Tax Laws Amendment (2004 Measures No. 6) Act 2005

No. 23, 2005

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

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

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Tax Laws Amendment (2004 Measures No. 6) Act 2005

No. 23, 2005

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

[*Assented to 21 March 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2004 Measures No. 6) Act 2005*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 March 2005
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	21 March 2005
3. Schedule 3, item 1	The day on which this Act receives the Royal Assent.	21 March 2005
4. Schedule 3, items 2 and 3	Immediately after the commencement of the provisions covered by table item 3.	
5. Schedule 3, item 4	Immediately after the commencement of the provisions covered by table item 4.	
6. Schedule 3, items 5 to 114	The day on which this Act receives the Royal Assent.	21 March 2005
7. Schedules 4 to 10	The day on which this Act receives the Royal Assent.	21 March 2005
8. Schedule 11	Immediately after the *Taxation Laws Amendment Act (No. 8) 2003* received the Royal Assent.	21 October 2003
9. Schedule 12, item 1	1 July 2000.	1 July 2000
10. Schedule 12, items 2 to 6	The day on which this Act receives the Royal Assent.	21 March 2005
11. Schedule 12, items 7 and 8	1 July 2000.	1 July 2000
12. Schedule 12, item 9	1 July 2001.	1 July 2001

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
13. Schedule 12, item 10	1 July 2000.	1 July 2000
14. Schedule 12, item 11	The day on which this Act receives the Royal Assent.	21 March 2005

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

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

4 Amendment of assessments

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

Schedule 1—Consolidation

Part 1—Application

1 Application

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

Part 2—Membership rules and insolvency etc.

Income Tax Assessment Act 1997

2 At the end of section 703-30 (after the note)

Add:

(3) For the purposes of this section, one entity is not prevented from being the beneficial owner of a *membership interest in another entity merely because the first entity is or becomes:

(a) an externally-administered body corporate within the meaning of the *Corporations Act 2001*; or

(b) an entity with a status under a *foreign law similar to the status of an externally-administered body corporate under the *Corporations Act 2001*.

Part 3—Finance leases

Income Tax Assessment Act 1997

3 Subsection 705-25(5) (note)

Omit "Note", substitute "Note 1".

4 At the end of subsection 705-25(5) (after the note)

Add:

Note 2: The joining entity's right to receive lease payments under a finance lease is treated as a retained cost base asset in some circumstances (see paragraph 705-56(3)(b)).

5 After section 705-55

Insert:

705-56 Modification for tax cost setting in relation to finance leases

(1) This section applies if, just before the joining time:

(a) the joining entity is the lessor or lessee under a lease of a *depreciating asset (the ***underlying asset***) to which Division 40 applies; and

(b) the joining entity classifies the lease, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, as a finance lease.

Joining entity is lessor

(2) If the joining entity is the lessor under the lease and *holds the underlying asset just before the joining time, subsection (5) applies, in relation to the joining entity, to the asset that is the joining entity's right to receive lease payments.

Note: In this situation, the underlying asset will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10).

(3) If the joining entity is the lessor under the lease and does *not* *hold the underlying asset just before the joining time:

(a) subsection (5) applies to the underlying asset in relation to the joining entity; and

(b) for the purposes of this Division:

(i) the joining entity's right to receive lease payments is taken to be a *retained cost base asset; and

(ii) the *tax cost setting amount of that retained cost base asset is taken to be equal to its *market value just before the joining time.

Note: In this situation, the asset that is the joining entity's right to receive lease payments will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10).

Joining entity is lessee

(4) If the joining entity is the lessee under the lease and does *not* *hold the underlying asset just before the joining time:

(a) subsection (5) applies to the underlying asset in relation to the joining entity; and

(b) the liability that is the lessee's obligation to make lease payments is *not* taken into account under subsection 705-70(1).

Note: If the joining entity is the lessee under the lease and holds the underlying asset just before the joining time:

(a) the underlying asset will have its tax cost set at the joining time because it would be an asset of the joining entity at that time if the single entity rule did not apply (see section 701-10); and

(b) the liability that is the lessee's obligation to make lease payments is taken into account under subsection 705-70(1).

Tax cost of certain assets set at nil

(5) If this subsection applies to an asset, in relation to the joining entity:

(a) the asset is *not* taken into account under paragraph 705-35(1)(b) or (c); and

(b) the asset's *tax cost setting amount is taken to be nil.

6 At the end of section 711-30

Add:

(3) However, that amount is the asset's *market value at the leaving time if:

(a) the asset (the ***receivable***) is a right to receive lease payments under a lease; and

(b) the receivables *tax cost was set when an entity (whether the leaving entity or another entity) became a *subsidiary member of the old group; and

(c) the receivable was taken to be a *retained cost base asset for the purposes of Division 705 when its tax cost was set, because of paragraph 705-56(3)(b).

7 After subsection 711-45(2)

Insert:

Exclusion where liability is obligation to make finance lease payments

(2A) An amount is not to be added for an accounting liability that is the leaving entity's obligation as lessee to make lease payments under a lease, if:

(a) subsection 705-56(4) applied in relation to the liability, at a time when an entity (whether the leaving entity or another entity) became a *subsidiary member of the old group; and

(b) the liability was *not* taken into account under subsection 705-70(1) at that time, because of paragraph 705-56(4)(b).

Part 4—Expenditure relating to mining or quarrying

Income Tax Assessment Act 1997

8 Section 716-100 (link note)

Repeal the link note, substitute:

Subdivision 716-E—Tax cost setting for exploration and prospecting assets

Table of sections

716-300 Prime cost method of working out decline in value

716-300 Prime cost method of working out decline in value

(1) This section has effect if:

(a) an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) because of subsection 40-80(1), the joining entity could (or did) deduct for a period before the joining time the *cost of a *depreciating asset that became an asset of the *head company of the group at the joining time because section 701-1 (Single entity rule) applied to the joining entity; and

(c) the joining entity could not deduct an amount under Subdivision 40-B (except because of subsection 40-80(1)) for the income year that includes the joining time for that cost.

Note: Subdivision 40-B allows deductions for the decline in value of depreciating assets. Subsection 40-80(1), which is in that Subdivision, provides that the decline in value of certain assets used for exploration and prospecting equals their cost.

(2) Subsection 701-55(2) has effect as if the *prime cost method for working out the decline in value of the *depreciating asset applied just before the joining time.

Note: This may affect both the method of working out the decline in value of the asset and the asset's effective life.

Income Tax (Transitional Provisions) Act 1997

9 Section 703-30 (link note)

Repeal the link note, substitute:

Division 705—Tax cost setting amount for assets where entities become members of consolidated groups

Table of Subdivisions

705-E Expenditure relating to exploration, mining or quarrying

Subdivision 705-E—Expenditure relating to exploration, mining or quarrying

Table of sections

705-300 Application and object of this Subdivision
705-305 Rules affecting depreciating assets
705-310 Adjustable value of head company's notional assets

705-300 Application and object of this Subdivision

(1) If an entity (the ***joining entity***) to which section 40-75 of this Act applied becomes a subsidiary member of a consolidated group at a time (the ***joining time***), this Subdivision applies in relation to:

(a) depreciating assets that:

(i) caused section 40-75 of this Act to apply to the joining entity; and

(ii) became assets of the head company of the group at the joining time because of section 701-1 (Single entity rule) of the *Income Tax Assessment Act 1997* operating in relation to the joining entity; and

(b) notional assets that sections 40-35, 40-37, 40-40 and 40-43 of this Act treat an entity as holding because of expenditure relating to such depreciating assets;

to affect the operation of Division 40, section 701-55 and Division 705 of that Act.

(2) The main object of this Subdivision is to ensure that entities are allowed only an appropriate amount of deductions in connection with such depreciating assets and such expenditure.

705-305 Rules affecting depreciating assets

(1) The main object of this section is to ensure that a depreciating asset's tax cost is set, and other matters relevant to working out the deductions of the head company of the consolidated group for the decline in value of the asset are dealt with, so as to:

(a) ensure that the head company does not get excessive deductions on account of expenditure (by any entity) relating to the asset; and

(b) reflect the deductions of an entity for a period ending before the joining time for expenditure relating to the asset; and

(c) ensure that the effective life of the asset for the head company reflects the rate or rates at which the joining entity was able to deduct expenditure relating to the asset (whether or not the expenditure formed part of the cost of the asset).

Prime cost method of working out decline in value of asset

(2) If the joining entity could not deduct an amount under Subdivision 40-B of the *Income Tax Assessment Act 1997* for the income year that includes the joining time for the decline in value of a depreciating asset, subsection 701-55(2) of that Act has effect as if the prime cost method for working out the decline in value of the asset applied just before the joining time.

Note: This may affect both the method of working out the decline in value of the asset and the asset's effective life.

Adjustable value of asset

(3) Division 705 of the *Income Tax Assessment Act 1997* has effect as if the adjustable value of a depreciating asset just before and at the joining time were increased by the amount described in subsection (4), if section 40-35, 40-37, 40-40 or 40-43 treated the joining entity as holding a notional asset.

Note: This affects not only the adjustable value of the depreciating asset but also the joining entity's terminating value for the asset (which section 705-30 of that Act defines as being equal to the asset's adjustable value just before the joining time).

(4) The amount of the increase is so much of the adjustable value of the notional asset just before the joining time as reasonably relates to the depreciating asset.

