195-1 (at the end of the definition of *member*)**

Add:

; or (c) in relation to a \*consolidated group—has the meaning given by section 703-15 of the \*ITAA 1997.

**8 Section 195-1 (note at the end of the definition of *taxable supply*)**

After “110-10”, insert “, 110-15, 110-20, 110-25, 110-30”.

**9 Section 195-1**

Insert:

*tax-related liability* has the meaning given by section 255-1 in Schedule 1 to the *Taxation Administration Act 1953*.

**10 Section 195-1**

Insert:

*TSA contributing member* of a \*consolidated group or a \*MEC group has the meaning given by paragraph 721-25(1)(a) of the \*ITAA 1997.

**11 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2002.

## Schedule 7—Imputation for life insurance companies

### *Income Tax Assessment Act 1997*

#### **1 Section 205-15 (table item 4)**

Omit “at the end of the income year of the last partnership or trust interposed between the entity and the corporate tax entity that made the distribution”, substitute “at the time specified in subsection (2)”.

#### **2 At the end of section 205-15**

Add:

- (2) A \*franking credit covered by item 4 of the table arises at the end of the income year:
- (a) that is an income year of the last \*partnership or trust interposed between:
    - (i) the entity; and
    - (ii) the \*corporate tax entity that made the distribution; and
  - (b) during which the \*franked distribution \*flows indirectly to the entity.

#### **3 Subsection 205-25(1)**

Repeal the subsection, substitute:

- (1) An entity satisfies the *residency requirement* for an income year in which, or in relation to which, an event specified in a relevant table occurs if:
- (a) the entity is a \*company, or a \*corporate limited partnership, to which at least one of the following subparagraphs applies:
    - (i) the entity is an \*Australian resident for more than one half of the 12 months immediately preceding the event if the event occurs before the end of the income year;
    - (ii) the entity is an Australian resident at all times during the income year when the entity exists if the event occurs at or after the end of the income year;

- (iii) the entity is an Australian resident for more than one half of the income year (whether or not the event occurs before the end of the income year); or
- (b) the entity is a \*corporate unit trust for the income year; or
- (c) the entity is a \*public trading trust for the income year.

#### **4 Link note before Division 220**

Repeal the link note, substitute:

### **Division 219—Imputation for life insurance companies**

#### **Table of Subdivisions**

Guide to Division 219

219-A Application of imputation rules to life insurance companies

219-B Franking accounts of life insurance companies

#### **Guide to Division 219**

##### **219-1 What this Division is about**

This Division sets out how the imputation rules are applied to a life insurance company.
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#### **Subdivision 219-A—Application of imputation rules to life insurance companies**

##### **Table of sections**

219-10 Application of imputation rules to life insurance companies

##### **219-10 Application of imputation rules to life insurance companies**

- (1) This Part (except this Division) applies to a \*life insurance company in the same way as it applies to any other company.
- (2) However, that application is subject to the modifications set out in this Division.

**Subdivision 219-B—Franking accounts of life insurance companies**

**Table of sections**

219-15	Franking credits
219-30	Franking debits
219-40	Residency requirement
219-45	Assessment day
219-50	Amount attributable to shareholders' share of income tax liability
219-55	Adjustment resulting from an amended assessment

**219-15 Franking credits**

- (1) The table in section 205-15 does not apply to a \*life insurance company.
- (2) The following table sets out when a \*franking credit arises under this section in the \*franking account of a \*life insurance company.

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**Franking credits in the franking account**

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Item	If:	A credit of:	Arises:
1	the company *pays a PAYG instalment; and the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and the payment is made before the company's *assessment day for that income year; and the company is a *franking entity for the whole or part of the relevant *PAYG instalment period	that part of the payment that: (a) the company estimates will be attributable to the *shareholders' share of the income tax liability of the company for that income year; and (b) is attributable to the period during which the company was a franking entity	on the day on which the payment is made (see note 1 to this subsection)

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**Franking credits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
2	<p>the company *paid a PAYG instalment; and</p> <p>the company satisfied the *residency requirement for the income year in relation to which the PAYG instalment was paid; and</p> <p>the payment was made before the company's *assessment day for that income year; and</p> <p>the company was a *franking entity for the whole or part of the relevant *PAYG instalment period</p>	<p>that part of the payment that is attributable to:</p> <p>(a) the *shareholders' share of the income tax liability of the company for that income year; and</p> <p>(b) the period during which the company was a franking entity</p>	<p>on the company's assessment day for that income year (see note 1 to this subsection)</p>
3	<p>the company *pays a PAYG instalment; and</p> <p>the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and</p> <p>the payment is made on or after the company's *assessment day for that income year; and</p> <p>the company is a *franking entity for the whole or part of the relevant *PAYG instalment period</p>	<p>that part of the payment that is attributable to:</p> <p>(a) the *shareholders' share of the income tax liability of the company for that income year; and</p> <p>(b) the period during which the company was a franking entity</p>	<p>on the day on which the payment is made</p>

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**Franking credits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
4	the company *pays income tax; and  the company satisfies the *residency requirement for the income year for which the tax is paid; and  the company is a *franking entity for the whole or part of that income year	that part of the payment that is attributable to:  (a) the *shareholders' share of the income tax liability of the company for that income year; and  (b) the period during which the company was a franking entity	on the day on which the payment is made
5	a *franked distribution is made to the company; and  the company satisfies the *residency requirement for the income year in which the distribution is made; and  the company is a *franking entity when it receives the distribution; and  the company is entitled to a *tax offset under Division 207 because of the distribution; and  the tax offset is not subject to the refundable tax offset rules in Division 67	the amount of the tax offset	on the day on which the distribution is made

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**Franking credits in the franking account**

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<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
6	a *franked distribution *flows indirectly to the company through a *partnership or trust; and the company is a *franking entity when the franked distribution is made; and the company is entitled to a *tax offset under Division 207 because of the distribution; and the tax offset is not subject to the refundable tax offset rules in Division 67	the amount of the tax offset	at the time specified in subsection (3)
7	the company incurs a liability to pay *franking deficit tax under section 205-45 or 205-50	the amount of the liability	immediately after the liability is incurred

Note 1: On the assessment day, a franking credit that arose under item 1 of the table:

- is reversed by a franking debit that arises under item 1 of the table in section 219-30; and
- is replaced with a franking credit that arises under item 2 of the table in this section.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

Note 3: To find out whether a tax offset under Division 207 is subject to the refundable tax offset rules: see section 67-25.

(3) A \*franking credit covered by item 6 of the table arises at the end of the income year:

(a) that is an income year of the last \*partnership or trust interposed between:

- (i) the \*life insurance company; and
- (ii) the \*corporate tax entity that made the distribution; and

(b) during which the \*franked distribution \*flows indirectly to the life insurance company.

**219-30 Franking debits**

- (1) The table in section 205-30 (except item 2) applies to a \*life insurance company in the same way as it applies to any other company.
- (2) The following table sets out when a \*franking debit arises under this section in the \*franking account of a \*life insurance company.

**Franking debits in the franking account**

Item	If:	A debit of:	Arises:
1	a *franking credit arises for the company under item 1 of the table in section 219-15 (*payment of a PAYG instalment)	the amount of the franking credit	on the company's *assessment day for the income year mentioned in that item
2	the company *receives a refund of income tax; and the company satisfies the *residency requirement for the income year to which the refund relates; and the company was a *franking entity for the whole or part of that income year	that part of the refund that is attributable to: (a) the *shareholders' share of the income tax liability of the company for that income year; and (b) the period during which the company was a franking entity	on the day on which the refund is received

Note 1: On the assessment day, a franking debit that arises under item 1 of this table reverses the effect of a franking credit that arose under item 1 of the table in section 219-15.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

**219-40 Residency requirement**

The tables in sections 219-15 and 219-30 are relevant for the purposes of subsection 205-25(1) (about the residency requirement).

### 219-45 Assessment day

A \*life insurance company's *assessment day* for an income year is the earlier of:

- (a) the day on which the company furnishes its \*income tax return for that income year; or
- (b) the day on which the Commissioner makes an assessment of the amount of the company's taxable income for that income year under section 166 of the *Income Tax Assessment Act 1936*.

### 219-50 Amount attributable to shareholders' share of income tax liability

- (1) Subsection (2) applies to a \*life insurance company in relation to the payment or refund mentioned in an item of a table in this Subdivision (except item 1 of the table in section 219-15).
- (2) For the purposes of this Part, the part of the payment or refund that is attributable to the \*shareholders' share of the income tax liability of the company for an income year must be worked out as follows:

*Method statement*

*Step 1.* Work out the part of the company's total income tax liability for the income year that is attributable to the company's shareholders.

The result of this step is the *shareholders' share* of the income tax liability of the company for the income year.

*Step 2.* Divide the step 1 result by that total income tax liability.

The result of this step is the *shareholders' ratio* for the income year.

*Step 3.* Multiply the amount of the payment or refund by the \*shareholders' ratio.

The result of this step is the part of the payment or refund that is attributable to the \*shareholders' share of the income tax liability of the company for the income year.

- (3) For the purposes of this Part, the estimate mentioned in item 1 of the table in section 219-15 (the part of a payment estimated to be attributable to the \*shareholders' share of a company's income tax liability for an income year) must be worked out on the basis of:
- (a) subject to paragraph (b), the method statement in subsection (2); and
  - (b) the company's reasonable estimate of the amounts that, on the company's \*assessment day for the income year, will be:
    - (i) its total income tax liability for the income year; and
    - (ii) the part of that total income tax liability that is attributable to its shareholders.
- (4) In working out the part of the income tax liability of a \*life insurance company that is attributable to the shareholders of the company for the purposes of this section, regard is to be had to the accounting records of the company.

#### **219-55 Adjustment resulting from an amended assessment**

- (1) This section applies in relation to the \*franking account of a \*life insurance company if:
- (a) the assessment of the company's income tax liability for an income year is amended on a particular day (the *adjustment day*); and
  - (b) the \*shareholders' ratio (the *new ratio*) based on the amended assessment is different from the shareholders' ratio used previously in relation to that income year to work out a \*franking credit or \*franking debit for the company; and
  - (c) the franking account would have a different balance on the adjustment day if the new ratio had been used to work out all the franking credits and franking debits covered by paragraph (b).
- (2) On the adjustment day, a \*franking credit or \*franking debit (as appropriate) of the amount worked out under subsection (3) arises in the \*franking account.

- (3) The amount is an adjustment that will bring the \*franking account to the balance that it would have on the adjustment day if the new ratio had been used to work out all the \*franking credits and \*franking debits covered by paragraph (1)(b).

Example: On the basis of a shareholders' ratio of 60% for the income year, franking credits of the amounts of \$6,000, \$6,000, \$6,000 and \$6,000 arose under item 2 of the table in section 219-15 for Company X.

An amended assessment results in a new shareholders' ratio of 70%. Under this section, a franking credit of \$4,000 arises on the day of the amended assessment to bring the balance of the franking account from \$24,000 to \$28,000, which would be the account's balance if the new shareholders' ratio had been used.

## 5 Subsection 995-1(1)

Insert:

*assessment day* for an income year of a \*life insurance company has the meaning given by section 219-45.

## 6 Subsection 995-1(1)

Insert:

*shareholders' ratio* for an income year of a \*life insurance company has the meaning given by section 219-50.

## 7 Subsection 995-1(1)

Insert:

*shareholders' share* of the income tax liability of a \*life insurance company for an income year has the meaning given by section 219-50.

## 8 Application

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 items 1 to 7 apply to events that occur on or after 1 July 2002.

## *Income Tax (Transitional Provisions) Act 1997*

## 9 Before Division 220

Insert:

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## Division 219—Imputation for life insurance companies

### Table of sections

219-40	Reversing and replacing (on tax paid basis) certain franking credits that arose before 1 July 2002
219-45	Reversing (on tax paid basis) certain franking debits that arose before 1 July 2002

### 219-40 Reversing and replacing (on tax paid basis) certain franking credits that arose before 1 July 2002

- (1) This section applies if:
- a franking credit arose before 1 July 2002 in the franking account of a life insurance company under section 160APVJ of the *Income Tax Assessment Act 1936* in relation to a PAYG instalment in respect of an income year; and
  - the company's assessment day (the **assessment day**) for that income year occurs on or after 1 July 2002; and
  - the company has a franking account (the **new franking account**) under section 205-10 of the *Income Tax Assessment Act 1997*.
- (2) A franking debit of the amount worked out in accordance with the following formula is taken to have arisen in the new franking account on the assessment day:

$$\text{Amount of the 1936 Act credit} \times \frac{30}{70}$$

where:

**amount of the 1936 Act credit** means the amount of the franking credit mentioned in paragraph (1)(a).

- (3) On the assessment day, a franking credit of the amount mentioned in item 2 of the table in section 219-15 of the *Income Tax Assessment Act 1997* arises in the new franking account in relation to a payment of the PAYG instalment mentioned in paragraph (1)(a) of this section that was made before 1 July 2002.

Note: On the assessment day, the franking credit mentioned in paragraph (1)(a) is therefore:

- reversed by the franking debit arising under subsection (2); and
- replaced with a franking credit arising under subsection (3).

**219-45 Reversing (on tax paid basis) certain franking debits that arose before 1 July 2002**

- (1) This section applies if:
- (a) a franking debit arose before 1 July 2002 in the franking account of a life insurance company under section 160AQCNCCE of the *Income Tax Assessment Act 1936* in relation to a PAYG instalment variation credit in respect of an income year; and
  - (b) the company's assessment day (the *assessment day*) for that income year occurs on or after 1 July 2002; and
  - (c) the company has a franking account (the *new franking account*) under section 205-10 of the *Income Tax Assessment Act 1997*.
- (2) A franking credit of the amount worked out in accordance with the following formula is taken to have arisen in the new franking account on 1 July 2002:

$$\text{Amount of the 1936 Act debit} \times \frac{30}{70}$$

where:

**amount of the 1936 Act debit** means the amount of the franking debit mentioned in paragraph (1)(a).

Note: As the effects of sections 160AQCNCCE and 160APVN of the *Income Tax Assessment Act 1936* are not duplicated in the *Income Tax Assessment Act 1997*, this section ensures that a debit arising under section 160AQCNCCE before 1 July 2002 is reversed on a tax paid basis on that date if it has not been reversed under section 160APVN before that date.

## Schedule 8—Overseas forces tax offsets

### *Income Tax Assessment Act 1936*

#### **1 At the end of subsection 23AB(8A)**

Add “or 23AG”.

#### **2 Subsection 79B(3A)**

Omit “or 23AD”, substitute “, 23AD or 23AG”.

#### **3 Application**

The amendments made by this Schedule apply in respect of service performed on or after 1 July 2001.

## Schedule 9—Roll-over for FSR transitions

### Part 1—Amendments

#### *Income Tax Assessment Act 1997*

##### **1 Section 108-50 (note)**

Omit “and section 124-725 (about a roll-over for a prospecting or mining entitlement)”, insert “, section 124-725 (about a roll-over for a prospecting or mining entitlement) and sections 124-895, 124-915 and 124-920 (about roll-overs for FSR transitions)”.

##### **2 Subsection 108-75(2) (cell at table item 3, column headed “Roll-over is obtained under this provision:”)**

Repeat the cell, substitute:

Subdivision 124-C or 124-O

##### **3 Section 109-55 (after table item 6)**

Insert:

6A	A new owner obtains a replacement-asset roll-over for replacing an asset that the original owner acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i>	sections 124-915 and 124-920
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##### **4 Section 109-55 (after table item 7)**

Insert:

7A	You obtain a replacement-asset roll-over in relation to an FSR transition and a replacement asset or part of a replacement asset relates to an original asset that you acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i> (for that replacement asset or that part of a replacement asset that relates to a pre-CGT original asset)	section 124-895
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7B	A new owner obtains a replacement-asset roll-over in relation to an FSR transition and a replacement asset or part of a replacement asset relates to an original asset that the original owner acquired <i>before</i> 20 September 1985	<i>before</i> 20 September 1985 (for that replacement asset or that part of a replacement asset that relates to a pre-CGT original asset)	sections 124-915 and 124-920
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## 5 Section 112-115 (after table item 14B)

Insert:

14BA	Replacement assets acquired during an FSR transition	Subdivision 124-O
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## 6 Subsection 124-5(1)

Omit “124-N”, substitute “124-O”.

## 7 Subsection 124-5(1) (note)

Omit “Note”, substitute “Note 1”.

## 8 At the end of subsection 124-5(1)

Add:

Note 2: Subdivision 124-O (about FSR transitions) also provides for roll-overs in situations where a replacement CGT asset is acquired by a new owner.

## 9 Subsection 124-5(2) (at the end of the note)

Add “The consequences of the new owner roll-overs in Subdivision 124-O (about FSR transitions) are set out in that Subdivision.”.

## 10 Subsection 124-10(3) (note 1)

Omit all the words after “(about statutory licences)”, substitute “, Subdivision 124-D (about strata title conversion) and Subdivision 124-O (about FSR transitions).”.

## 11 Subsection 124-10(3) (note 2)

Omit all the words after “(about Crown leases)”, substitute “, Subdivision 124-L (about prospecting and mining) and Subdivision 124-O (about FSR transitions).”.

**12 At the end of subsection 124-15(5) (after the example)**

Add:

Note: Subdivision 124-O provides a different rule for FSR transitions.

**13 At the end of Division 124**

Add:

**Subdivision 124-O—FSR (financial services reform) transitions**

**Table of sections**

**Same owner roll-overs**

- 124-880 Old licence roll-over (same owner)
- 124-885 Qualified licence roll-over (same owner)
- 124-890 Rights roll-over (same owner)
- 124-895 Consequences of a same owner roll-over

**New owner roll-overs**

- 124-900 Old licence roll-over (new owner)
- 124-905 Qualified licence roll-over (new owner)
- 124-910 Rights roll-over (new owner)
- 124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)
- 124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)

**Extension of FSR transition period**

- 124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)
- 124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)

**Same owner roll-overs**

**124-880 Old licence roll-over (same owner)**

There is a roll-over if:

---

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) at the time you make the application, you hold one or more licences, registrations, approvals, authorities or other similar things (the *old licence or licences*) that give you the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
- (c) you are granted an Australian financial services licence as a result of the application; and
- (d) that licence covers some or all of the activities that the old licence or licences authorised you to carry on; and
- (e) the old licence or licences cease to have effect (whether wholly or partly):
  - (i) when the Australian financial services licence is granted to you; or
  - (ii) if the Australian financial services licence is granted to you after 10 March 2004—on 10 March 2004.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in subparagraph (e)(ii) changes too.

### **124-885 Qualified licence roll-over (same owner)**

There is a roll-over if:

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) at the time you make the application, you hold an Australian financial services licence to which section 1434 of the *Corporations Act 2001* applies (the *qualified licence*); and
- (c) you are granted an Australian financial services licence as a result of the application (the *new licence*); and
- (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to you; and
- (e) if the new licence is granted after 10 March 2004:
  - (i) the qualified licence ceases to have effect on 10 March 2004; and

- (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in paragraphs (d) and (e) changes too.

### 124-890 Rights roll-over (same owner)

There is a roll-over if:

- (a) one or more intangible \*CGT assets owned by you cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) the asset or assets cease to exist because of the termination of one or more contracts; and
- (c) the termination is directly connected with Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) beginning to apply to you; and
- (d) you acquire one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925.

### 124-895 Consequences of a same owner roll-over

- (1) In each situation covered by section 124-880, 124-885 or 124-890, where:
  - (a) your ownership of one or more \*CGT assets (the *original asset or assets*) comes to an end; and
  - (b) you acquire one or more CGT assets (the *replacement asset or assets*);the consequences of that section applying are the consequences specified in Subdivision 124-A, with the modifications set out below.
- (2) The first element of the \*cost base and \*reduced cost base of each replacement asset includes any amount you paid to get the replacement asset (which can include giving property: see section 103-5). This subsection does not apply if subsection (3) applies.

Note: If subsection (3) applies, any amount you paid to get the replacement asset is included in the cost base and reduced cost base by subsection (5).

- (3) In a situation where subsection 124-15(5) would otherwise apply (where you \*acquired some original assets before 20 September 1985 and some on or after that date), use subsections (4) to (7) of this section instead of subsections 124-15(5) and (6).
- (4) Each replacement asset, or part of a replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:
- (a) a separate asset; and
  - (b) acquired before 20 September 1985.
- (5) The first element of the \*cost base of each replacement asset that you are not taken to have \*acquired before 20 September 1985 is the sum of:
- (a) the amount worked out under the formula in subsection (6); and
  - (b) either:
    - (i) any amount you paid to get the replacement asset (which can include giving property: see section 103-5); or
    - (ii) for a replacement asset, part of which is treated as a separate asset under subsection (4)—such part of any amount you paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that you are not taken to have acquired before 20 September 1985.
- (6) The formula is:

$$\frac{\text{The total of the *cost bases of the original assets that you *acquired on or after 20 September 1985}}{\text{The number of replacement assets that you are not taken to have *acquired before 20 September 1985}}$$

Note: If an original asset is an old licence that ceases to have effect only partly, subsection (8) modifies this formula.

- (7) The first element of each replacement asset's \*reduced cost base is worked out similarly.

- (8) If, in a situation covered by section 124-880, an old licence mentioned in that section ceases to have effect only partly, then:
- (a) a reference in Subdivision 124-A to the original asset's \*cost base; and
  - (b) the reference in subsection (6) of this section to the total of the \*cost bases of the original assets;
- is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

## New owner roll-overs

### 124-900 Old licence roll-over (new owner)

- (1) There is a roll-over if:
- (a) a person (the **new owner**) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) at the time the application is made, another person (the **original owner**) holds one or more licences, registrations, approvals, authorities or other similar things (the **old licence or licences**) that give the original owner the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
  - (c) the new owner is granted an Australian financial services licence as a result of the application; and
  - (d) if the Australian financial services licence is granted on or before 10 March 2004—the old licence or licences cease to have effect (whether wholly or partly) because, as a result of the Australian financial services licence being granted to the new owner, the original owner starts to be covered by an exemption under subsection 911A(2) of the *Corporations Act 2001* (or would be so covered by an exemption if that subsection applied) in respect of the original owner's regulated activities (within the meaning of section 1430 of the *Corporations Act 2001*); and
  - (e) if the Australian financial services licence is granted after 10 March 2004:
    - (i) the old licence or licences cease to have effect (whether wholly or partly) on 10 March 2004; and

(ii) if the Australian financial services licence had been granted before 10 March 2004, the old licence or licences would have ceased to have effect (whether wholly or partly) for the reason mentioned in paragraph (d); and

(f) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.

(2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*Australian financial services licence.

(3) This subsection applies if:

(a) at the time that the new owner \*acquires the \*Australian financial services licence, all of the following apply:

(i) the new owner is a company or a trust;

(ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;

(iii) all of the \*membership interests in the new owner are owned by the original owner; and

(b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:

(i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or

(ii) becomes an employee of the new owner; or

(iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

### **124-905 Qualified licence roll-over (new owner)**

(1) There is a roll-over if:

(a) a person (the ***new owner***) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and

(b) at the time the application is made, another person (the ***original owner***) holds an Australian financial services

licence to which section 1434 of the *Corporations Act 2001* applies (the *qualified licence*); and

- (c) the new owner is granted an Australian financial services licence as a result of the application (the *new licence*); and
- (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to the new owner; and
- (e) if the new licence is granted after 10 March 2004:
  - (i) the qualified licence ceases to have effect on 10 March 2004; and
  - (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted; and
- (f) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the new licence.
- (3) This subsection applies if:
  - (a) at the time that the new owner \*acquires the new licence, all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the new licence:
    - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
    - (ii) becomes an employee of the new owner; or
    - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

### **124-910 Rights roll-over (new owner)**

- (1) There is a roll-over if:
- (a) one or more intangible \*CGT assets owned by a person (the *original owner*) cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) the asset or assets cease to exist because of the termination of one or more contracts; and
  - (c) the termination is directly connected with the original owner choosing that another person (the *new owner*) will conduct, in place of the original owner, the business of the original owner in relation to which Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) is to apply; and
  - (d) the new owner acquires one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated; and
  - (e) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d).
- (3) This subsection applies if:
- (a) at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d), all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:

- (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
- (ii) becomes an employee of the new owner; or
- (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

**124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
  - (a) a person's (the *original owner's*) ownership of one \*CGT asset (the *original asset*) comes to an end; and
  - (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);the consequences of that section applying are the consequences specified in this section.
- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to the original asset is disregarded.
- (3) If the original owner \*acquired the original asset on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:
  - (a) the amount worked out under the formula in subsection (4); and
  - (b) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5).
- (4) The formula is:

$$\frac{\text{The original asset's *cost base}}{\text{The number of replacement assets}}$$

(worked out when the original owner's ownership of it ended)

Note: If the original asset is an old licence that ceases to have effect only partly, subsection (7) modifies this formula.

- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.

- (6) If the original owner \*acquired the original asset before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
- (7) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then the reference in subsection (4) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

**124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
  - (a) a person's (the *original owner's*) ownership of more than one \*CGT asset (the *original asset or assets*) comes to an end; and
  - (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);the consequences of that section applying are the consequences set out in this section.
- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to any of the original assets is disregarded.
- (3) If the original owner \*acquired all the original assets on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:
  - (a) the amount worked out under the formula in subsection (4); and
  - (b) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5).
- (4) The formula is:

$$\frac{\text{The total of the *cost bases of all the original assets  
(worked out when the original owner's ownership of them ended)}}{\text{The number of replacement assets}}$$

Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.

- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (6) If the original owner \*acquired all the original assets before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
- (7) If the original owner \*acquired some of the original assets before 20 September 1985, each replacement asset, or part of a replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:
  - (a) a separate asset; and
  - (b) acquired before 20 September 1985.
- (8) If subsection (7) applies, the first element of the \*cost base of each replacement asset that is not taken to have been \*acquired before 20 September 1985 is the sum of:
  - (a) the amount worked out under the formula in subsection (9); and
  - (b) either:
    - (i) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5); or
    - (ii) for a replacement asset, part of which is treated as a separate asset under subsection (7)—such part of any amount the new owner paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that is not taken to have been acquired before 20 September 1985.
- (9) The formula is:

$$\frac{\text{The total of the *cost bases of the original assets that the original owner *acquired on or after 20 September 1985}}{\text{The number of replacement assets that are not taken to have been *acquired before 20 September 1985}}$$

Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.

- (10) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (11) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then a reference in subsection (4) or (9) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

### **Extension of FSR transition period**

#### **124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)**

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to you until the end of the period declared by the Commission, then:

- (a) the period mentioned in paragraphs 124-880(a), 124-885(a) and 124-890(a) is modified in its application to you so that it ends on the last day of the period declared by the Commission; and
- (b) subparagraph 124-880(e)(ii) and paragraphs 124-885(d) and (e) are modified in their application to you so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

#### **124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)**

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to a person who is an original owner mentioned in section 124-900, 124-905 or 124-910 until the end of the period declared by the Commission, then:

- (a) the period mentioned in paragraphs 124-900(1)(a), 124-905(1)(a) and 124-910(1)(a) is modified in its application to that person so that it ends on the last day of the period declared by the Commission; and

- (b) paragraphs 124-900(1)(d) and (e) and 124-905(1)(d) and (e) are modified in their application to that person so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

#### **14 After subsection 152-45(1)**

Insert:

*Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the *new asset*) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then the active asset test in section 152-35 applies as if:
  - (a) you had acquired the new asset when you acquired the original asset; and
  - (b) the new asset had been your \*active asset at all times when the original asset was your active asset; and
  - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

*Assets replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the *new asset*) acquired in a situation covered by section 124-900, 124-905 or 124-910, then the active asset test in section 152-35 applies as if:
  - (a) the new owner had acquired the new asset when the original owner acquired the original asset; and
  - (b) the new asset had been the \*active asset of the new owner at all times when the original asset was the original owner's active asset; and
  - (c) the new asset had not been the active asset of the new owner at all times when the original asset was not the original owner's active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

## **15 After subsection 152-115(1)**

Insert:

*Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the *new asset*) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and controlling individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

*Asset replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the *new asset*) acquired in a situation covered by section 124-900, 124-905 or 124-910, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and controlling individual rules) apply as if the new owner had acquired the new asset when the original owner acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

## **16 Subsection 995-1(1) (the Dictionary)**

Insert:

*Australian financial services licence* has the meaning given by section 761A of the *Corporations Act 2001*.

## **Part 2—Application of amendments**

### **17 Application of amendments**

The amendments made by this Schedule apply to CGT events happening on or after 11 March 2002.

## Schedule 10—Foreign hybrids

### Part 1—Amendment of the Income Tax Assessment Act 1936

#### 1 Subsection 92(2)

Omit “Where”, substitute “Subject to section 830-45 of the *Income Tax Assessment Act 1997*, if”.

#### 2 Section 94B (paragraph (a) of the definition of *income tax law*)

After “Division”, insert “and Division 830 of the *Income Tax Assessment Act 1997*”.

#### 3 At the end of section 94D

Add:

- (4) A limited partnership that is a foreign hybrid limited partnership in relation to a year of income because of subsection 830-10(1) of the *Income Tax Assessment Act 1997* is not a corporate limited partnership in relation to the year of income.

Note: As result, both the normal partnership provisions and special provisions relating to foreign hybrid limited partnerships will apply to the entity.

- (5) If, for the purpose of applying this Act and the *Income Tax Assessment Act 1997* in relation to a partner’s interest in a limited partnership, the partnership is a foreign hybrid limited partnership in relation to a year of income because of subsection 830-10(2) of that Act, the partnership is not a corporate limited partnership in relation to the partner’s interest in relation to the year of income.

Note: As result, both the normal partnership provisions and special provisions relating to foreign hybrid limited partnerships will apply to the entity, but only in relation to the partner’s interest.

#### 4 At the end of section 324

Add:

Note: Section 830-75 of the *Income Tax Assessment Act 1997* sets out additional circumstances, relating to entities that are foreign hybrids, in which a gain or profit is subject to tax in a listed country.

## 5 After section 485

Insert:

### **485AA Election to exclude interests in foreign hybrids from operation of this Part**

*Limited partnerships that are treated as companies*

(1) If:

(a) disregarding subsection 94D(5):

- (i) at the end of a year of income, a taxpayer has an interest in a FIF that is a corporate limited partnership for the purposes of Division 5A of Part III in relation to the year of income; and
- (ii) the interest consists of a share in the FIF; and

Note: The share will be an interest in the partnership that is treated by Division 5A of Part III as a share.

(b) the entity satisfies the requirements of paragraphs 830-10(1)(a) to (d) of the *Income Tax Assessment Act 1997* in relation to the year of income;

the taxpayer may elect that subsection (5) of this section applies in relation to the interest in the FIF.

*Actual companies*

(2) If:

(a) at the end of a year of income, a taxpayer has an interest in a FIF that consists of one or more shares in the FIF; and

(b) the interest is not one to which paragraph (1)(a) applies; and

(c) the entity satisfies the requirements of paragraphs 830-15(1)(a) to (c) of the *Income Tax Assessment Act 1997* in relation to the year of income;

the taxpayer may elect that subsection (5) of this section applies in relation to the interest in the FIF.

*Time limit for making election*

(3) A taxpayer must make an election under this section:

- (a) on or before the day on which the taxpayer lodges its return of income for the year of income; or

(b) within a further time allowed by the Commissioner.

*When election is in force*

- (4) If the taxpayer makes the election, it is in force during the year of income and all later years of income.

*Effect of election on interest in FIF etc.*

- (5) While the election is in force, the operative provision, and any other provision of this Part relevant to the operation of that provision, does not apply to the taxpayer in relation to the interest in the FIF consisting of the share or shares or any option, convertible note, or other instrument, that confers an entitlement to acquire the share or shares.

Note: The election will also have the effect under Division 830 of the *Income Tax Assessment Act 1997* of making the company or limited partnership a foreign hybrid in relation to the taxpayer's interest in the FIF.

*Effect of election on other interests in FIF*

- (6) However, subsection (5) does not have effect so far as that interest in the FIF is relevant for the purpose of the application of this Part in relation to the taxpayer, or any other taxpayer, in relation to any other interest in the FIF.

Note: For example, in applying section 580 to work out other taxpayers' shares of the calculated profit of the FIF, the interest would not be disregarded.

*Election irrevocable*

- (7) The election is irrevocable.

## 6 Application

The amendments made by this Part have the same application to assessments of a taxpayer, and for working out the attributable income of a CFC, as does Division 830 of the *Income Tax Assessment Act 1997*.

Note: Division 830 of the *Income Tax Assessment Act 1997* is inserted by Part 2 of this Schedule. Its application is given by Division 830 of the *Income Tax (Transitional Provisions) Act 1997*, which is inserted by Part 3 of this Schedule.

## Part 2—Amendment of the Income Tax Assessment Act 1997

### 7 Section 12-5 (table item headed “partnerships”)

Before:

losses, partner’s share of partnership loss..... 90, 92

insert:

foreign hybrid loss exposure adjustment..... 830-50

### 8 Section 36-25 (after the table headed “Tax losses of VCLPs, AFOFs and VCMPs”)

Insert:

*Tax losses of entities that become foreign hybrids*

Item	For the special rules about this situation...	See:
1.	An entity that has a tax loss becomes a *foreign hybrid: it cannot deduct the loss while it is a foreign hybrid.	Section 830-115

### 9 Subsection 102-25(2)

Repeal the subsection, substitute:

- (2) However, there are 3 exceptions: one for \*CGT events J2 and J3, one for CGT event K5 and one for CGT event K12.

### 10 After subsection 102-25(2B)

Insert:

(2C) If:

- (a) \*CGT events happen for which you make \*capital gains or \*capital losses; and
- (b) the capital gains or losses are taken into account in working out a \*foreign hybrid net capital loss amount; and

(c) the foreign hybrid net capital loss amount is itself taken into account in determining that \*CGT event K12 happens;  
CGT event K12 applies in addition to the other CGT events.

**11 Section 104-5 (before table item relating to CGT event L1)**

Insert:

K12 Foreign hybrid loss exposure adjustment	just before the end of the income year	<i>no capital gain</i>	the amount stated in subsection 104-270(3)
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[See section 104-270]

**12 At the end of Subdivision 104-K**

Add:

**104-270 Foreign hybrids: CGT event K12**

- (1) *CGT event K12* happens if, in accordance with paragraph 830-50(2)(b) or (3)(b), you make a \*capital loss under this section for an income year.
- (2) The time of the event is just before the end of the income year.
- (3) You make a *capital loss* equal to the amount applicable under paragraph 830-50(2)(b) or (3)(b).

**13 Section 110-10 (before table item relating to CGT event L1)**

Insert:

K12	Foreign hybrid loss exposure adjustment	104-270
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**14 Section 112-97 (after table item 20)**

Insert:

20A	An entity becomes or ceases to be a foreign hybrid	The total cost base and reduced cost base	Sections 830-80 and 830-85
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**15 At the end of Part 4-5 (before the link note)**

Add:

## **Division 830—Foreign hybrids**

### **Table of Subdivisions**

	Guide to Division 830
830-A	Meaning of “foreign hybrid”
830-B	Extension of normal partnership provisions to foreign hybrid companies
830-C	Special rules applicable while an entity is a foreign hybrid
830-D	Special rules applicable when an entity becomes or ceases to be a foreign hybrid

### **Guide to Division 830**

#### **830-1 What this Division is about**

This Division:

- (a) provides for certain entities (called foreign hybrids) that are treated as partnerships for the purposes of foreign tax, but as companies for the purposes of tax within the meaning of this Act, to be treated as partnerships for the purposes of this Act; and
- (b) applies special rules to the entities in addition to those that normally apply to partnerships.

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

### **Subdivision 830-A—Meaning of “foreign hybrid”**

#### **Table of sections**

830-5	Foreign hybrid
830-10	Foreign hybrid limited partnership
830-15	Foreign hybrid company

### 830-5 Foreign hybrid

The expression *foreign hybrid* means:

- (a) a \*foreign hybrid limited partnership; or
- (b) a \*foreign hybrid company.

### 830-10 Foreign hybrid limited partnership

- (1) A \*limited partnership is a *foreign hybrid limited partnership* in relation to an income year if:
  - (a) it was formed in a foreign country; and
  - (b) \*foreign tax is imposed under the law of the foreign country on the partners, not the limited partnership, in respect of the income or profits of the partnership for the income year; and
  - (c) at no time during the income year is the limited partnership, for the purposes of a law of any foreign country that imposes foreign tax on entities because they are residents of the foreign country, a resident of that country; and
  - (d) disregarding subsection 94D(4) of the *Income Tax Assessment Act 1936*, at no time during the income year is it an Australian resident; and
  - (e) disregarding that subsection, in relation to the same income year of another taxpayer:
    - (i) the limited partnership is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
    - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.
- (2) If a partner in a \*limited partnership makes an election under subsection 485AA(1) of the *Income Tax Assessment Act 1936* in relation to the partner's interest in the partnership, then, for the purpose of applying that Act and this Act in relation to the partner's interest, the limited partnership is a *foreign hybrid limited partnership* in relation to any income year during which the election is in force.