Cost of asset

(5) Division 705 of the *Income Tax Assessment Act 1997* has effect as if the cost of a depreciating asset were increased by expenditure incurred that did not form part of the asset's cost worked out under Division 40 of that Act but would have if it had been incurred just before the joining time under a contract entered into after 30 June 2001.

Earlier deductions for decline in value of asset

(6) Division 705 of the *Income Tax Assessment Act 1997* has effect as if deductions relating to expenditure described in subsection (5) were deductions for the decline in value of the depreciating asset.

Example: Such deductions include:

(a) deductions under former Subdivision 330-A, 330-C or 330-H of the *Income Tax Assessment Act 1997*, or a corresponding previous law, for the expenditure; and

(b) deductions under Division 40 of that Act for the decline in value of a notional asset that section 40-35, 40-37, 40-40 or 40-43 of this Act treated an entity as holding because of the expenditure.

Effective life of asset

(7) If a depreciating asset's tax cost setting amount does not exceed the joining entity's terminating value for the asset, Division 40 of the *Income Tax Assessment Act 1997* has effect as if the effective life of the asset were such period as is reasonable, having regard to the following:

(a) the remainder of the effective life of the asset, worked out just before the joining time;

(b) the remainder of the effective life, worked out just before the joining time, of each notional asset (which section 40-35, 40-37, 40-40 or 40-43 of this Act treats an entity as holding wholly or partly because of expenditure relating to the depreciating asset);

(c) any other relevant matters.

Subsection 701-55(2) of that Act has effect subject to this subsection.

Note 1: The effective life of the depreciating asset was set on 1 July 2001 by subsection 40-75(4) of this Act, but may have been reset since under Subdivision 40-B of the *Income Tax Assessment Act 1997*.

Note 2: The effective life of a notional asset is specified by whichever one of sections 40-35, 40-37, 40-40 and 40-43 of this Act is relevant to the notional asset.

Choosing to reduce tax cost setting amount of asset

(8) If:

(a) a depreciating asset's tax cost setting amount would be greater than the joining entity's terminating value for the asset; and

(b) the head company of the consolidated group chooses to apply this subsection to the asset;

the asset's tax cost setting amount is reduced so that it equals the terminating value.

Note 1: A consequence of the choice is that subsection (7) applies to the asset.

Note 2: The amount of the reduction is not re-allocated among other assets.

(9) Section 705-55 of the *Income Tax Assessment Act 1997* has effect as if subsection (8) of this section were included in section 705-45 of that Act.

Note: This affects the order of reductions in the asset's tax cost setting amount under subsection (8) of this section and sections 705-40 and 705-50 of the *Income Tax Assessment Act 1997*.

705-310 Adjustable value of head company's notional assets

Application

(1) If:

(a) section 40-35, 40-37, 40-40 or 40-43 of this Act treats the head company of the consolidated group as holding a notional asset at the joining time because expenditure is taken under section 701-5 (Entry history rule) of the *Income Tax Assessment Act 1997* to be expenditure of the head company; and

(b) section 40-35, 40-37, 40-40 or 40-43 of this Act treated the joining entity as holding a notional asset just before the joining time because of the expenditure;

this section affects the adjustable value of the head company's notional asset.

Object

(2) The object of this section is to ensure, by reducing the adjustable value of a notional asset of the head company, that the head company cannot get both:

(a) a deduction for the notional asset reflecting the amount of the expenditure relating to depreciating assets; and

(b) a deduction for that amount because of the decline in value of those depreciating assets.

Reduction at joining time for expenditure on depreciating assets

(3) The opening adjustable value of the head company's notional asset for the income year that includes the joining time is so much of the adjustable value of the joining entity's notional asset just before the joining time as does not reasonably relate to any depreciating asset.

Note: This offsets the increases in adjustable value of the head company's depreciating assets under subsection 705-305(3).

10 Section 707-405 (link note)

Repeal the link note, substitute:

Division 712—Certain rules for where entities cease to be subsidiary members of consolidated groups

Table of Subdivisions

712-E Expenditure relating to exploration, mining or quarrying

Subdivision 712-E—Expenditure relating to exploration, mining or quarrying

Table of sections

712-305 Reducing adjustable value of head company's notional asset

712-305 Reducing adjustable value of head company's notional asset

(1) This section reduces the adjustable value of a notional asset that section 40-35, 40-37, 40-38, 40-40 or 40-43 treats the head company of a consolidated group as holding, if:

(a) an entity (the ***leaving entity***) ceases to be a subsidiary member of the group at a time (the ***leaving time***); and

(b) that section treats the leaving entity as holding a notional asset because of section 701-40 (Exit history rule) of the *Income Tax Assessment Act 1997*.

Note: Section 701-40 (Exit history rule) of the *Income Tax Assessment Act 1997* treats as expenditure of the leaving entity certain expenditure incurred before the leaving time in relation to an asset or business that was an asset or business of the leaving entity at the leaving time.

(2) The adjustable value of the head company's notional asset is reduced at the leaving time by the adjustable value of the leaving entity's notional asset at that time.

Part 5—Low-value and software development pools

Income Tax Assessment Act 1997

11 Before Subdivision 716-Z

Insert:

Subdivision 716-G—Low-value and software development pools

Table of sections

Assets in joining entity's low-value pool

716-330 Head company's deductions for decline in value of assets in joining entity's low-value pool

Entity leaving group with asset allocated to head company's low-value pool

716-335 Entity leaving group with asset allocated to head company's low-value pool

Depreciating assets arising from expenditure in joining entity's software development pool

716-340 Depreciating assets arising from expenditure in joining entity's software development pool

Software development pools if entity leaves consolidated group

716-345 Head company taken not to have incurred expenditure

Assets in joining entity's low-value pool

716-330 Head company's deductions for decline in value of assets in joining entity's low-value pool

(1) This section modifies the operation of sections 40-430, 40-435, 40-440, 40-445, 701-10 and 701-60 and Division 705 for the head company core purposes mentioned in section 701-1 if:

(a) an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) there are one or more *depreciating assets (the ***previous pool assets***) that:

(i) were allocated to the joining entity's low-value pool; and

(ii) become assets of the *head company of the group at the joining time because section 701-1 applies to the joining entity; and

(c) *none* of the previous pool assets was an asset to which Division 58 applied to affect the joining entity's deductions relating to the asset.

Note 1: Sections 40-430, 40-435 and 40-440 are relevant to allocating depreciating assets to a low-value pool and to working out the decline in value of assets allocated to a low-value pool. Section 40-445 affects the closing pool balance, and may give rise to assessable income, if a balancing adjustment event happens to such an asset.

Note 2: Section 701-10 provides that, for each asset the joining entity has at the joining time, the asset's tax cost is set at the joining time at the asset's tax cost setting amount, which is defined by section 701-60 as the amount worked out under Division 705.

Note 3: Division 58 is about capital allowances for depreciating assets previously owned by an exempt entity.

Objects

(2) The main objects of this section are:

(a) to clarify how sections 40-430, 40-435 and 40-440 operate in relation to the previous pool assets; and

(b) to reduce compliance costs by providing that the *tax cost is set for all the previous pool assets in one operation, rather than individually for each such asset.

Time of allocation of assets to head company's low-value pool

(3) Sections 40-430, 40-435, 40-440 and 40-445 operate as if the *head company of the *consolidated group allocated the previous pool assets to a low-value pool for the income year that includes the joining time. Section 701-5 has effect subject to this subsection.

Note 1: Under section 40-435, the head company must make a reasonable estimate of the taxable use percentage for each asset.

Note 2: This subsection affects the percentages and amounts to be taken into account for working out under section 40-440 the decline in value of assets in the pool and the closing pool balance.

Allocating other low-cost assets to head company's low-value pool

(4) Subsection 40-430(1) operates as if the previous pool assets were *low-cost assets.

Note: This has the effect that the head company must allocate to the low-value pool each low-cost asset it starts to hold in the income year that includes the joining time or a later income year, whether or not the head company starts to hold the asset because of section 701-1.

If joining time was in first day of joining entity's income year

(5) If the joining time was in the first day of the joining entity's income year, section 40-440 operates as if:

(a) all the previous pool assets were *low-value assets; and

(b) the sum of the previous pool assets' *opening adjustable values for the income year that includes the joining time equalled the *tax cost setting amount for the hypothetical asset worked out on the basis described in subsections (7), (8) and (9) of this section.

If joining time was not in first day of joining entity's income year

(6) If the joining time was *not* in the first day of the joining entity's income year, section 40-440 operates as if:

(a) all the previous pool assets were *low-cost assets; and

(b) the sum of the previous pool assets' *costs equalled the total of:

(i) the *tax cost setting amount for the hypothetical asset worked out on the basis described in subsections (7), (8) and (9) of this section; and

(ii) the expenditure (if any) that was incurred after the joining time (but in the income year that includes that time) and included in the second element of the costs (ignoring this paragraph) of the previous pool assets.

Tax cost is set for assets collectively not individually

(7) Sections 701-10 and 701-60 and Division 705 operate as if all the previous pool assets formed a single *depreciating asset (the ***hypothetical asset***), and were not separate assets.

Modified operation of Division 705 for hypothetical asset

(8) Sections 705-40 and 705-57 operate as if the joining entity's *terminating value for the hypothetical asset were the amount worked out using the table:

Modification of basis on which sections 705-40 and 705-57 operate

	If the joining time is:	Sections 705-40 and 705-57 operate as if the joining entity's terminating value for the hypothetical asset were:
1	In the first day of an income year of the joining entity	The *closing pool balance for the joining entity's low-value pool for the previous income year
2	In another day	The *closing pool balance for the joining entity's low-value pool for the non-membership period described in section 701-30 that ends just before the joining time

Note: Sections 705-40 and 705-57 are about reduction of an asset's tax cost setting amount to an amount that may be affected by the joining entity's terminating value for the asset.

(9) Division 705 operates in relation to the hypothetical asset as if section 705-50 had not been enacted.

Note: Section 705-50 is about reduction of an asset's tax cost setting amount for over-depreciation of the asset.

Entity leaving group with asset allocated to head company's low-value pool

716-335 Entity leaving group with asset allocated to head company's low-value pool

(1) This section sets out rules affecting the *head company of a *consolidated group and an entity (the ***leaving entity***) that ceases to be a *subsidiary member of the group at a time (the ***leaving time***) in an income year (the ***leaving year***), if:

(a) a *depreciating asset becomes an asset of the leaving entity at the leaving time because section 701-1 (Single entity rule) ceases to apply to the leaving entity; and

(b) the asset was in the head company's low-value pool.

Note: Section 701-40 (Exit history rule) treats the asset as having been allocated to the leaving entity's low-value pool, with the taxable use percentage estimated by the head company, for the income year for

which the head company allocated the asset to the head company's low-value pool.

Objects

(2) The main objects of this section are:

(a) to ensure that the decline in value of assets in the *head company's low-value pool and the decline in value of assets in the leaving entity's low-value pool are worked out so that:

(i) for the leaving year, the *depreciating asset is taken into account in working out the decline in value of assets in the *head company's* low-value pool only; and

(ii) for later income years, the depreciating asset is taken into account in working out the decline in value of assets in the *leaving entity's* low-value pool only; and

(b) to specify the *adjustable value of the depreciating asset just before and at the leaving time.

Reduced decline in value for leaving entity for leaving year

(3) The decline in value worked out for the leaving year under subsection 40-440(1) for assets in the leaving entity's low-value pool is reduced by such amount as is reasonable to prevent duplication of deductions for the leaving year in respect of the *depreciating asset by the *head company and the leaving entity.

Reduced closing pool balance for head company's pool for leaving year

(4) The *closing pool balance of the *head company's low-value pool for the leaving year is reduced by so much of the balance as reasonably relates to the *depreciating asset.

Cost of head company's membership interests in leaving entity etc.

(5) Sections 701-15, 701-40 and 701-60 and Division 711 have effect as if the *adjustable value of the *depreciating asset for the *head company just before and at the leaving time were such amount as is reasonable, having regard to:

(a) the reduction described in subsection (4) of this section; and

(b) the taxable use percentage estimated for the depreciating asset by the head company under section 40-435.

Note 1: Section 701-15 provides that, for each membership interest the head company holds in the leaving entity, the interest's tax cost is set just before the leaving time at the interest's tax cost setting amount, which is defined by section 701-60 as the amount worked out under certain sections of Division 711.

Note 2: Division 711 sets the interest's tax cost setting amount by reference to the head company's terminating value of the asset, which is to be worked out under section 711-30 by reference to the adjustable value of the asset for the head company just before the leaving time.

Note 3: Section 701-40 has the effect that the adjustable value of the asset for the leaving entity at the leaving time is the same as the adjustable value of the asset for the head company then.

Depreciating assets arising from expenditure in joining entity's software development pool

716-340 Depreciating assets arising from expenditure in joining entity's software development pool

(1) This section modifies the basis on which Subdivision 40-B and sections 40-455, 701-10, 701-55 and 701-60 and Division 705 operate if:

(a) an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) the joining entity had incurred before the joining time expenditure that it allocated to a software development pool; and

(c) some or all of the expenditure is reasonably related to *in-house software that:

(i) is a *depreciating asset; and

(ii) became an asset of the *head company of the consolidated group at the joining time because section 701-1 (Single entity rule) applied to the joining entity.

Note 1: Subdivision 40-B allows deductions for the decline in value of a depreciating asset, but only if expenditure on the asset has not been allocated to a software development pool. Section 40-455 provides for deduction of expenditure allocated to such a pool. Section 701-5 (Entry history rule) treats the head company as having incurred the expenditure that was allocated to the pool.

Note 2: Section 701-10 provides that, for each asset the joining entity has at the joining time, the asset's tax cost is set at the joining time at the asset's tax cost setting amount, which is defined by section 701-60 as

the amount worked out under Division 705, which in turn depends on the adjustable value of the asset worked out under section 40-85.

Note 3: Section 701-55 affects matters relevant to working out the head company's deductions for the decline in value of depreciating assets that became assets of the head company at the joining time because section 701-1 (Single entity rule) applied to the joining entity.

Note 4: This section operates whether or not the joining entity's deductions under section 40-455 for the period before the joining time for expenditure allocated to the pool total 100% of the expenditure allocated to the pool.

Object

(2) The main object of this section is to ensure that:

(a) the *head company's deductions for the *in-house software:

(i) are *not* worked out under section 40-455 on the basis of section 701-5 (Entry history rule) treating the expenditure relating to the software as being the head company's expenditure; and

(ii) are instead worked out under Subdivision 40-B, using the *prime cost method with the *effective life given by subsection 40-95(7) and taking account of the *tax cost setting amount for the software; and

(b) the tax cost setting amount is worked out in a way that takes account of deductions for the period before the joining time for the expenditure reasonably related to the in-house software.

Joining entity taken not to have incurred certain expenditure

(3) Subdivision 40-B and section 40-455 operate for the head company core purposes mentioned in section 701-1 (Single entity rule) as if the expenditure reasonably related to the *in-house software had not been incurred by the joining entity.

Note 1: This has the effects that:

(a) subsection 40-50(2) does not apply because of section 701-5 (Entry history rule) to deny the head company deductions under Subdivision 40-B for the decline in value of the software; and

(b) the head company cannot deduct the expenditure under section 40-455 as it operates because of section 701-5.

Note 2: This does not prevent the head company from deducting under section 40-455 expenditure that is *not* reasonably related to the in-house software and that the head company is treated by

section 701-5 as having incurred and allocated to a software development pool because the joining entity did.

Prime cost method of working out decline in value of software

(4) Subsection 701-55(2) operates as if the *prime cost method of working out the decline in value of the *in-house software applied just before the joining time.

Note: This affects the method of working out the decline in value of the software for the head company of the consolidated group.

Effective life of software

(5) Subdivision 40-B operates as if the *effective life of the *in-house software were the period specified for in-house software in subsection 40-95(7). Subsection 701-55(2) is subject to this subsection.

Cost of in-house software

(6) Sections 701-10 and 701-60 and Division 705 (and section 40-85, so far as it affects that Division) operate as if the *cost of the *in-house software were the total amount of the joining entity's expenditure that reasonably related to the software and was allocated to a software development pool.

Earlier decline in value of the in-house software

(7) Sections 701-10 and 701-60 and Division 705 (and section 40-85, so far as it affects that Division) operate as if the decline in value, and deductions for the decline in value, of the *in-house software for a period before the joining time were the amount worked out under subsection (8).

(8) Work out the amount by:

(a) working out, for each software development pool to which expenditure relating to the *in-house software was allocated, the amount of the joining entity's deductions under section 40-455 that reasonably relates to the software; and

(b) adding up each of those amounts if there are 2 or more such pools.

Note: Subsections (6), (7) and (8) can affect the working out of the tax cost setting amount for the in-house software in these ways:

(a) one way is by affecting the adjustable value of the software, which may be worked out under section 40-85 by reference to the decline in value of the software, and which is relevant to section 705-50 (which reduces the tax cost setting amount for over-depreciated assets);

(b) another way is by affecting the joining entity's terminating value for the software, which section 705-30 defines as being the adjustable value of the software just before the joining time, and which is relevant to sections 705-40, 705-50 and 705-57 (which may reduce the tax cost setting amount for the software);

(c) another way is by affecting section 705-50, whose operation depends on the decline in value, and deductions for the decline in value, of the software (among other things).

Software development pools if entity leaves consolidated group

716-345 Head company taken not to have incurred expenditure

(1) This section has effect if:

(a) an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group at a time in an income year (the ***leaving year***); and

(b) under section 701-40 (Exit history rule), expenditure is taken to have been allocated by the leaving entity to a software development pool.

Note: Section 701-40 treats expenditure incurred by the head company of the consolidated group and allocated by that company to a software development pool as having been incurred by the leaving entity and allocated by it to a software development pool.

(2) Work out deductions of the *head company of the *consolidated group for income years after the leaving year as if the head company had not incurred the expenditure.

(3) The leaving entity cannot deduct an amount for the leaving year for the expenditure it is taken to have allocated to the software development pool.

Income Tax (Transitional Provisions) Act 1997

12 After Division 713

Insert:

Division 716—Miscellaneous special rules

Table of Subdivisions

716-G Software development pools

Subdivision 716-G—Software development pools

Table of sections

716-340 Expenditure incurred before 1 July 2001 and allocated to a software pool

716-340 Expenditure incurred before 1 July 2001 and allocated to a software pool

Sections 716-340 and 716-345 of the *Income Tax Assessment Act 1997* operate in relation to a thing mentioned in column 1 of an item of the table in the same way as they operate in relation to a thing mentioned in column 2 of the item.