### 830-15 Foreign hybrid company

- (1) A company is a *foreign hybrid company* in relation to an income year if:
- (a) at all times during the income year when the company is in existence, the partnership treatment requirements for the income year in subsection (2) or (3) are satisfied; and
  - (b) at no time during the income year is the company, for the purposes of a law of any foreign country that imposes \*foreign tax on entities because they are residents of the foreign country, a resident of that country; and
  - (c) at no time during the income year is the company an Australian resident; and
  - (d) disregarding this Division, in relation to the same income year of another taxpayer:
    - (i) the company is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
    - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.

#### *Partnership treatment requirements specific to USA*

- (2) For the purposes of paragraph (1)(a), the partnership treatment requirements are satisfied if:
- (a) the company was formed in the United States of America; and
  - (b) for the purposes of the law of that country relating to \*foreign tax imposed by that country, the company is a limited liability company that:
    - (i) is treated as a partnership; or
    - (ii) is an eligible entity that is disregarded as an entity separate from its owner.

#### *Partnership treatment requirements relating to any foreign country*

- (3) For the purposes of paragraph (1)(a), the partnership treatment requirements are also satisfied if:
- (a) the company was formed in a foreign country (which may be the United States of America); and

- (b) for the purposes of the law of that country relating to \*foreign tax imposed by that country, the company is treated as a partnership; and
  - (c) regulations are in force setting out requirements to be satisfied by a company in relation to the income year for the purposes of this paragraph, and the company satisfies those requirements.
- (4) Regulations for the purposes of paragraph (3)(c) cannot set out requirements in relation to any income year before the one in which the regulations are made.
- (5) If a \*shareholder in a company makes an election under subsection 485AA(2) of the *Income Tax Assessment Act 1936* in relation to the shareholder's share or shares in the company, then, for the purpose of applying that Act and this Act in relation to the shareholder's share or shares, the company is a **foreign hybrid company** in relation to any income year during which the election is in force.

### **Subdivision 830-B—Extension of normal partnership provisions to foreign hybrid companies**

Note: The normal partnership provisions will apply of their own force to foreign hybrids that are foreign hybrid limited partnerships.

#### **Table of sections**

830-20	Treatment of company as a partnership
830-25	Partners are the shareholders in the company
830-30	Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits
830-35	Partner's interest in assets
830-40	Control and disposal of share in partnership income

#### **830-20 Treatment of company as a partnership**

If a company is a \*foreign hybrid company in relation to an income year, the \*foreign hybrid tax provisions apply as if the company were a partnership, and for that purpose the following provisions of this Subdivision have effect.

### **830-25 Partners are the shareholders in the company**

The partners in the partnership are the \*shareholders in the company.

### **830-30 Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits**

The individual interest of a partner in the \*net income or \*partnership loss of the partnership of the income year is equal to the percentage that, if the profits of the company for the income year were distributed at the end of the income year to its \*shareholders:

- (a) if paragraph (b) does not apply—as dividends; or
- (b) if the company's \*constitution or other rules provide for the distribution of profits other than as dividends—in accordance with the constitution or those rules;

the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

### **830-35 Partner's interest in assets**

- (1) The interest that each partner has in the assets of the partnership, under the partnership agreement, is equal to the percentage in subsection (2).
- (2) The percentage is the percentage that, if the capital of the company were distributed to its \*shareholders on a winding-up of the company at the end of the income year, the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

### **830-40 Control and disposal of share in partnership income**

- (1) This section applies for the purposes of determining under section 94 of the *Income Tax Assessment Act 1936* whether the partnership is so constituted or controlled, or its operations are so conducted, that a partner does not have the real and effective control and disposal of the partner's share, or a part of the partner's share, in the \*net income of the partnership of an income year.

- (2) The reference to the partner's share, or a part of the partner's share, in the \*net income is a reference to any rights that the \*shareholder has under the \*constitution or other rules of the company that were taken into account under section 830-30 in working out the individual interest of the partner in the partnership's net income or \*partnership loss of the income year.

### **Subdivision 830-C—Special rules applicable while an entity is a foreign hybrid**

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

#### **Table of sections**

830-45	Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount
830-50	Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount
830-55	Meaning of <i>foreign hybrid net capital loss amount</i>
830-60	Meaning of <i>loss exposure amount</i>
830-65	Meaning of <i>outstanding foreign hybrid revenue loss amount</i>
830-70	Meaning of <i>outstanding foreign hybrid net capital loss amount</i>
830-75	Extended meaning of <i>subject to tax</i>

### **830-45 Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount**

- (1) This section applies to a \*limited partner in a \*foreign hybrid in relation to an income year if the sum of the following amounts:
- (a) any amount (a *foreign hybrid revenue loss amount*) allowable to the partner as a deduction under subsection 92(2) of the *Income Tax Assessment Act 1936* in respect of a \*partnership loss of the foreign hybrid for the income year;
  - (b) any \*foreign hybrid net capital loss amount of the partner in respect of the foreign hybrid for the income year;
- exceeds the partner's \*loss exposure amount for the income year.

*Reduction in foreign hybrid revenue loss amount or foreign hybrid net capital loss amount*

- (2) If this section applies, the amount mentioned in paragraph (1)(a) or (b), or each of the amounts mentioned in those paragraphs, is reduced so that in total they equal the partner's \*loss exposure amount. The partner must choose how much of the reduction is applied to each of the amounts.

*Effect of reducing foreign hybrid net capital loss amount*

- (3) If the partner's \*foreign hybrid net capital loss amount in respect of the \*foreign hybrid for the income year is reduced under subsection (2), the partner's \*net capital gain or \*net capital loss for the income year is worked out by assuming that the \*capital gains and \*capital losses taken into account in working out the partner's foreign hybrid net capital loss amount were instead a capital loss equal to the foreign hybrid net capital loss amount after the reduction.

**830-50 Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount**

- (1) This section applies if:
- (a) the sum of a partner's \*foreign hybrid revenue loss amount and \*foreign hybrid net capital loss amount for a \*foreign hybrid for an income year does not exceed the partner's \*loss exposure amount for the foreign hybrid for the income year (the difference being the partner's *available loss exposure amount*); and
  - (b) the partner has one or more \*outstanding foreign hybrid revenue loss amounts or one or more \*outstanding foreign hybrid net capital loss amounts, or both, in respect of the foreign hybrid for the income year.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts does not exceed available loss exposure amount*

- (2) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts does not exceed the \*available loss exposure amount:
- (a) a deduction is allowable to the partner for the income year equal to the sum of the outstanding foreign hybrid revenue loss amounts; and
  - (b) the partner makes a \*capital loss for the income year under section 104-270 equal to the sum of the outstanding foreign hybrid net capital loss amounts.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts exceeds available loss exposure amount*

- (3) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts exceeds the \*available loss exposure amount, then either or both of the following apply:
- (a) a deduction is allowable to the partner for the income year equal to some or all of the outstanding foreign hybrid revenue loss amounts;
  - (b) the partner makes a \*capital loss under section 104-270 equal to some or all of the outstanding foreign hybrid net capital loss amounts;
- such that the sum of the deduction and the capital loss equals the available loss exposure amount.

*Partner to choose how to apply subsection (3)*

- (4) The partner must choose:
- (a) which of paragraphs (3)(a) and (b) is to apply or whether both are to apply; and
  - (b) the amount of the deduction or \*capital loss, or the amounts of both; and
  - (c) the particular outstanding foreign hybrid revenue loss amounts or outstanding foreign hybrid net capital loss amounts, or both, to which they relate.

**830-55 Meaning of *foreign hybrid net capital loss amount***

If:

- (a) the sum of a partner's \*capital losses from \*CGT events happening during an income year in relation to a \*foreign hybrid or \*CGT assets of a foreign hybrid;

exceeds:

- (b) the sum of the partner's \*capital gains from CGT events happening during the income year in relation to the foreign hybrid or CGT assets of the foreign hybrid;

the partner has a *foreign hybrid net capital loss amount* in respect of the foreign hybrid for the income year equal to the excess.

**830-60 Meaning of *loss exposure amount***

- (1) The *loss exposure amount* of a partner in a \*foreign hybrid for an income year is worked out as follows:

*Method statement*

*Step 1.* Work out the sum of the amounts or \*market values of the contributions made by the partner to the \*foreign hybrid that, as at the end of the income year:

- (a) have not been repaid or returned to the partner; and
- (b) have been contributed for at least 180 days, or are intended by the partner to remain contributed for at least 180 days.

*Step 2.* Subtract the sum of the amounts of:

- (a) all \*limited recourse debts owed by the partner at the end of the income year, to the extent that the \*borrowings concerned were for the purpose of enabling the partner to make contributions to the \*foreign hybrid and the debts were secured by the partner's interest in the foreign hybrid; and
- (b) all the partner's \*foreign hybrid revenue loss amounts in respect of the foreign hybrid for

previous income years, after any reduction under subsection 830-45(2); and

- (c) all the partner's \*foreign hybrid net capital loss amounts in relation to the partnership for previous income years, after any reduction under subsection 830-45(2); and
- (d) all deductions allowed to the partner under subsection 830-50(2) or (3) in respect of the foreign hybrid for previous income years; and
- (e) all \*capital losses that, as a result of subsection 830-50(2) or (3), the partner made in respect of \*CGT event K12 in respect of the foreign hybrid for previous income years.

*Contribution in case of foreign hybrid company*

- (2) For the purposes of step 1 in the method statement in subsection (1), if:
- (a) the \*foreign hybrid is a \*foreign hybrid company; and
  - (b) the partner \*acquired its \*shares in the company from another shareholder; and
  - (c) the payment or other consideration for the acquisition of the shares did not constitute the making of a contribution by the partner to the foreign hybrid;
- the payment or other consideration is taken:
- (d) to be a contribution by the partner to the foreign hybrid; and
  - (e) to be so contributed for as long as the partner holds the shares; and
  - (f) to have been repaid to the partner to the extent of any payment that:
    - (i) the foreign hybrid makes to the partner in respect of the share; and
    - (ii) the foreign hybrid describes as a return of capital; and
    - (iii) is attributable to the period during which the partner has held the shares.

**830-65 Meaning of *outstanding foreign hybrid revenue loss amount***

- (1) This section applies if a \*foreign hybrid revenue loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).
- (2) The partner has, for each later income year, an ***outstanding foreign hybrid revenue loss amount*** equal to the amount of the reduction, less the sum of any deductions allowable to the partner under subsection 830-50(2) or (3) in respect of the outstanding foreign hybrid revenue loss amount for income years between the reduction year and the later income year.

*Outstanding foreign hybrid revenue loss amount not to form part of tax loss*

- (3) To avoid doubt, a partner's \*outstanding foreign hybrid revenue loss amount for an income year cannot form part of a \*tax loss for the purposes of Division 36.

**830-70 Meaning of *outstanding foreign hybrid net capital loss amount***

- (1) This section applies if a \*foreign hybrid net capital loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).
- (2) The partner has, for each later income year, an ***outstanding foreign hybrid net capital loss amount*** equal to the amount of the reduction, less the sum of any \*capital losses that, as a result of subsection 830-50(2) or (3), the partner makes in respect of \*CGT event K12 in respect of the outstanding foreign hybrid net capital loss amount for income years between the reduction year and the later income year.

**830-75 Extended meaning of *subject to tax***

*Where entity becomes a partner*

- (1) If:
  - (a) an entity becomes a partner (the ***first partner***) in a \*foreign hybrid in relation to an income year; and
  - (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other

partner's interest in an asset of the foreign hybrid that happens when the first partner becomes a partner; and

- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where partner increases its interest*

(2) If:

- (a) an entity is a partner (the **first partner**) that increases its interest in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other partner's interest in an asset of the foreign hybrid that happens when the first partner increases its interest in the foreign hybrid; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where entity ceases to be a partner*

(3) If:

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- (a) an entity ceases to be a partner in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of its interest in an asset of the foreign hybrid that happens when the entity ceases to be a partner; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of its interest in the foreign hybrid that happens when the entity ceases to be a partner is subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where partner disposes of part of its interest*

(4) If:

- (a) an entity is a partner that disposes of part of its interest in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of part of its interest in an asset of the foreign hybrid that happens when the entity disposes of the part of its interest in the foreign hybrid; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of the part of its interest in the foreign hybrid is subject to tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

### **Subdivision 830-D—Special rules applicable when an entity becomes or ceases to be a foreign hybrid**

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

#### **Table of sections**

830-80	Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid
830-85	Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid
830-90	What the expression <i>tax cost is set</i> means
830-95	What the expression <i>tax cost setting amount</i> means
830-100	What the expression <i>tax cost</i> means
830-105	What the expression <i>asset-based income tax regime</i> means
830-110	No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid
830-115	Tax losses cannot be transferred to a foreign hybrid
830-120	End of CFC's last statutory accounting period
830-125	How long interest in asset, or asset, held

#### **830-80 Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid**

- (1) This section applies if:
  - (a) an entity is a \*foreign hybrid in relation to an income year (the *hybrid year*); and
  - (b) the entity was in existence at the end of the preceding income year (which may be the income year before this Division first applies to the entity); and
  - (c) the entity was not a foreign hybrid in relation to that preceding income year.
- (2) For the purposes of applying an \*asset-based income tax regime for the hybrid year and each later income year in relation to which the entity continues to be a foreign hybrid, the \*tax cost is set at the start of the hybrid year, for each asset of the \*foreign hybrid in which each partner has an interest at that time.

**830-85 Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid**

- (1) This section applies if:
- (a) an entity is a \*foreign hybrid in relation to an income year; and
  - (b) the entity is in existence at the start of the next income year; and
  - (c) the entity is not a foreign hybrid in relation to that income year (the *post-hybrid year*).
- (2) For the purposes of applying an \*asset-based income tax regime for the post-hybrid year and each later income year in relation to which the entity continues not to be a foreign hybrid, the \*tax cost is set at the start of the post-hybrid year, for each asset of the entity at that time.

**830-90 What the expression *tax cost is set* means**

The following table explains what the expression *tax cost is set* at the start of the hybrid year or the post-hybrid year means, in relation to an asset in which a partner has an interest or in relation to an asset of the entity, for the purposes of each \*asset-based income tax regime:

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
2	Division 70	the value of the interest or the asset at the start of the hybrid year or the post-hybrid year under Division 70 is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the Division applies as if the interest or the asset were *acquired by the partner or the entity at the start of the hybrid year or the post-hybrid year for a payment equal to the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

**830-95 What the expression *tax cost setting amount* means**

- (1) A partner's *tax cost setting amount* for an interest of the partner in an asset at the start of the hybrid year, in relation to an \*asset-based income tax regime, is worked out as follows:

*Method statement*

*Step 1.* Work out what would have been the entity's \*tax cost of the asset for the purposes of applying the \*asset-based income tax regime as at the start of the hybrid year if it were not a \*foreign hybrid in relation to the hybrid year.

*Step 2.* Multiply the result of step 1 by:

- (a) if the entity is a \*foreign hybrid company in relation to the hybrid year—the percentage applicable to the partner under subsection 830-35(2); or
- (b) if the entity is a \*foreign hybrid limited partnership in relation to the hybrid year—the individual interest of the partner in the asset, expressed as a percentage of the interests of all of the partners in the asset.

*Step 3.* If the partner paid a premium in respect of the \*acquisition of its interest in the asset (see subsection (2)), add the amount of the premium to the result of step 2. If the partner received a discount in respect of the acquisition (see subsection (2)), subtract the amount of the discount from the result of step 2, but not to the extent that this would result in a negative amount.

The result of step 3 is the partner's ***tax cost setting amount*** in respect of the asset.

- (2) Work out whether the partner paid a premium or received a discount for its interest in the asset using the following method statement:

*Method Statement*

*Step 1.* Add up all the amounts paid by the partner before the start of the hybrid year for its \*shares in the entity (if the entity was a company), or for its interests in the assets of the entity and in the entity (if the entity was a \*limited partnership), that it held at the start of the hybrid year, and subtract all amounts received by the partner in respect of those shares or interests by way of reduction in capital of the entity.

*Step 2.* Work out the amount that, if the capital of the entity had been distributed to its \*shareholders on a winding-up or to its partners on a dissolution, at the end of the income year before the hybrid year, the partner could reasonably be expected to have received of the total distribution.

*Step 3.* If the result of step 1 exceeds the result of step 2, the partner paid a premium for its interest in the asset. If the result of step 2 exceeds the result of step 1, the partner received a discount for its interest in the asset.

*Step 4.* Work out the amount of the premium or discount using the formula:

$\frac{\text{Result of step 1 in the method statement in subsection (1)}}{\text{Sum of results of step 1 in the method statement in subsection (1) for the partner for all of the *foreign hybrid's assets in relation to the *asset-based income tax regime}} \times \text{Excess mentioned in step 3 in the method statement in this subsection}$
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- (3) The entity's *tax cost setting amount* for an asset at the start of the post-hybrid year in relation to an \*asset-based income tax regime is equal to the sum of what the partners' \*tax costs for their interests in the asset would be at that time for the purpose of applying the asset-based income tax regime if the entity had continued to be a \*foreign hybrid in relation to that income year.

**830-100 What the expression *tax cost* means**

The *tax cost* of a partner's interest in an asset or of an asset of the entity for the purposes of applying an \*asset-based income tax regime at the start of the post-hybrid year or the hybrid year is worked out using the following table:

<b>Tax cost of an asset</b>		
<b>Item</b>	<b>If the asset-based income tax regime is:</b>	<b>the tax cost of the interest or the asset is:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the post-hybrid year or the hybrid year
2	Division 70	the value of the interest or the asset at the start of the post-hybrid year or the hybrid year under Division 70
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the post-hybrid year or the hybrid year

<b>Tax cost of an asset</b>		
<b>Item</b>	<b>If the asset-based income tax regime is:</b>	<b>the tax cost of the interest or the asset is:</b>
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the amount that the partner or entity would need to receive if it were to dispose of the interest or asset at the start of the post-hybrid year or the hybrid year without an amount being assessable income of, or deductible to, the partner or entity under section 159GS of the <i>Income Tax Assessment Act 1936</i>
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or the asset at the start of the post-hybrid year or the hybrid year

### **830-105 What the expression *asset-based income tax regime* means**

The provisions listed in the first column in relation to each item in the table in section 830-100 are an *asset-based income tax regime*.

### **830-110 No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid**

To avoid doubt, the fact that an entity becomes or ceases to be a \*foreign hybrid in relation to an income year does not cause:

- (a) a \*CGT event to happen to any \*CGT asset consisting of:
  - (i) any \*share or interest in the entity; or
  - (ii) any interest in an asset of the entity; or
- (b) a disposal or any other event to happen to any other asset consisting of such a share or interest.

### **830-115 Tax losses cannot be transferred to a foreign hybrid**

- (1) If an entity is a \*foreign hybrid in relation to an income year, it cannot deduct in that income year a \*tax loss for a \*loss year in relation to which it was not a foreign hybrid.

*Former foreign hybrid can deduct tax losses for income years before it became a foreign hybrid*

- (2) This section does not prevent an entity that:
- (a) is not a \*foreign hybrid in relation to an income year (the ***post-hybrid year***); and
  - (b) was a foreign hybrid in relation to a previous income year; and
  - (c) was not a foreign hybrid in relation to an income year (the ***pre-hybrid year***) before the previous year;
- from deducting, in the post-hybrid year, a \*tax loss for the pre-hybrid year.

### **830-120 End of CFC's last statutory accounting period**

If:

- (a) a taxpayer is a partner in an entity that becomes a \*foreign hybrid in relation to an income year; and
- (b) the entity was a \*CFC at the end of the taxpayer's preceding income year; and
- (c) the last \*statutory accounting period of the CFC did not end at the end of the taxpayer's preceding income year; and
- (d) if it had so ended, the taxpayer would have been an \*attributable taxpayer in relation to the CFC;

for the purposes of working out the \*attributable income of the CFC for the taxpayer in respect of the last statutory accounting period of the CFC, that statutory accounting period ends at the end of the taxpayer's preceding income year.

### **830-125 How long interest in asset, or asset, held**

*Partner's interest in asset when entity becomes a foreign hybrid*

- (1) If an entity becomes a \*foreign hybrid company in relation to an income year, the interest that a partner has in an asset as mentioned in section 830-35 is taken to have been held by the partner (except for the purposes of having the \*tax cost of the interest set) from the later of the following times:
- (a) when the entity \*acquired the asset;
  - (b) when the partner acquired its \*shares in the entity.

*Entity's asset when it ceases to be a foreign hybrid company*

(2) If:

- (a) an entity is not a \*foreign hybrid company in relation to an income year (the *post-hybrid year*); and
- (b) the entity was a \*foreign hybrid company in relation to the preceding income year; and
- (c) during:
  - (i) that preceding income year; or
  - (ii) any earlier income year in relation to which the entity was also a foreign hybrid;

but not at the start of the first income year in relation to which the entity was a foreign hybrid company, the partners in the foreign hybrid company \*acquired an interest in an asset that is an asset of the entity at the start of the post-hybrid year;

the asset is taken to have been held by the entity (except for the purposes of having the \*tax cost of the asset set) from the time the partners acquired their interests in the asset.

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

Insert:

*asset-based income tax regime* has the meaning given by section 830-105.

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

Insert:

*attributable taxpayer* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

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

Insert:

*attribution percentage* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

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

Insert:

*available loss exposure amount* has the meaning given by paragraph 830-50(1)(a).

**20 Subsection 995-1(1) (at the end of the definition of company)**

Add:

Note: Division 830 treats foreign hybrid companies as partnerships.

**21 Subsection 995-1(1)**

Insert:

*foreign hybrid* has the meaning given by section 830-5.

**22 Subsection 995-1(1)**

Insert:

*foreign hybrid company* has the meaning given by section 830-15.

**23 Subsection 995-1(1)**

Insert:

*foreign hybrid limited partnership* has the meaning given by section 830-10.

**24 Subsection 995-1(1)**

Insert:

*foreign hybrid net capital loss amount* has the meaning given by section 830-55.

**25 Subsection 995-1(1)**

Insert:

*foreign hybrid revenue loss amount* has the meaning given by paragraph 830-45(1)(a).

**26 Subsection 995-1(1)**

Insert:

*foreign hybrid tax provisions* means:

- (a) the *Income Tax Assessment Act 1936* (other than Division 5A of Part III); and
- (b) this Act (other than Subdivision 830-A and 830-B); and
- (c) an Act that imposes any tax payable under the *Income Tax Assessment Act 1936* or this Act; and
- (d) the *Income Tax Rates Act 1986*; and
- (e) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and
- (f) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c), (d) or (e); and
- (g) regulations under an Act covered by any of the preceding paragraphs.

**27 Subsection 995-1(1)**

Insert:

*foreign tax* has the meaning given by section 6AB of the *Income Tax Assessment Act 1936*.

**28 Subsection 995-1(1)**

Insert:

*loss exposure amount* has the meaning given by section 830-60.

**29 Subsection 995-1(1)**

Insert:

*outstanding foreign hybrid net capital loss amount* has the meaning given by section 830-70.

**30 Subsection 995-1(1)**

Insert:

*outstanding foreign hybrid revenue loss amount* has the meaning given by section 830-65.

**31 Subsection 995-1(1) (at the end of the definition of *partnership*)**

Add:

Note: Division 830 treats foreign hybrid companies as partnerships.

**32 Subsection 995-1(1)**

Insert:

*statutory accounting period* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**33 Subsection 995-1(1)**

Insert:

*subject to tax* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**34 Subsection 995-1(1)**

Insert:

*tax accounting period* has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**35 Subsection 995-1(1)**

Insert:

*tax cost* has the meaning given by section 830-100.

**36 Subsection 995-1(1) (at the end of the definition of *tax cost is set*)**

Add “or 830-90”.

**37 Subsection 995-1(1) (at the end of the definition of *tax cost setting amount*)**

Add “or 830-95”.

## **Part 3—Amendment of the Income Tax (Transitional Provisions) Act 1997**

### **38 At the end of Part 4-5**

Add:

### **Division 830—Application of the foreign hybrid rules**

#### **Table of sections**

830-1	Standard application
830-5	Election to extend standard application for foreign hybrids
830-10	Election to extend standard application for CFCs with direct or indirect interests in foreign hybrid
830-15	Modified version of income tax law to apply for certain past income years
830-20	Modifications of income tax law

#### **830-1 Standard application**

##### *Foreign hybrids*

- (1) Division 830 of the *Income Tax Assessment Act 1997* applies to assessments for the 2003-2004 income year, and each later income year, of a taxpayer who will as a result be a partner in an entity that is a foreign hybrid in relation to that income year.