Extended operation of sections of the *Income Tax Assessment Act 1997*

	Column 1 **Sections 716-340 and 716-345 of the *Income Tax Assessment Act 1997* operate in relation to:**	**Column 2** **In the same way as they operate in relation to:**
1	Former section 46-90 of that Act	Section 40-455 of that Act
2	A software pool created under former Subdivision 46-D of that Act	A software development pool
3	Expenditure in a software pool under former Subdivision 46-D of that Act	Expenditure allocated to a software development pool
4	Software, expenditure on which was in a software pool under former Subdivision 46-D of that Act	In-house software, expenditure on the development of which is allocated to a software development pool

Part 6—Notice requirements for inter-entity loss multiplication rules

Income Tax Assessment Act 1997

13 At the end of subsection 165-115ZC(1)

Add:

Note: Section 165-115ZC of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this section.

14 Subsection 165-115ZC(4)

Omit "later", substitute "latest".

15 After paragraph 165-115ZC(4)(b)

Insert:

(c) the time (if any) specified by the Commissioner;

16 Subsection 165-115ZC(5)

Omit "6 months after the later", substitute "6 months after the latest".

17 After paragraph 165-115ZC(5)(d)

Insert:

(e) the time (if any) specified by the Commissioner;

18 After subsection 165-115ZC(7)

Insert:

Commissioner's power to specify a later time for giving notice

(7A) The Commissioner may, by written notice given to an entity, or *loss company, that is required to give a notice under subsection (4) or (5), specify a time later than the alteration time as the start of the 6 months mentioned in the subsection.

Commissioner's power to waive requirement for notice

(7B) The Commissioner may give an entity or *loss company a written declaration that subsection (4) or (5) does not apply to require the

entity or company to give a notice relating to the alteration time. If the Commissioner does so, the subsection does not apply in relation to the alteration time.

Considerations relating to Commissioner's powers

(7C) In deciding whether to specify a time for the purposes of subsection (4) or (5) or declare that the subsection does not apply, the Commissioner must consider:

(a) the consequences of doing so for each entity to which notice must be given under the subsection (apart from any such declaration); and

(b) any other matters that the Commissioner considers relevant.

19 Application

The amendments of section 165-115ZC of the *Income Tax Assessment Act 1997* made by this Part apply if the alteration time mentioned in that section is after 10 November 1999.

Income Tax (Transitional Provisions) Act 1997

20 At the end of section 165-115ZC

Add:

Special rules for consolidatable groups and potential MEC groups

(4) Subsections (5) and (6) have effect if:

(a) the alteration time mentioned in section 165-115ZC of the *Income Tax Assessment Act 1997* is after 10 November 1999 and before 1 July 2004; and

(b) apart from this section, subsection 165-115ZC(4) or (5) of that Act would require an entity (the ***notifying entity***) to give a notice to another entity (the ***receiving entity***) in relation to the alteration time; and

(c) just before the alteration time, the notifying entity and the receiving entity were both members of the same consolidatable group or potential MEC group.

(5) Subsections 165-115ZC(4) and (5) of the *Income Tax Assessment Act 1997* do not apply to the notifying entity if both it and the

receiving entity became members of the same consolidated group or MEC group before 1 July 2004.

(6) Even if subsection (5) does not apply, the notifying entity is not required to give the notice to the receiving entity before the end of 6 months after the commencement of this subsection.

(7) Subsections (1) and (3) have effect subject to subsections (5) and (6).

Part 7—Source of certain distributions for allocable cost amount purposes

Income Tax Assessment Act 1997

21 After subsection 705-50(3)

Insert:

(3A) A way in which the extent to which dividends were paid out of profits that were not subject to income tax may be worked out is by:

(a) assuming that dividends were paid out of profits of income years in order from the most recent to the earliest; and

(b) assuming that, for any income year for which dividends were paid out of profits in accordance with paragraph (a), they were, to the extent they were not *franked distributions, paid out of profits of that income year that were not subject to income tax before they were paid out of such profits that were subject to income tax.

22 At the end of section 705-90

Add:

(10) Without limiting paragraph (9)(b), a way in which, for the purposes of subsection (7), the amount of a profit that accrued to the joined group during a particular period may be worked out is by:

(a) assuming that profits of income years were distributed in order from the most recent to the earliest; and

(b) assuming that, for any income year for which distributions were paid out of profits in accordance with paragraph (a), they were, to the extent they were not *franked distributions, paid out of profits of that income year that were not subject to income tax before they were paid out of such profits that were subject to income tax.

23 At the end of paragraph 705-95(b)

Add:

Note: As well as subsection 705-90(7), paragraph 705-90(9)(b) and subsection 705-90(10) are relevant to working out whether or not profits accrued to the joined group before the joining time.

Part 8—Certain losses not taken into account under step 3 of allocable cost amount

Income Tax Assessment Act 1997

24 After subsection 705-90(2)

Insert:

(2A) However, if a loss that did not accrue to the joined group before the joining time (subsection (8) states what it means for a loss to accrue to the joined group before the joining time) would be taken into account in working out the undistributed profits, the loss is not so taken into account.

Part 9—Transitional treatment of tax liabilities for allocable cost amount and CGT purposes

Income Tax (Transitional Provisions) Act 1997

25 After section 701-30

Insert:

701-32 No adjustment of amount of liabilities required in working out allocable cost amount

(1) This section has effect for the purposes of applying section 705-70 (step 2 of allocable cost amount) of the *Income Tax Assessment Act 1997* in relation to a transitional entity.

(2) In spite of subsection 705-70(1A) of that Act, if the amount of an accounting liability of the transitional entity would be different when it becomes an accounting liability of the transitional group, that difference is not taken into account in working out the amount of the liability.

701-34 CGT event L7 does not happen in respect of certain liabilities

CGT event L7 does not happen if the liability mentioned in section 104-530 of the *Income Tax Assessment Act 1997* is one that satisfies the conditions in section 701-32 of this Act.

Part 10—Entry and exit history rules and choices

Income Tax Assessment Act 1997

26 After Subdivision 715-H

Insert:

Subdivision 715-J—Entry history rule and choices

Table of sections

Head company's choice overriding entry history rule

715-660 Head company's choice overriding entry history rule

Choices head company can make ignoring entry history rule to override inconsistencies

715-665 Head company's choice to override inconsistency

Choices with ongoing effect

715-670 Ongoing effect of choices made by entities before joining group
715-675 Head company adopting choice with ongoing effect

Head company's choice overriding entry history rule

715-660 Head company's choice overriding entry history rule

Application

(1) This section has effect if an entity becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***) and either:

(a) the question whether the entity had made a choice (however described) under a provision (the ***choice provision***) listed in the table was relevant to working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular *sort, calculated by reference to an income year starting before the joining time; or

(b) before the joining time, the entity made a choice that:

(i) is described in paragraph (a); and

(ii) would, if the entity had not become a subsidiary member of a consolidated group, have started to have effect for working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular *sort, calculated by reference to the first income year starting after the joining time.

List

Item	Provision	Subject of provision
1	A provision of Part X or XI of the *Income Tax Assessment Act 1936* for an irrevocable declaration, election, choice or selection	Attribution of income in respect of controlled foreign companies (if the provision is in Part X), or foreign investment funds and foreign life assurance policies (if the provision is in Part XI)
2	Section 70-70	Valuing interests in *FIFs that are trading stock
3	Item 1 of the table in subsection 960-60(1)	Choosing to use an *applicable functional currency
4	A provision that: (a) provides for a choice (however described); and (b) is a provision of regulations made for the purposes of this Act, other than this item; and (c) is prescribed by regulations made for the purposes of this item	Choice about a matter described in the regulations

Note: Declarations, elections and selections made under the choice provision by the entity are all examples of choices under that provision (even though the provision does not call them choices), because the entity has chosen to make them.

Objects

(2) The main objects of this section are:

(a) to override section 701-5 (Entry history rule) in relation to a choice (however described) by the entity under the choice provision or the absence of such a choice; and

(b) to extend, in some cases, the time for the *head company of the *consolidated group to make a choice (however described) under the choice provision after the joining time; and

(c) to modify, in some cases, the time at which such a choice by the head company starts to have effect.

Overriding the entry history rule

(3) For the head company core purposes set out in section 701-1 (Single entity rule), ignore a choice (however described) made by the entity under the choice provision or the absence of such a choice.

Extension of time for head company to make choice

(4) If:

(a) because of:

(i) the fact that the entity became a *subsidiary member of the *consolidated group; and

(ii) section 701-1 (Single entity rule);

the question whether the *head company of the group has made a choice (however described) under the choice provision becomes relevant for the head company core purposes set out in that section; and

(b) there is a limit (outside this section) on the period within which the head company may make such a choice;

the head company has until the later of these times to make such a choice:

(c) the last time the head company may make the choice (apart from this subsection);

(d) the end of 90 days after the Commissioner is given notice under Division 703 that the entity has become a *member of the group or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

When head company's choice starts to have effect

(5) If the *head company of the *consolidated group makes a choice (however described) under the choice provision as a result of becoming able to make the choice because the entity became a

*subsidiary member of the group at the joining time, the choice starts to have effect:

(a) at the joining time; or

(b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the joining time occurs.