##### *CFCs that are, directly or indirectly, partners in foreign hybrids*

- (2) Division 830 of the *Income Tax Assessment Act 1997* applies for the purpose of working out the attributable income, in relation to an attributable taxpayer, for:
- (a) the statutory accounting period that starts on 1 July 2003 or on the day on which, as a result of an election under subsection 319(2) of the *Income Tax Assessment Act 1936*, the statutory accounting period that would otherwise start on 1 July 2003 starts; and
  - (b) each later statutory accounting period;  
of a CFC that:

- (c) will as a result be a partner in an entity that is a foreign hybrid in relation to that statutory accounting period; or
- (d) has, directly or indirectly through one or more other entities, an interest in another entity that will, as a result, be a foreign hybrid in relation to that statutory accounting period.

**830-5 Election to extend standard application for foreign hybrids**

- (1) If a taxpayer will, as a result of making an election under this subsection, be a partner in an entity that is a foreign hybrid in relation to the 2002-2003 income year, the taxpayer may elect that Division 830 of the *Income Tax Assessment Act 1997* applies to the taxpayer's assessment for the 2002-2003 income year.
- (2) If:
  - (a) a taxpayer is, as a result of subsection 830-1(1) of this Act, a partner in an entity that is a foreign hybrid in relation to the 2003-2004 income year; and
  - (b) the entity is a foreign hybrid in relation to that income year in a case where the requirements in subsection 830-15(3) of the *Income Tax Assessment Act 1997* are satisfied;the taxpayer may elect that Division 830 of the *Income Tax Assessment Act 1997* applies to the taxpayer's assessment for the 2002-2003 income year as if the entity were a foreign hybrid in relation to that income year.
- (3) A taxpayer must make an election under this section:
  - (a) on or before the day on which the taxpayer lodges its income tax return for the 2003-2004 income year; or
  - (b) within a further time allowed by the Commissioner.
- (4) The election is irrevocable.

**830-10 Election to extend standard application for CFCs with direct or indirect interests in foreign hybrid**

- (1) If:
    - (a) an entity is an attributable taxpayer in relation to a CFC at the end of the statutory accounting period that starts on 1 July 2002 or on the day on which, as a result of an election under subsection 319(2) of the *Income Tax Assessment Act 1936*,
-

the statutory accounting period that would otherwise start on 1 July 2002 starts; and

(b) either:

- (i) if the attributable taxpayer makes an election under this subsection, the CFC will, as a result, be a partner in an entity that is a foreign hybrid in relation to that statutory accounting period; or
- (ii) the CFC has, directly or indirectly through one or more other entities, an interest in another entity that, if the attributable taxpayer makes an election under this subsection, will, as a result, be a foreign hybrid in relation to that statutory accounting period;

the attributable taxpayer may elect that Division 830 of the *Income Tax Assessment Act 1997* applies for the purpose of working out the attributable income of the CFC for the statutory accounting period.

(2) If:

(a) for the purpose of working out the attributable income of a CFC in relation to an attributable taxpayer, a CFC:

- (i) is, as a result of subsection 830-1(2) of this Act, a partner in an entity that is a foreign hybrid in relation to the statutory accounting period mentioned in paragraph (a) of that subsection; or
- (ii) has, directly or indirectly through one or more other entities, an interest in another entity that is, as a result of subsection 830-1(2) of this Act, a foreign hybrid in relation to that statutory accounting period; and

(b) the entity mentioned in subparagraph (a)(i) or (ii) is also a foreign hybrid in relation to that statutory accounting period in a case where the requirements in subsection 830-15(3) of the *Income Tax Assessment Act 1997* are satisfied;

the attributable taxpayer may elect that Division 830 of the *Income Tax Assessment Act 1997* applies for the purpose of working out the attributable income of the CFC, in relation to the attributable taxpayer, for the preceding statutory accounting period.

(3) An attributable taxpayer must make an election under this section:

- (a) on or before the day on which it lodges its income tax return for the 2003-2004 income year; or
- (b) within a further time allowed by the Commissioner.

- (4) The election is irrevocable.

**830-15 Modified version of income tax law to apply for certain past income years**

*Basic rule*

- (1) Subject to subsection (3), if:
- (a) an income year (the *past income year*) of a taxpayer started before:
    - (i) if section 830-5 of this Act does not apply to the taxpayer—the 2003-2004 income year; or
    - (ii) if that section applies to the taxpayer—the 2002-2003 income year; and
  - (b) either:
    - (i) a statutory accounting period of a CFC, in relation to which the taxpayer was an attributable taxpayer at the end of that period and had an attribution percentage greater than nil, ended in the past income year; or
    - (ii) the taxpayer had an interest in a FIF at the end of the past income year; and
  - (c) the CFC or FIF would have been a foreign hybrid in relation to the past income year under:
    - (i) section 830-10 of the *Income Tax Assessment Act 1997* (disregarding paragraph (1)(e) of that section); or
    - (ii) section 830-15 of that Act (disregarding paragraph (1)(d) and subsection (3) of that section);if that section had been in force in the past income year;
- then, for the purposes mentioned in subsection (2) of this section, the *Income Tax Assessment Act 1936* applies with the modifications set out in section 830-20 of this Act in working out:
- (d) the attributable income of the CFC for the statutory accounting period that ended in the past income year; or
  - (e) the notional income of the FIF for the notional accounting period that ends in the past income year.

*Purposes*

- (2) The purposes are:

- (a) any amendment of an assessment of the taxpayer for the past income year made before the commencement of this section; and
- (b) the making of an assessment of the taxpayer for the past income year between the commencement of this section and the end of 30 June 2004; and
- (c) any amendment of such an assessment; and
- (d) the making of any assessment of the taxpayer for the past income year that takes place after 30 June 2004 and before the end of the time within which, if that assessment had been made on 1 July 2004, the Commissioner could amend the assessment under paragraph 170(2)(b), (c) or (d) of the *Income Tax Assessment Act 1936*; and
- (e) any amendment of such an assessment.

*Exception*

- (3) If:
  - (a) apart from this subsection, subsection (1) would apply to a taxpayer in relation to a CFC for a past income year; and
  - (b) before the commencement of this section, the taxpayer lodged its income tax return for the past income year; and
  - (c) the taxpayer prepared the income tax return on the basis that, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the CFC was a resident of no particular unlisted country;then subsection (1) does not apply to the taxpayer in relation to the CFC for the past income year unless:
  - (d) if there is only one past income year to which paragraphs (a) to (c) of this subsection apply—the taxpayer elects that the subsection applies for the past income year; or
  - (e) if there is more than one past income year to which paragraphs (a) to (c) of this subsection apply—the taxpayer elects that the subsection applies for all of those past income years.
- (4) The taxpayer must make the election:
  - (a) on or before the day on which the taxpayer lodges its income tax return for the 2003-2004 income year; or
  - (b) within a further time allowed by the Commissioner.

- (5) The election is irrevocable.

### 830-20 Modifications of income tax law

- (1) This section sets out the modifications of the *Income Tax Assessment Act 1936* that, if section 830-15 of this Act so provides, apply in working out for a taxpayer:
- (a) the attributable income of a CFC for the statutory accounting period that ended in an income year; or
  - (b) the notional income of a FIF for the notional accounting period that ended in an income year.

#### *CFC—residence*

- (2) If the CFC is not a resident of a particular listed country or a particular unlisted country for the purposes of Part X of the *Income Tax Assessment Act 1936* (including after applying section 331 of that Act), then for the purposes of that Part, the CFC is taken to be a resident of the country under whose laws it was formed.

#### *CFC—foreign tax paid by taxpayer*

- (3) For the purpose of subsection 393(1) of the *Income Tax Assessment Act 1936*, if the taxpayer paid foreign tax (the **actual foreign tax**) on its interest in an amount included in the notional assessable income of the CFC for the statutory accounting period, then the CFC is taken to have paid foreign tax in respect of the amount equal to the actual foreign tax divided by the taxpayer's direct attribution interest in the CFC at the end of the statutory accounting period.

#### *CFC—foreign tax paid by another CFC*

- (4) For the purpose of subsection 393(1) of the *Income Tax Assessment Act 1936*, if:
- (a) on the assumption in paragraph 830-15(1)(c) of this Act, another CFC (the **tracing CFC**) would have been a partner in the foreign entity that the CFC mentioned in subsection (1) of this section (the **foreign hybrid CFC**) would have been; and
  - (b) the taxpayer had an attribution tracing interest in the tracing CFC that was taken into account in calculating the taxpayer's

attribution percentage for the foreign hybrid CFC at the end of the statutory accounting period; and

- (c) the tracing CFC paid foreign tax (the *actual foreign tax*) on its interest in an amount included in the notional assessable income of the foreign hybrid CFC for the statutory accounting period;

then the foreign hybrid CFC is taken to have paid foreign tax, in respect of the amount included in its notional assessable income, equal to the actual foreign tax divided by the tracing CFC's direct attribution interest in the foreign hybrid CFC at the end of the statutory accounting period.

*FIF—foreign tax paid by taxpayer*

- (5) For the purpose of section 573 of the *Income Tax Assessment Act 1936*, if the taxpayer paid foreign tax (the *actual foreign tax*) on its interest in an amount included in the notional income of the FIF for the notional accounting period, then the FIF is taken to have paid foreign tax in respect of that amount equal to the actual foreign tax divided by the attribution percentage applicable under section 581 of that Act to the taxpayer in respect of the taxpayer's interests in the FIF at the end of the notional accounting period.

## Schedule 11—Technical amendments

### Part 1—Amendments commencing on 16 July 1999

#### *Income Tax Assessment Act 1936*

#### 1 After section 160AQCND

Insert:

#### **160AQCNDA Carry forward of exempting surplus**

- (1) If a former exempting company has a class A exempting surplus at the end of a franking year, there arises at the beginning of the next franking year a class A exempting credit of the company equal to that class A exempting surplus.
- (2) If a former exempting company has a class C exempting surplus at the end of a franking year, there arises at the beginning of the next franking year a class C exempting credit of the company equal to that class C exempting surplus.

#### 2 Application

Section 160AQCNDA of the *Income Tax Assessment Act 1936* applies in relation to franking years ending after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

## **Part 2—Amendments commencing on 22 December 1999**

### **Division 1—Withholding from mining payments**

#### ***Taxation Administration Act 1953***

##### **3 Subsection 12-320(2) in Schedule 1**

Repeal the subsection, substitute:

- (2) Subsection (1) does not require the entity to withhold more than the \* mining withholding tax payable in respect of the \* mining payment.

Note: Section 128V of the *Income Tax Assessment Act 1936* deals with mining withholding tax liability.

### **Division 2—Administrative penalties**

#### ***Taxation Administration Act 1953***

##### **4 Section 16-30 in Schedule 1 (heading)**

Repeal the heading, substitute:

##### **16-30 Failure to withhold: administrative penalty for entity other than exempt Australian government agency**

##### **5 Section 16-35 in Schedule 1 (heading)**

Repeal the heading, substitute:

##### **16-35 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment other than dividend, interest or royalty**

##### **6 Subsection 16-35(1) in Schedule 1 (note 2)**

Omit “civil”, substitute “administrative”.

##### **7 Section 16-40 in Schedule 1 (heading)**

Repeal the heading, substitute:

**16-40 Failure to withhold: administrative penalty for exempt  
Australian government agency in relation to dividend,  
interest or royalty payment**

**8 Subsection 16-140(3) in Schedule 1**

Omit “a civil”, substitute “an administrative”.

**9 Part 4-25 in Schedule 1 (heading)**

Repeal the heading, substitute:

**Part 4-25—Charges and administrative penalties  
for failing to meet obligations**

**10 Section 288-10 in Schedule 1**

Omit “a civil”, substitute “an administrative”.

**11 Section 288-10 in Schedule 1 (note 2)**

Omit “civil”, substitute “administrative”.

**12 Section 288-20 in Schedule 1**

Omit “a civil”, substitute “an administrative”.

**13 Section 288-20 in Schedule 1 (note 2)**

Omit “civil”, substitute “administrative”.

**14 Division 298 in Schedule 1 (heading)**

Repeal the heading, substitute:

**Division 298—Machinery provisions for administrative  
penalties**

**Division 3—Correcting cross-reference**

***Taxation Administration Act 1953***

**15 Paragraph 18-75(3)(b) in Schedule 1**

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Omit “(2)(b)”, substitute “(1)(b)”.

#### **Division 4—Interest on overpayments**

#### ***Taxation (Interest on Overpayments and Early Payments) Act 1983***

#### **16 Paragraph 8G(1)(f)**

Omit “first instalment day”, substitute “final instalment day”.

## **Part 3—Amendments commencing on 30 June 2000**

### **Division 1—Life assurance company definition**

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

#### **17 Subsection 6H(6) (paragraph (a) of the definition of *credit union*)**

Omit “within the meaning of Division 8 of Part III”.

#### **18 Application**

The amendment of section 6H of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

#### **19 Section 102M (definition of *life assurance company*)**

Repeal the definition.

#### **20 Application**

The amendment of section 102M of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

#### **21 Paragraph 128B(3)(gb)**

Omit “(within the meaning of Division 8)”.

#### **22 Application**

The amendment of section 128B of the *Income Tax Assessment Act 1936* made by this Division applies in relation to dividends paid after 30 June 2000.

#### **23 Subsection 160AAB(1) (paragraph (a) of the definition of *eligible 26AH amount*)**

Omit “within the meaning of Division 8”.

#### **24 Application**

The amendment of paragraph (a) of the definition of *eligible 26AH amount* in subsection 160AAB(1) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

**25 Subsection 160AAB(1) (paragraph (b) of the definition of eligible 26AH amount)**

Repeal the paragraph.

**26 Application**

The repeal of paragraph (b) of the definition of *eligible 26AH amount* in subsection 160AAB(1) of the *Income Tax Assessment Act 1936* by this Division applies in relation to policies issued on or after 1 July 2000.

**27 Subparagraph 279D(1)(a)(ii)**

Omit “or registered organization”.

**28 Application**

The amendment of section 279D of the *Income Tax Assessment Act 1936* made by this Division applies to payments made on or after 1 July 2000.

**29 Paragraphs 279E(1)(b) and (c)**

Omit “or a registered organisation”.

**30 Application**

The amendment of section 279E of the *Income Tax Assessment Act 1936* made by this Division applies to policies issued on or after 1 July 2000.

**31 Paragraphs 289A(1)(b) and (c)**

Omit “or a registered organisation”.

**32 Application**

The amendment of section 289A of the *Income Tax Assessment Act 1936* made by this Division applies to policies issued on or after 1 July 2000.

**33 Paragraph 272-125(2)(c) in Schedule 2F**

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Omit “(within the meaning of section 110)”.

### **34 Application**

The amendment of section 272-125 in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income ending after 30 June 2000.

### ***Income Tax Assessment Act 1997***

#### **35 Section 10-5 (table item headed “insurance”)**

Omit “*life assurance companies*”, substitute “*life insurance companies*”.

### ***Superannuation Contributions Tax (Assessment and Collection) Act 1997***

#### **36 Section 43 (definition of *life assurance company*)**

Omit “Division 8 of Part III”, substitute “subsection 6(1)”.

### **37 Application**

The amendment of section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* made by this Division applies in relation to financial years ending after 30 June 2000.

## **Division 2—Disallowance of deductions**

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

#### **38 Paragraph 51AAA(1)(a)**

Omit “116CD(2), 116GB(2) or”.

#### **39 Paragraph 51AAA(1)(a)**

Omit “*life assurance companies*, registered organisations or”.

### **40 Application**

The amendments of section 51AAA of the *Income Tax Assessment Act 1936* made by this Division apply in relation to income derived on or after 1 July 2000.

## **Division 3—Deductions for life assurance premiums**

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

#### **41 Paragraph 67AAA(2)(a)**

Omit “a risk component within the meaning of section 110”, substitute “the risk component of the premium”.

#### **42 Subsection 67AAA(3)**

Insert:

*risk component* of a premium for a life assurance policy means the amount of the premium worked out on the basis specified in the regulations.

#### **43 Application**

The amendments of section 67AAA of the *Income Tax Assessment Act 1936* made by this Division apply in relation to financing costs incurred on or after 1 July 2000.

## **Part 4—Amendments commencing on 1 July 2000**

### **Division 1—Mutual life assurance company definition**

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

##### **44 Subsection 6(1) (definition of *mutual life assurance company*)**

Repeal the definition, substitute:

*mutual life assurance company* means a life assurance company the profits of which are divisible only among the policy holders.

##### **45 Subsection 26BC(1) (paragraph (b) of the definition of *public company*)**

Omit “(within the meaning of section 110)”.

##### **46 Subparagraph 103A(2)(d)(i)**

Omit “as defined by section 110”.

#### ***Income Tax Rates Act 1986***

##### **47 Subparagraph 23(4A)(c)(i)**

Omit “(within the meaning of section 110 of the Assessment Act as in force immediately before 1 July 2000)”.

##### **48 Application**

The amendment of subparagraph 23(4A)(c)(i) of the *Income Tax Rates Act 1986* made by this Division applies in relation to the year of income including 1 July 2000 and later years of income.

### **Division 2—Due date for income tax**

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

##### **49 After subsection 204(1)**

Insert:

(1AA) To avoid doubt, the reference in subparagraph (1)(a)(ii) to an assessment does not include a reference to an amended assessment.

## **50 Application**

The amendment of section 204 of the *Income Tax Assessment Act 1936* made by this Division applies in relation to income tax for the 2000-01 year of income and later years of income.

## **Division 3—Repeal of various redundant provisions**

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

#### **51 Subsection 267(1) (definition of *superannuation policy*)**

Repeal the definition.

### ***Income Tax Assessment Act 1997***

#### **52 Section 12-5 (table item headed “insurance and annuity business”)**

Repeal the item.

#### **53 Section 50-15 (note)**

Repeal the note.

#### **54 Section 118-1 (note 1)**

Omit “• section 116DK (about life insurance companies);”.

#### **55 Subsection 995-1(1) (definition of *CS/RA class*)**

Repeal the definition.

#### **56 Subsection 995-1(1) (definition of *CS/RA component*)**

Repeal the definition.

#### **57 Subsection 995-1(1) (definition of *registered organisation*)**

Repeal the definition.

#### **58 Subsection 995-1(1) (definition of *tax advantaged business*)**

Repeal the definition.

**59 Subsection 995-1(1) (definition of *tax advantaged insurance fund*)**

Repeal the definition.

**Division 4—SGIOs**

***Income Tax Assessment Act 1936***

**60 Subsection 6(1) (definition of *SGIO*)**

Repeal the definition.

**61 Section 24AN**

Omit “or an SGIO”.

**62 Section 24AN (note 3)**

Repeal the note.

**63 Application**

The amendments of section 24AN of the *Income Tax Assessment Act 1936* made by this Division apply to income derived on and after 1 July 2000.

**Division 5—Registered organizations**

***Income Tax Assessment Act 1936***

**64 Subsection 6H(6) (definition of *credit union*)**

Repeal the definition, substitute:

*credit union* means a credit union as defined in section 23G, except a life assurance company.

**65 Application**

The amendment of section 6H of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**66 Subsection 27A(1) (definition of *registered organization*)**

Repeal the definition.

**67 Paragraph 27A(12)(c)**

Omit “or registered organisation”.

**68 Application**

The amendments of section 27A of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

**69 Subparagraph 103A(2)(d)(ia)**

Repeal the subparagraph.

**70 Application**

The amendment of section 103A of the *Income Tax Assessment Act 1936* made by this Division applies to years of income starting on or after 1 July 2000.

**71 Section 140C (definition of *registered organisation*)**

Repeal the definition.

**72 Application**

The amendment of section 140C of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**73 Section 140ZI**

Omit “or a registered organisation”.

Note: The heading to section 140ZI is altered by omitting “or registered organisation”.

**74 Application**

The amendment of section 140ZI of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**75 Subsection 159GP(1) (definition of *ineligible annuity*)**

Omit “or by a registered organization, within the meaning of that Subdivision,”.

## 76 Application

The amendment of section 159GP of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

## 77 Subsection 267(1) (definition of *registered organization*)

Repeal the definition.

## 78 Subsection 275(1)

Omit “, registered organisation”.

## 79 Application

The amendment of subsection 275(1) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income starting on or after 1 July 2000.

## 80 Paragraph 275(5)(b)

Omit “or registered organization”.

## 81 Application

The amendment of subsection 275(5) of the *Income Tax Assessment Act 1936* made by this Division applies in relation to policies issued on or after 1 July 2000.

## 82 Section 299B

Omit “or a registered organization”.

## 83 Application

The amendment of section 299B of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

## 84 Subsection 299D(1)

Omit “or a registered organization”.

## 85 Application

The amendment of section 299D of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**86 Paragraph 272-125(2)(d) in Schedule 2F**

Repeal the paragraph.

**87 Application**

The amendment of section 272-125 in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Division applies on and after 1 July 2000.

***Income Tax Assessment Act 1997***

**88 Subsection 152-305(1) (note 2)**

Omit “or registered organisations”.

**89 Subsection 152-325(7) (note)**

Omit “or registered organisations”.

***Superannuation Contributions Tax (Assessment and Collection) Act 1997***

**90 Section 43 (paragraph (b) of the definition of *member*)**

Omit “or from a registered organisation”.

**91 Saving**

If, immediately before 1 July 2000, a person was a member as defined in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (as in force at that time), the person does not cease to be a member for the purposes of that Act because of the amendment of the definition of *member* in that section made by this Division.

**92 Section 43 (definition of *registered organisation*)**

Repeal the definition.

**93 Section 43 (paragraph (c) of the definition of *superannuation provider*)**

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

**94 Section 43 (paragraph (d) of the definition of *superannuation provider*)**

Repeal the paragraph.

## 95 Saving

If, immediately before 1 July 2000, an entity (as defined in the *Income Tax Assessment Act 1997*) was a superannuation provider as defined in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (as in force at that time), the entity does not cease to be a superannuation provider for the purposes of that Act because of the amendments of the definition of *superannuation provider* in that section made by this Division.

## *Superannuation Guarantee (Administration) Act 1992*

### 96 Paragraph 15A(3)(a)

Omit “or a registered organisation”.

Note: The heading to subsection 15A(3) is altered by omitting “*or registered organisation*”.

### 97 Subsection 15A(6) (definition of *benefit body*)

Omit “, an RSA provider or a registered organisation”, substitute “or an RSA provider”.

### 98 Subsection 15A(6) (definition of *life assurance company*)

Omit “27A(1)”, substitute “6(1)”.

### 99 Subsection 15A(6) (definition of *registered organisation*)

Repeal the definition.

## 100 Application

The amendments of the *Superannuation Guarantee (Administration) Act 1992* made by this Division apply in relation to test times (within the meaning of section 15A of that Act) on or after 1 July 2000.

## **Division 6—Miscellaneous amendments relating to repeal of Divisions 8 and 8A of Part III of the Income Tax Assessment Act 1936**

## *Income Tax Assessment Act 1936*

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**101 Subsection 27A(1) (paragraph (a) of the definition of *eligible annuity*)**

Repeal the paragraph.

**102 Subsection 27A(1) (paragraph (a) of the definition of *qualifying annuity*)**

Repeal the paragraph, substitute:

- (a) an annuity purchased after 12 January 1987, wholly with rolled-over amounts, that has at any time been an eligible annuity in relation to any taxpayer; or

**103 Subparagraph 27A(12)(c)(iii)**

Omit “an Australian policy (as defined by subsection 110(1))”, substitute “a life assurance policy issued in Australia”.

**104 Application**

The amendments of section 27A of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

**105 Subsection 67AAA(3) (definition of *life assurance policy*)**

Repeal the definition.

**106 Application**

The amendment of section 67AAA of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**107 Section 102M (definition of *eligible policy*)**

Repeal the definition, substitute:

*eligible policy* means:

- (a) an exempt life insurance policy (as defined in the *Income Tax Assessment Act 1997*); or
- (b) a virtual PST life insurance policy (as defined in that Act).

**108 Section 102M (definition of *life assurance business*)**

Repeal the definition.

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## 109 Application

The amendments of section 102M of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

## 110 Subsection 159SJ(1) (paragraph (a) of the definition of *applicable fund*)

Omit “a CS policy, or an exempt policy,”, substitute “an exempt life insurance policy (as defined in the *Income Tax Assessment Act 1997*)”.

## 111 Subsection 159SJ(1) (definition of *CS policy*)

Repeal the definition.

## 112 Subsection 159SJ(1) (definition of *exempt policy*)

Repeal the definition.

## 113 Subsection 159SJ(1) (paragraph (b) of the definition of *superannuation pension*)

Omit “a CS policy or an exempt policy, being in each case a policy”, substitute “an exempt life insurance policy (as defined in the *Income Tax Assessment Act 1997*) that is”.