Note: Subsection (5) has effect whether or not subsection (4) contributed to the head company becoming able to make the choice.

Relationship with other provisions

(6) Section 701-5 (Entry history rule) and the choice provision have effect subject to this section.

Choices head company can make ignoring entry history rule to override inconsistencies

715-665 Head company's choice to override inconsistency

Application

(1) This section has effect if:

(a) an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) for each of the following entities, the question whether the entity had made a choice (however described) under a provision (the ***choice provision***) listed in the table was relevant to working out the entity's liability (if any) for income tax, or the entity's loss (if any) of a particular *sort, calculated by reference to an income year starting before the joining time:

(i) the joining entity;

(ii) another entity that was a *member of the group at the joining time; and

(c) there was an inconsistency because, just before the joining time, such a choice had effect for one of the entities but not for the other.

List		
Item	**Provision**	**Subject of provision**
1	Section 148 of the *Income Tax Assessment Act 1936*	Reinsurance with non-residents
2	Section 775-80	Choosing not to have sections 775-70 and 775-75 apply to deal with *forex realisation gains and *forex realisation losses
3	A provision that: (a) provides for a choice (however described); and (b) is a provision of regulations made for the purposes of this Act, other than this item; and (c) is prescribed by regulations made for the purposes of this item	Choice about a matter described in the regulations

Note 1: The other entity mentioned in subparagraph (1)(b)(ii) may have become a member of the group either before or at the joining time. That other entity may be either another subsidiary member of the group or the head company of the group.

Note 2: An election by an entity under section 148 of the *Income Tax Assessment Act 1936* is an example of a choice under that provision (even though that section does not call the election a choice) because the entity has chosen to make the election.

Object

(2) The main objects of this section are:

(a) to override the inconsistency; and

(b) to displace section 701-5 (Entry history rule), so far as it relates to the inconsistency; and

(c) to allow the *head company of the *consolidated group to make a choice (however described) under the choice provision.

Overriding the inconsistency

(3) Neither of these things relating to an entity that becomes a *member of the *consolidated group at the joining time has effect

for the head company core purposes set out in section 701-1 (Single entity rule):

(a) a choice (however described) by the entity having effect under the choice provision before that time;

(b) the absence of such a choice.

Note: This affects all entities that become members of the consolidated group at the joining time, including the head company if the joining time is the time at which the group comes into existence.

(4) However, if the choice provision is section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents):

(a) subsection (3) of this section does not apply in relation to reinsurance under contracts made before the joining time (but does apply in relation to reinsurance under contracts made at or after that time); and

(b) that section applies for the head company core purposes in relation to reinsurance under a contract made before the joining time by an entity (the ***contracting party***) that became a *member of the *consolidated group at or before the joining time:

(i) as if the *head company of the consolidated group had made an election under that section, if the contracting party had made such an election that was relevant to working out the party's liability (if any) for income tax, or the party's *tax loss (if any), for an income year in connection with the contract; or

(ii) as if the head company had not made such an election, if the contracting party had not made such an election that was relevant to working out the party's liability (if any) for income tax, or the party's tax loss (if any), for an income year in connection with the contract.

Choice replacing inconsistency

(5) If:

(a) the question whether the *head company of the *consolidated group has made a choice (however described) under the choice provision is relevant for the head company core purposes set out in section 701-1 (Single entity rule); and

(b) there is a limit (outside this section) on the period within which the head company may make such a choice;

the head company has until the later of these times to make such a choice:

(c) the last time the head company may make the choice (apart from this subsection);

(d) the end of 90 days after the Commissioner is given notice under Division 703 that the joining entity has become a *member of the group or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

Note: If the joining time is when the consolidated group is formed, the Commissioner should be given notice under Division 703 that the joining entity has become a member of the group when the approved form of the choice to form the group is given to the Commissioner.

When head company's choice starts to have effect

(6) If the *head company of the *consolidated group makes a choice (however described) under the choice provision as a result of becoming able to make the choice because the joining entity became a *member of the group, the choice starts to have effect:

(a) at the joining time; or

(b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the joining time occurs.

(7) However, if:

(a) the *head company of the *consolidated group makes a choice as described in subsection (6); and

(b) the choice is an election under section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents);

the election has effect only for the purposes of that section applying in relation to reinsurance under contracts made after the joining time and in an income year for which the election applies under that section.

Note: Subsection (4) explains how section 148 of the *Income Tax Assessment Act 1936* applies in relation to reinsurance under contracts made before the joining time.

Relationship with other provisions

(8) Section 701-5 (Entry history rule) and the choice provision have effect subject to this section.

Choices with ongoing effect

715-670 Ongoing effect of choices made by entities before joining group

(1) This section has effect if the question whether the *head company of a *consolidated group has made a choice (however described) under a provision listed in the table is relevant for the head company core purposes set out in section 701-1 (Single entity rule) because of something happening in relation to a thing:

(a) that is an asset, right, liability or obligation of the head company; and

(b) that the head company started to have, at the time (the ***joining time***) an entity (the ***joining entity***) became a *subsidiary member of the group, because of that section and the fact that (ignoring that section) the entity had the thing at the joining time.

List

Item	Provision	Subject of provision
1	Section 775-150	Choice to apply rules about disregarding certain *forex realisation gains and *forex realisation losses

(2) The *head company is taken to have made such a choice if the joining entity had one in effect before the joining time.

(3) The *head company is taken not to have made the choice if the joining entity did not have one in effect before the joining time.

715-675 Head company adopting choice with ongoing effect

(1) This section has effect, despite section 715-670, if:

(a) an entity that becomes a *member of a *consolidated group had a choice (however described) in effect under a provision (the ***choice provision***) listed in that section before becoming a member of the group; and

(b) the time at which the entity becomes a member of the group is the first time at which an entity that had a choice (however described) in effect under the choice provision before becoming a member of the group became a member of the group; and

(c) the *head company of the group chooses in writing, before:
(i) the end of 90 days after the Commissioner is given notice under Division 703 that the entity has become a member of the group; or
(ii) a later time allowed by the Commissioner;
to be treated as if the head company had made a choice under the choice provision.

(2) The *head company is taken to have made a choice under the choice provision for these purposes:
(a) the head company core purposes set out in section 701-1 (Single entity rule);
(b) the purposes of the application of section 715-670 and paragraph (1)(a) in relation to another *consolidated group of which the company later becomes a *subsidiary member.

Subdivision 715-K—Exit history rule and choices

Table of sections

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715-700 Choices leaving entity can make ignoring exit history rule

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715-705 Choices leaving entity can make ignoring exit history rule to overcome inconsistencies

Choices leaving entity can make ignoring exit history rule

715-700 Choices leaving entity can make ignoring exit history rule

Application

(1) This section has effect if:
(a) an entity ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***); and
(b) the question whether the *head company of the group had made a choice (however described) under a provision (the ***choice provision***) listed in the table in subsection 715-660(1)

was relevant to working out that company's liability (if any) for income tax, or the entity's loss (if any) of a particular *sort, calculated by reference to an income year starting before the leaving time.

Note: Declarations, elections and selections made under the choice provision at the option of a company are all examples of choices under that provision (even though it does not call them choices) because the company has chosen to make them.

Objects

(2) The main objects of this section are:

(a) to override section 701-40 (Exit history rule) and let the entity make a choice (however described) under the choice provision with effect after the leaving time; and

(b) to extend, in some cases, the time for the entity to make such a choice after the leaving time; and

(c) to modify, in some cases, the rules about when such a choice by the entity starts to have effect.

Overriding the exit history rule

(3) For the entity core purposes set out in section 701-1 (Single entity rule) relating to income years ending after the leaving time, ignore a choice (however described) made by the *head company of the *consolidated group under the choice provision or the absence of such a choice.

Fresh choice by the entity

(4) The entity may make a choice (however described) under the provision if the question whether the entity has made such a choice is relevant to working out the entity's liability (if any) for income tax, or loss (if any) of a particular *sort, calculated by reference to an income year ending after the leaving time.

Extension of time for fresh choice by the entity

(5) If there is a time limit (apart from this subsection) on the entity making such a choice, the entity has until the later of these times to make the choice:

(a) the last time it may make the choice under the provision (apart from this section);

(b) the end of 90 days after the leaving time or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

Start of effect of choice

(6) If the entity makes a choice because of this section, the choice starts to have effect:

(a) at the leaving time; or

(b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the leaving time occurs.

Relationship with other provisions

(7) Section 701-40 (Exit history rule) and the choice provision have effect subject to this section.

Choices leaving entity can make ignoring exit history rule to overcome inconsistencies

715-705 Choices leaving entity can make ignoring exit history rule to overcome inconsistencies

Application

(1) This section has effect if an entity ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***) and there is an inconsistency because either:

(a) both of these conditions are met:

(i) a choice (however described) under a provision (the ***choice provision***) listed in the table in subsection 715-665(1) by the entity had effect just before the entity became a *member of the group;

(ii) there was not such a choice by the *head company of the group having effect just before the leaving time; or

(b) both of these conditions are met:

(i) there was not a choice (however described) under the choice provision by the entity having effect just before the entity became a member of the group;

(ii) such a choice by the head company had effect just before the leaving time.

Note: An election by the entity or head company under the choice provision is an example of a choice under that provision (even though the provision does not call the election a choice) because the entity or company has chosen to make the election.