## 114 Application

The amendments of section 159SJ of the *Income Tax Assessment Act 1936* made by this Division apply to assessments for years of income starting on or after 1 July 2000.

## 115 Subparagraph 279D(1)(a)(ii)

Omit “an exempt policy (within the meaning of Division 8 of Part III) or RA policy (within the meaning of Division 8 of Part III)”, substitute “either an exempt life insurance policy (as defined in the *Income Tax Assessment Act 1997*) or a life assurance policy covered by subparagraph (b)(i) of the definition of *virtual PST life insurance policy* in subsection 995-1(1) of that Act while the policy was held by the deceased person,”.

## 116 Application

The amendment of section 279D of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**117 Subsection 290A(4) (definition of CS policy)**

Repeal the definition.

**118 Subsection 290A(4) (subparagraph (b)(ii) of the definition of fixed interest complying ADF)**

Repeal the subparagraph, substitute:

- (ii) virtual PST life insurance policies (as defined in the *Income Tax Assessment Act 1997*) issued by a life assurance company.

**119 Application**

The amendments of section 290A of the *Income Tax Assessment Act 1936* made by this Division apply to years of income starting on or after 1 July 2000.

**120 Subsection 482(1)**

Omit “an Australian policy as defined by section 110”, substitute “a policy issued in Australia”.

**121 Application**

The amendment of section 482 of the *Income Tax Assessment Act 1936* made by this Division applies in relation to notional accounting periods starting on or after 1 July 2000.

**Division 7—Life assurance company definition in section 27A of the Income Tax Assessment Act 1936**

*Income Tax Assessment Act 1936*

**122 Subsection 27A(1) (definition of life assurance company)**

Repeal the definition.

**123 Application**

The amendment of section 27A of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**124 Section 140C (definition of *life assurance company*)**

Repeal the definition.

**125 Application**

The amendment of section 140C of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

**126 Subsection 159GP(1) (definition of *ineligible annuity*)**

Omit “, within the meaning of Subdivision AA of Division 2,”.

**127 Application**

The amendment of section 159GP of the *Income Tax Assessment Act 1936* made by this Division applies to assessments for years of income starting on or after 1 July 2000.

***Superannuation Guarantee (Administration) Act 1992***

**128 Subsection 15A(6) (definition of *life assurance company*)**

Omit “27A(1)”, substitute “6(1)”.

**129 Application**

The amendment of the *Superannuation Guarantee (Administration) Act 1992* made by this Division applies in relation to test times (within the meaning of section 15A of that Act) on or after 1 July 2000.

## **Part 5—Amendment commencing on 30 June 2001**

### *Taxation Administration Act 1953*

#### **130 Paragraph 298-5(b) in Schedule 1**

Omit “162-C”, substitute “162-D”.

## Part 6—Amendments commencing on 1 July 2001

### *Income Tax Assessment Act 1936*

**131 Subsection 22A(1) (table item 7, column headed “Corresponding provision of the *Income Tax Assessment Act 1997*”)**

Omit “sections 50-10 and 50-20”, substitute “section 50-10”.

**132 Section 102M (paragraph (a) of the definition of *exempt entity*)**

Omit “50-20,”.

**133 Application**

The amendment of section 102M of the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

**134 Subsection 121F(1) (paragraph (aa) of the definition of *relevant exempting provision*)**

Omit “50-20,”.

**135 Application**

The amendment of section 121F of the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

**136 Subparagraph 128B(3)(a)(i)**

Omit “, 50-10 or 50-20”, substitute “or 50-10”.

**137 Application**

The amendment of section 128B of the *Income Tax Assessment Act 1936* made by this Part applies in relation to income derived on or after 1 July 2001.

**138 Paragraph 269B(1)(b)**

Omit “50-20,”.

**139 Paragraph 272-90(7)(b) in Schedule 2F**

Omit “, 50-10 or 50-20”, substitute “or 50-10”.

**140 Application**

The amendment of paragraph 272-90(7)(b) in Schedule 2F to the *Income Tax Assessment Act 1936* made by this Part applies in relation to the year of income including 1 July 2001 and later years of income.

***Income Tax Assessment Act 1997***

**141 Section 11-5 (table item headed “finance”)**

Repeal the item.

**142 Subparagraph 43-55(1)(a)(i)**

Omit “50-20,”.

**143 Application**

The amendment of section 43-55 of the *Income Tax Assessment Act 1997* made by this Part applies in relation to the income year including 1 July 2001 and later income years.

## Part 7—Amendments commencing on Royal Assent

### *Income Tax Assessment Act 1997*

#### **144 Section 208-145 (table item 2, column headed “If:”)**

Omit “this item”, substitute “item 7 of the table in section 208-115”.

#### **145 Application**

The amendment of section 208-145 of the *Income Tax Assessment Act 1997* made by this Part applies in relation to income years ending on or after 1 July 2002.

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

Insert:

*SPOR taxpayer* has the meaning given by section 6AD of the *Income Tax Assessment Act 1936*.

### *Income Tax Rates Act 1986*

#### **147 Subsection 12(6)**

After “13”, insert “, 14”.

#### **148 Paragraph 12(7)(a) (definition of *B*)**

Omit “or credit”, substitute “, credit or other tax offset (as defined in the *Income Tax Assessment Act 1997*)”.

#### **149 Paragraph 12(7)(b) (definition of *B*)**

Omit “or credit”, substitute “, credit or other tax offset (as defined in the *Income Tax Assessment Act 1997*)”.

#### **150 Paragraph 12(8)(a) (definition of *B*)**

Omit “or credit”, substitute “, credit or other tax offset (as defined in the *Income Tax Assessment Act 1997*)”.

#### **151 Paragraph 12(8)(b) (definition of *B*)**

Omit “or credit”, substitute “, credit or other tax offset (as defined in the *Income Tax Assessment Act 1997*)”.

**152 Subsections 23(5) and (6)**

Omit “or credit”, substitute “, credit or other tax offset (as defined in the *Income Tax Assessment Act 1997*)”.

**153 Application**

The amendments of the *Income Tax Rates Act 1986* (except the amendment of subsection 12(6) of that Act) made by this Part apply to assessments for the 1998-99 year of income and later years of income.

***Income Tax (Transitional Provisions) Act 1997***

**154 After Division 205**

Insert:

**Division 208—Exempting entities and former exempting entities**

**Table of sections**

208-111 Converting former exempting company’s exempting account balance on 30 June 2002

**208-111 Converting former exempting company’s exempting account balance on 30 June 2002**

- (1) This section has effect for the purposes of working out the following for a company that was a former exempting company (as defined in Part IIIAA of the *Income Tax Assessment Act 1936*) at the end of 30 June 2002:
  - (a) whether the company has an exempting surplus or an exempting deficit for the purposes of the *Income Tax Assessment Act 1997* at a time after 30 June 2002;
  - (b) the company’s class A exempting account balance (as defined in that Part) at a time after 30 June 2002;
  - (c) the company’s class C exempting account balance (as defined in that Part) at a time after 30 June 2002.

*Class A exempting surplus at the end of 30 June 2002*

- (2) If the company had a class A exempting surplus (as defined in Part IIIAA of the *Income Tax Assessment Act 1936*) at the end of 30 June 2002:
- (a) a class A exempting debit equal to the surplus is taken to have arisen immediately before the end of 30 June 2002 for the purposes of that Part; and
  - (b) an exempting credit of the amount worked out using the formula is taken to have arisen at the start of 1 July 2002 in the exempting account that the company has under section 208-110 of the *Income Tax Assessment Act 1997*:

$$\text{Amount of the surplus} \times \frac{39}{61}$$

Note: Section 205-5 (with sections 160APU and 160AQCNM of the *Income Tax Assessment Act 1936*) may affect whether the company had such a surplus at the end of 30 June 2002 and the amount of that surplus, but this section does not (because this section affects the company's exempting account balance only after then).

*Class C exempting surplus at the end of 30 June 2002*

- (3) If the company had a class C exempting surplus (as defined in Part IIIAA of the *Income Tax Assessment Act 1936*) at the end of 30 June 2002:
- (a) a class C exempting debit equal to the surplus is taken to have arisen immediately before the end of 30 June 2002 for the purposes of that Part; and
  - (b) an exempting credit of the amount worked out using the formula is taken to have arisen at the start of 1 July 2002 in the exempting account that the company has under section 208-110 of the *Income Tax Assessment Act 1997*:

$$\text{Amount of the surplus} \times \frac{30}{70}$$

Note: Section 205-5 (with sections 160APU and 160AQCNM of the *Income Tax Assessment Act 1936*) may affect whether the company had such a surplus at the end of 30 June 2002 and the amount of that surplus, but this section does not (because this section affects the company's exempting account balance only after then).

*Class A exempting deficit at end of 30 June 2002*

- (4) If the company had a class A exempting deficit (as defined in Part IIIAA of the *Income Tax Assessment Act 1936*) at the end of 30 June 2002 and its 2001-02 franking year (as defined in that Part) ended earlier:
- (a) a class A exempting credit equal to the deficit is taken to have arisen at the end of 30 June 2002 for the purposes of that Part; and
  - (b) an exempting debit of the amount worked out using the formula is taken to have arisen at the start of 1 July 2002 in the exempting account that the company has under section 208-110 of the *Income Tax Assessment Act 1997*:

$$\text{Amount of the deficit} \times \frac{39}{61}$$

Note: If the company's 2001-02 franking year ended at the end of 30 June 2002 and it would have had a class A exempting deficit at that time apart from section 160AQCNO of the *Income Tax Assessment Act 1936*, that section will have eliminated the deficit and either:

- (a) increased the company's liability for franking deficit tax; or
- (b) reduced the franking credit arising under section 205-10 of this Act in the franking account the company has under the *Income Tax Assessment Act 1997*.

*Class C exempting deficit at end of 30 June 2002*

- (5) If the company had a class C exempting deficit (as defined in Part IIIAA of the *Income Tax Assessment Act 1936*) at the end of 30 June 2002 and its 2001-02 franking year (as defined in that Part) ended earlier:
- (a) a class C exempting credit equal to the deficit is taken to have arisen at the end of 30 June 2002 for the purposes of that Part; and
  - (b) an exempting debit of the amount worked out using the formula is taken to have arisen at the start of 1 July 2002 in the exempting account that the company has under section 208-110 of the *Income Tax Assessment Act 1997*:

$$\text{Amount of the deficit} \times \frac{30}{70}$$

Note: If the company's 2001-02 franking year ended at the end of 30 June 2002 and it would have had a class C exempting deficit at that time apart from section 160AQCNO of the *Income Tax Assessment Act 1936*, that section will have eliminated the deficit and either:

- (a) increased the company's liability for franking deficit tax; or
- (b) reduced the franking credit arising under section 205-10 of this Act in the franking account the company has under the *Income Tax Assessment Act 1997*.

### ***Taxation Administration Act 1953***

#### **155 Subsection 2(1) (at the end of paragraphs (a) to (dac) of the definition of *law enforcement agency*)**

Add "or".

#### **156 Subsection 2(1) (paragraph (dad) of the definition of *law enforcement agency*)**

Repeal the paragraph.

#### **157 Subsection 2(1) (at the end of paragraph (dae) of the definition of *law enforcement agency*)**

Add "or".

#### **158 Subsection 2(1) (paragraph (daf) of the definition of *law enforcement agency*)**

Repeal the paragraph, substitute:

(daf) the Crime and Misconduct Commission of Queensland; or

#### **159 Subsection 2(1) (at the end of paragraph (da) of the definition of *law enforcement agency*)**

Add "or".

#### **160 Sections 47 and 48**

Repeal the sections.

## **Part 8—Amendments commencing on Royal Assent or later**

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

#### **161 Subsection 121F(1) (paragraph (c) of the definition of *relevant exempting provision*)**

Repeal the paragraph, substitute:

(c) paragraph 320-37(1)(a) of the *Income Tax Assessment Act 1997*;

#### **162 Application**

The amendment of section 121F of the *Income Tax Assessment Act 1936* applies in relation to amounts derived on or after 1 July 2000.

### ***Taxation Administration Act 1953***

#### **163 Section 16-43 in Schedule 1 (heading)**

Repeal the heading, substitute:

#### **16-43 Failure to withhold: administrative penalty for exempt Australian government agency in relation to payment to foreign resident etc.**

#### **164 Subsection 16-43(2) in Schedule 1 (note)**

Omit “civil”, substitute “administrative”.

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*[Minister's second reading speech made in—  
House of Representatives on 26 June 2003  
Senate on 11 September 2003]*

(122/03)