Object

(2) The main objects of this section are:

(a) to displace section 701-40 (Exit history rule), so far as it relates to the inconsistency; and

(b) to allow the entity to make a choice (however described) under the choice provision with effect after the leaving time.

Displacing the exit history rule

(3) For the entity core purposes set out in section 701-1 (Single entity rule) relating to income years ending after the leaving time, ignore a choice (however described) made by the *head company of the *consolidated group under the choice provision or the absence of such a choice.

(4) However, if the choice provision is section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents):

(a) subsection (3) of this section does not apply in relation to reinsurance under contracts made before the leaving time (but does apply in relation to reinsurance under contracts made at or after that time); and

(b) that section applies, for the entity core purposes relating to income years ending after the leaving time, in relation to reinsurance under a contract made before the leaving time:

(i) as if the entity had made an election under that section, if the *head company of the *consolidated group made, or was treated as having made, such an election that was relevant to working out that company's liability (if any) for income tax, or that company's *tax loss (if any), for an income year in connection with the contract; or

(ii) as if the entity had not made such an election, if the head company had not made, and was not treated as having made, such an election that was relevant to working out that company's liability (if any) for income

tax, or that company's tax loss (if any), for an income year in connection with the contract.

Note: In some cases, subsection 715-665(4) treats the head company of a consolidated group as having made an election under section 148 of the *Income Tax Assessment Act 1936* in relation to reinsurance under contracts made before an entity becomes a member of the group.

Fresh choice by the entity

(5) The entity may make a choice (however described) under the choice provision if the question whether the entity has made such a choice is relevant to working out the entity's liability (if any) for income tax, or loss (if any) of a particular *sort, calculated by reference to an income year ending after the leaving time.

Extension of time for fresh choice by the entity

(6) If there is a time limit (apart from this subsection) on the entity making such a choice, the entity has until the later of these times to make the choice:

(a) the last time it may make the choice under the choice provision (apart from this section);

(b) the end of 90 days after the leaving time or, if the Commissioner allows a later time for the purposes of this paragraph, that later time.

Start of effect of choice

(7) If the entity makes a choice because of this section, the choice starts to have effect:

(a) at the leaving time; or

(b) if the choice relates (explicitly or implicitly) to one or more whole income years—for the income year in which the leaving time occurs.

(8) However, if:

(a) the entity makes a choice because of this section; and

(b) the choice is an election under section 148 of the *Income Tax Assessment Act 1936* (Reinsurance with non-residents);

the election has effect only for the purposes of that section applying in relation to reinsurance under contracts made at or after

the leaving time and in an income year for which the election applies under that section.

Note: Subsection (4) explains how section 148 of the *Income Tax Assessment Act 1936* applies in relation to reinsurance under contracts made before the joining time.

Relationship with other provisions

(9) Section 701-40 (Exit history rule) and the choice provision have effect subject to this section.

27 Subdivisions 717-F and 717-G

Repeal the Subdivisions.

Income Tax (Transitional Provisions) Act 1997

28 After Division 713

Insert:

Division 715—Interactions between the consolidation rules and other areas of the income tax law

Table of Subdivisions

715-J Entry history rule and choices
715-K Exit history rule and choices

Subdivision 715-J—Entry history rule and choices

Table of sections

715-658 Application
715-659 Extension of time for making choice if joining time was before commencement

715-658 Application

Subdivision 715-J of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002.

715-659 Extension of time for making choice if joining time was before commencement

(1) This section extends the time given by each of the following provisions of the *Income Tax Assessment Act 1997* for making a choice because an entity becomes a member of a consolidated group, if, before the commencement of the provision, the Commissioner is given notice under Division 703 that the entity has become a member of the group:

(a) subsection 715-660(4);

(b) subsection 715-665(5);

(c) paragraph 715-675(1)(c).

(2) A reference in each of those provisions to the end of 90 days after the Commissioner is given notice under Division 703 that the entity has become a member of the group has effect as if it were a reference to the end of 90 days after the commencement of the provision.

Subdivision 715-K—Exit history rule and choices

Table of sections

715-698 Application
715-699 Extension of time for making choice if leaving time was before commencement

715-698 Application

Subdivision 715-K of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002.

715-699 Extension of time for making choice if leaving time was before commencement

(1) This section extends the time given by each of the following provisions of the *Income Tax Assessment Act 1997* for making a choice because an entity ceases to be a subsidiary member of a consolidated group at the leaving time, if the leaving time is before the commencement of the provision:

(a) subsection 715-700(5);

(b) subsection 715-705(6).

(2) A reference in each of those provisions to the end of 90 days after the leaving time has effect as if it were a reference to the end of 90 days after the commencement of the provision.

Part 11—Trusts

Income Tax Assessment Act 1997

29 Section 705-60 (table item 3, column headed "What the step requires")

Omit "in respect of discretionary interests".

30 Section 705-60 (table item 3, column headed "Purpose of the step")

Omit "in respect of discretionary interests".

31 Section 713-25 (heading)

Repeal the heading, substitute:

713-25 Undistributed, realised profits that accrue to joined group before joining time and could be distributed tax free—step 3 in working out allocable cost amount

32 Subparagraph 713-25(1)(c)(ii)

Omit "*not* be taken into account", substitute "be disregarded".

Schedule 2—Copyright collecting societies

Income Tax Assessment Act 1997

1 Section 10-5 (after table item dealing with partnerships)

Insert:

payments to members of copyright collecting societies

payments by copyright collecting societies 15-22

2 Section 11-15 (before table item dealing with credit unions)

Insert:

copyright collecting societies

copyright income ..... 51-43(2)(a)

non-copyright income up to certain limits ..... 51-43(2)(b)

3 Section 15-20

Before "Your", insert "(1)".

4 At the end of section 15-20

Add:

(2) Subsection (1) does not apply to an amount of a payment to which section 15-22 applies.

5 After section 15-20

Insert:

15-22 Payments made to members of a copyright collecting society

(1) This section, instead of Division 6 of Part III of the *Income Tax Assessment Act 1936*, applies to a payment that a *copyright collecting society, to which section 51-43 applies, makes to you as a *member of the society.

(2) Your assessable income includes the amount of the payment, except to the extent that the payment represents an amount on which the directors of the society are or have been assessed, and

are liable to pay tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*.

Note: Section 410-5 of this Act requires a copyright collecting society to give you a notice at the time of payment.

6 After section 51-40

Insert:

51-43 Income collected or derived by a copyright collecting society

(1) This section applies to a *copyright collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.

(2) The following are exempt from income tax:

(a) *copyright income collected or *derived by the society in an income year;

(b) *non-copyright income derived by the society in an income year to the extent that it does not exceed the lesser of:

(i) 5% of the total amount of the copyright income and non-copyright income collected and derived by the society in the income year; and

(ii) $5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

7 Section 405-50 (link note)

Repeal the link note, substitute:

Division 410—Copyright collecting societies

410-1 What this Division is about

This Division sets out rules that apply whenever a copyright collecting society to which section 51-43 applies makes a payment to a member of the society.

Table of sections

Operative provision

410-5 Copyright collecting society must give a notice to a member of the society

Operative provision

410-5 Copyright collecting society must give a notice to a member of the society

(1) This section applies to a *copyright collecting society to which section 51-43 applies.

(2) If the society makes a payment to a *member of the society, the society must give the member a notice, in writing, that states:

(a) the name of the society and the member; and

(b) the total amount of the payment; and

(c) the amount of the payment on which the directors of the society are or have been assessed, and are liable to pay tax, under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*; and

(d) the amount of the payment that is to be included in the member's assessable income under section 15-22 of this Act.

Note 1: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* a society is liable to an administrative penalty for failing to give a notice required under this section.

Note 2: The amount mentioned in paragraph (2)(c) is not included in the member's assessable income—see section 15-22.

(3) The society must give the notice at the time of the payment.

8 Subsection 995-1(1)

Insert:

copyright collecting society means either of the following bodies:

(a) a body that satisfies all of the following conditions:

(i) a declaration under the *Copyright Act 1968* is in force in respect of the body;

(ii) the body is a company whose *constitution contains provisions about the distribution of amounts collected or *derived by it, including a requirement that a *member of the society cannot direct the body to pay an amount at a particular time;

(iii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met;

(b) a company that satisfies all of the following conditions:

(i) the company is incorporated under a law in force in a State or Territory relating to companies;

(ii) the company has and maintains the purpose of collective administration of copyrights;

(iii) if the company has other purposes—these purposes are incidental to the purpose described in subparagraph (ii);

(iv) the company collects or derives, and distributes, *copyright income;

(v) the company's constitution allows any copyright owner, or his or her agent, to be a member of the society, or allows all copyright owners of a particular type to be members;

(vi) the company's constitution prohibits the payment of *dividends;

(vii) the company's constitution contains provisions about the payment, out of amounts collected or derived by it, of the administrative costs of collecting those amounts;

(viii) the company's constitution contains provisions about the distribution of amounts collected or derived by it, including a requirement that an amount must be paid to a member as soon as is reasonably possible after the allocation of the amount to the member, as well as a requirement that a member cannot direct the company to pay an amount at a particular time;

(ix) the company's constitution, or contracts with members, contains such other provisions as are prescribed by the regulations (if any), being provisions necessary to ensure that the interests of members or their agents are protected adequately;

(x) the company's constitution requires the company to hold amounts on trust for copyright owners who are not members, or for members pending the payment of amounts to them;

(xi) the company's constitution, or contracts with members, allows all members to access the company's records;

(xii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met.

9 Subsection 995-1(1)

Insert:

copyright income of a *copyright collecting society means *ordinary income, or *statutory income, of the following kinds:

(a) *royalties, and interest on royalties, collected or *derived by the society;

(b) such other amounts relating to copyright that are derived by the society as are prescribed by the regulations for the purposes of this paragraph.

10 Subsection 995-1(1)

Insert:

member of a *copyright collecting society means:

(a) any person who has been admitted as a member under the society's *constitution; or

(b) any person who has authorised the society to license the use of his or her copyright material.

11 Subsection 995-1(1)

Insert:

non-copyright income of a *copyright collecting society means *ordinary income and *statutory income derived by the society, but does not include *copyright income.

Income Tax (Transitional Provisions) Act 1997

12 Section 405-1 (link note)

Repeal the link note, substitute:

Division 410—Copyright collecting societies

Table of sections

410-1 Application of section 51-43 of the *Income Tax Assessment Act 1997*

410-1 Application of section 51-43 of the *Income Tax Assessment Act 1997*

(1) A copyright collecting society to which section 51-43 of the *Income Tax Assessment Act 1997* applies, may elect that, from 1 July 2004, the section apply to all copyright income, and non-copyright income, collected or derived by the society on or after 1 July 2004.

(2) A society makes a valid election if:
  (a) the election is in writing; and
  (b) the election is given to the Commissioner within 28 days after the day on which this section commences.

Taxation Administration Act 1953

13 At the end of Division 288 of Part 4-25 in Schedule 1 (before the link note)

Add:

288-75 Administrative penalty for a copyright collecting society

A *copyright collecting society is liable to an administrative penalty of 20 penalty units if the society fails to give a notice to a *member as required by section 410-5 of the *Income Tax Assessment Act 1997*.

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

14 Application

(1) The amendments made by items 1 to 6 and 8 to 11 of this Schedule apply to copyright income, and non-copyright income, collected or derived by a copyright collecting society on or after 1 July 2002, unless the society has made an election in accordance with section 410-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Note: If the society has made an election, then from 1 July 2004, the amendments listed above apply to all copyright income, and non-copyright income, collected or derived by the society on or after 1 July 2004.

(2) The amendments made by items 7 and 13 of this Schedule apply to payments of copyright income or non-copyright income made by a

copyright collecting society in an income year after the income year in which this item commences.

Schedule 3—Simplified Imputation System

Part 1—Anti-avoidance rules in relation to exempt institutions

Income Tax Assessment Act 1997

1 At the end of section 207-130

Add:

(7) This section has effect subject to sections 207-119 to 207-136.

2 Section 207-130

Renumber as section 207-115.

3 Section 207-135

Renumber as section 207-117.

4 At the end of Subdivision 207-E

Add:

207-119 Entity not treated as exempt institution eligible for refund in certain circumstances

For the purposes of this Act:

(a) an entity must not be treated as an *exempt institution that is eligible for a refund in relation to a *franked distribution if section 207-120, 207-122 or 207-124 applies to the entity in relation to the distribution; and

(b) a beneficiary of a trust must not be treated as an exempt institution that is eligible for a refund in relation to a franked distribution made in an income year if section 207-126 applies to the beneficiary in relation to that income year.

207-120 Entity may be ineligible because of a distribution event

(1) This section applies to an entity (the ***ineligible entity***) if:

(a) a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), to the entity; and

(b) subsection (2) of this section applies because of a *distribution event in relation to the distribution.

(2) Subject to subsection (3) and to section 207-128, this subsection applies if, because of a *distribution event in relation to the *franked distribution:

(a) the ineligible entity or another entity:

(i) makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment to any entity; or

(ii) transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property to any entity; or

(iii) incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation; or

(b) if the distribution is made to the ineligible entity—the amount or value of the benefit derived by the ineligible entity from the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the distribution as at the time the distribution is made; or

(c) if the distribution *flows indirectly to the ineligible entity—the amount or value of the benefit derived by the ineligible entity from the ineligible entity's *trust share amount in relation to the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the ineligible entity's trust share amount in relation to the distribution as at the time when that amount arises; or

(d) any of the following entities has obtained, will obtain or may reasonably be expected to obtain, a benefit, advantage, right or privilege:

(i) the entity making the distribution;

(ii) an entity through which the distribution flows indirectly to the ineligible entity;

(iii) an *associate of any of those entities.

Note: For when paragraph (d) is satisfied, see also subsection 207-132(2).

Exception to paragraph (2)(b) or (c)

(3) Paragraph (2)(b) or (c) does not apply if:

(a) that paragraph would otherwise apply only because of expenses the ineligible entity has incurred, will incur, or may reasonably be expected to incur, for the purpose of obtaining the *franked distribution or *trust share amount mentioned in that paragraph; and

(b) the Commissioner considers the expenses to be reasonable.

Trust share amount

(4) An entity's ***trust share amount*** in relation to a *franked distribution that *flows indirectly to the entity under subsection 207-50(3) or (4) is the entity's share amount that is mentioned in that subsection.

Distribution event

(5) A ***distribution event*** in relation to a *franked distribution is an act, transaction or circumstance that has happened, will happen, or may reasonably be expected to happen, as part of, in relation to or as a result of:

(a) the payment or receipt of the distribution; or

(b) if the distribution *flows indirectly to an entity under subsection 207-50(3) or (4)—the arising of, or the distribution or receipt of, the entity's *trust share amount in relation to the distribution; or

(c) an *arrangement entered into in association with a matter mentioned in paragraph (a) or (b).

207-122 Entity may be ineligible if distribution is in the form of property other than money

This section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

(a) one of the following is in the form of property other than money:

(i) if the distribution is made to the ineligible entity—all or part of the distribution;

(ii) if the distribution flows indirectly to the ineligible entity through the trustee of a trust under subsection 207-50(3) or (4)—all or a part of a distribution (the ***trust***

distribution) made by the trustee of the trust that relates to the ineligible entity's *trust share amount in relation to the franked distribution; and

(b) the terms and conditions on which the franked distribution or trust distribution is made are such that the ineligible entity:

(i) does not receive immediate custody and control of the property; or

(ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or

(iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.

207-124 Entity may be ineligible if other money or property also acquired

Subject to section 207-128, this section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

(a) the ineligible entity or another entity has entered into an *arrangement as part of, or in association with:

(i) the distribution; or

(ii) if the distribution flows indirectly to the ineligible entity—the ineligible entity's *trust share amount in relation to the distribution; and

(b) because of the arrangement, the ineligible entity or another entity has acquired or will acquire (whether directly or indirectly) money or property, other than money or property comprising the distribution or the ineligible entity's trust share amount, from:

(i) the entity making the distribution; or

(ii) an entity through which the distribution flows indirectly to the ineligible entity; or

(iii) an *associate of any of those entities (other than the ineligible entity).

207-126 Entity may be ineligible if distributions do not match trust share amounts

(1) This section applies to a beneficiary of a trust in relation to an income year if:

(a) the sum of the distributions:
  (i) made to the beneficiary during the income year by the trustee of the trust; and
  (ii) that relate to the beneficiary's *trust share amount in relation to a *franked distribution made during the income year;

is less than:

(b) that trust share amount.

Commissioner's power to treat trust share amount as having been distributed during the income year

(2) Subsection (1) does not apply if the Commissioner, having regard to all the circumstances, considers that it would be reasonable to treat the *trust share amount as having been distributed to the beneficiary in the income year.

207-128 Reinvestment choice

(1) If, apart from this section, paragraph 207-120(2)(a) or (d) or section 207-124 would apply to an entity (the ***receiving entity***) to whom a *franked distribution is made or *flows indirectly, that paragraph or section is taken not to apply to the receiving entity if:
  (a) instead of receiving the distribution, or the *trust share amount concerned, by a payment of money, the receiving entity chooses to be issued with:
    (i) if the distribution is made to the receiving entity—*shares in the *corporate tax entity making the distribution; or
    (ii) if the distribution flows indirectly to the receiving entity—a fixed interest in the trust in relation to which the trust share amount arises; and
  (b) the choice is genuine and furthers the purpose for which the entity was established; and
  (c) the choice is not made for the purpose, or purposes that include the purpose, of benefiting the corporate tax entity, trust or any of their *associates (other than the receiving entity); and
  (d) any benefit derived by the corporate tax entity, trust or any of their associates (other than the receiving entity) because of that choice is one which is an ordinary incident of issuing the

shares or interests to the receiving entity or of the receiving entity's holding of those shares or interests; and

(e) the parties that were involved in the *distribution event or *arrangement concerned deal with one another on an arm's length basis in relation to the event or arrangement.

A vested and indefeasible interest constitutes a fixed interest

(2) The receiving entity's interest in a trust is a fixed interest if the interest is a vested and indefeasible interest in the trust's capital.

Special rule about whether interests in unit trusts are defeasible

(3) If:

(a) the trust is a unit trust and the receiving entity holds units in the unit trust; and

(b) the units are redeemable or further units are able to be issued; and

(c) the units held by the receiving entity will be redeemed, or any further units will be issued:

(i) if units in the unit trust are listed for quotation in the official list of an *approved stock exchange—for the price at which other units of the same kind in the unit trust are offered for sale on the exchange at the time of the redemption or issue; or

(ii) if the units are not listed as mentioned in subparagraph (i)—for their market value at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the receiving entity's interest, as a unit holder, in the trust's capital is defeasible.

Commissioner's power to treat an interest in a trust as being a fixed interest

(4) If:

(a) the receiving entity has an interest in the trust's capital; and

(b) apart from this subsection, the interest would not be a vested or indefeasible interest; and

(c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:

(i) the circumstances in which the interest is capable of not vesting, or the defeasance can happen; and

(ii) the likelihood of the interest not vesting or the defeasance happening; and

(iii) the nature of the trust; and

(iv) any other matter the Commissioner thinks relevant;

the Commissioner may determine that the interest is to be taken to be vested and indefeasible.

(5) A determination made under subsection (4) has effect according to its terms.

207-130 Controller's liability

(1) A *controller (for imputation purposes) of an entity (the ***controlled entity***) is liable to pay an amount under this section in respect of a refund paid to the controlled entity under Division 67 if:

(a) the controlled entity claimed the refund wholly or partly on the basis that:

(i) the controlled entity was entitled to a *tax offset under section 207-20, 207-45 or 207-110 in relation to a *franked distribution; and

(ii) the controlled entity was an *exempt institution that is eligible for a refund; and

(b) because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event or an *arrangement in relation to the distribution, the controlled entity is not entitled to the tax offset; and

(c) the controller or an *associate of the controller benefited from that event or arrangement; and

(d) some or all of the amount that the controlled entity is liable to pay in respect of the refund remains unpaid after the day on which the amount becomes due and payable; and

(e) the Commissioner gives the controller written notice:

(i) stating that the controller is liable to pay an amount under this section; and

(ii) specifying that amount.

Except as provided for in subsection (5), this subsection does not affect any liability the controlled entity has in relation to the refund.

Note 1: Section 207-134 also provides that the controlled entity's present entitlement to a trust share amount is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

Note 2: For when paragraph (c) is satisfied, see also subsection 207-132(3).

(2) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1):

(a) is the amount specified under subparagraph (1)(e)(ii); and

(b) becomes due and payable at the end of the period of 14 days that starts on the day on which the notice mentioned in paragraph (1)(e) is given.

(3) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1) must not exceed the total amount or value of the benefit that the controller and its *associates obtained from the *distribution event or *arrangement.

(4) The total of:

(a) the amounts that the Commissioner recovers under subsection (1) in relation to the refund from all of the controlled entity's *controllers (for imputation purposes); and

(b) the amounts that the Commissioner recovers in relation to the refund from the controlled entity;

must not exceed the amount that the controlled entity was liable to pay as mentioned in paragraph (1)(d).

Controller of a company

(5) An entity is a ***controller (for imputation purposes)*** of a company if the entity is a *controller of the company (for CGT purposes).

Controller of an entity other than a company—basic meaning

(6) Subject to subsections (7) and (8), an entity is a ***controller (for imputation purposes)*** of an entity other than a company (the ***controlled entity***) if:

(a) a group in relation to the entity has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the controlled entity; or

(b) a group in relation to the entity is able (directly or indirectly) to control the application of the capital or income of the controlled entity; or

(c) a group in relation to the entity is capable, under a *scheme, of gaining the beneficial enjoyment mentioned in paragraph (a) or the control mentioned in paragraph (b); or

(d) the controlled entity or, if the controlled entity is a trust, the trustee of the trust:

(i) is accustomed; or

(ii) is under an obligation; or

(iii) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or

(e) if the controlled entity is a trust—a group in relation to the entity is able (directly or indirectly) to remove or appoint the trustee of the trust; or

(f) a group in relation to the entity has more than a 50% stake in the income or capital of the controlled entity; or

(g) entities in a group in relation to the entity are the only entities that, under the terms of:

(i) the constitution of the controlled entity or the terms on which the controlled entity is established; or

(ii) if the controlled entity is a trust—the terms of the trust;

can obtain the beneficial enjoyment of the income or capital of the controlled entity.

Group in relation to an entity

(7) For the purposes of subsection (6), each of the following constitutes a ***group*** in relation to an entity:

(a) the entity acting alone;

(b) an *associate of the entity acting alone;

(c) the entity and one or more associates of the entity acting together;

(d) 2 or more associates of the entity acting together.

Commissioner's power to take an entity not to be a controller (for imputation purposes)

(8) If:

(a) at a particular time, an entity (the ***first entity***) would, but for this subsection, be a *controller (for imputation purposes) of an entity other than a company (the ***second entity***); and

(b) the Commissioner, having regard to all relevant circumstances, considers that it is reasonable that the first entity be taken not to be such a controller of the second entity at the particular time;

the first entity is taken *not* to be a controller (for imputation purposes) of the second entity at the particular time.

(9) Without limiting paragraph (8)(b), if the second entity is a trust, the Commissioner may have regard under that paragraph to the identity of the beneficiaries of the trust at any time (whether before or after the first entity began to be a *controller (for imputation purposes) of the second entity).

207-132 Treatment of benefits provided by an entity to a controller

(1) This section applies in relation to a benefit (the ***relevant benefit***) given by an entity to a *controller (for imputation purposes) of the entity, or to an *associate of such a controller, if:

(a) the controller or associate:

(i) makes a *franked distribution to the entity; or

(ii) is the trustee of the trust in relation to which a *trust share amount of the entity arises in relation to a franked distribution that *flows indirectly to the entity; and

(b) the benefit is, or was, given to the controller or associate at any time during the period that starts 3 years before, and ends 3 years after, the distribution is made or the trust share amount arises (as appropriate).

(2) For the purposes of paragraph 207-120(2)(d), the controller or *associate is taken to have obtained the relevant benefit because of a *distribution event in relation to the *franked distribution or *trust share amount.

(3) For the purposes of paragraph 207-130(1)(c), and at least to the extent of the relevant benefit, the controller or *associate is taken to have benefited from a *distribution event or *arrangement that caused section 207-120 to apply in relation to the *franked distribution or *trust share amount.

Commissioner's power not to apply subsection (2) or (3)

(4) Subsection (2) or (3) does not apply in relation to a benefit if the Commissioner is satisfied, having regard to all the circumstances, that it would be unreasonable to apply that subsection.

207-134 Entity's present entitlement disregarded in certain circumstances

The present entitlement of a beneficiary of a trust to a share of trust income is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* if:

(a) the beneficiary has claimed a *tax offset under section 207-45 or 207-110 of this Act on the basis that the beneficiary was an *exempt institution that was eligible for a refund in relation to a *trust share amount that is that share of trust income; but

(b) the beneficiary was not entitled to that tax offset because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event, or an *arrangement, to which the trust share amount is related.

Note: This means that the trustee of the trust is liable to pay income tax on that share of the trust income.

207-136 Review of certain decisions

An entity that is dissatisfied with a decision of the Commissioner under any of the following provisions may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*:

(a) paragraph 207-120(3)(b);
(b) subsection 207-126(2);
(c) subsection 207-128(4);
(d) paragraph 207-130(1)(e);
(e) paragraph 207-130(8)(b);
(f) subsection 207-132(4).

5 At the end of Subdivision 975-A

Add:

975-155 When is an entity a *controller (for CGT purposes)* of a company?

An entity (the ***first entity***) is a ***controller (for CGT purposes)*** of a company if:

(a) the first entity has an *associate-inclusive control interest in the company of at least 50%; or

(b) the first entity has an associate-inclusive control interest in the company of at least 40% and entities other than the first entity or associates of the first entity do not control the company; or

(c) the first entity controls the company (alone or with an *associate).

975-160 When an entity has an *associate-inclusive control interest*

(1) An entity has an ***associate-inclusive control interest*** in a company in the circumstances set out in Subdivision A of Division 3 of Part X of the *Income Tax Assessment Act 1936*.

(2) However, in working out whether an entity has an associate-inclusive control interest of a particular percentage for the purposes of section 975-155, there are these modifications to the way Part X of that Act operates:

(a) that Part is applied to any company, including one acting as a trustee; and

(b) subsection 349(4) applies in all cases in working out which entity holds a direct control interest or a control tracing interest equal to 100%; and

(c) subsections 350(6) and (7) and 355(1) are ignored; and

(d) despite subsection 352(2), an interposed entity may be taken into account in calculating an indirect control interest if the interposed entity is:

(i) a company of which the first entity or an *associate is a controller; or

(ii) a partnership or a trust; and

(e) section 354 applies as if it referred to partnerships rather than CFP's; and

(f) section 355 applies as if it referred to trusts rather than CFT's.

Note 1: Part X of the *Income Tax Assessment Act 1936* defines company to exclude a company in the capacity of a trustee.

Note 2: The terms direct control interest and control tracing interest are relevant to working out associate-inclusive control interests in a company: see sections 350, 351, 353, 354 and 355 of that Act.

Note 3: Under subsection 349(4) of that Act, if 2 or more entities would have a direct control interest or a control tracing interest in a company or trust equal to 100%, only one of them holds the interest.

Note 4: Subsections 350(6) and (7) of that Act deal with direct control interests in a company. They deal with interests held by Australian entities. Under subsection 355(1), certain entities are taken to hold a control tracing interest in a trust equal to 100%.

Note 5: Paragraphs (2)(d), (e) and (f) of this section are necessary because Part X of the *Income Tax Assessment Act 1936* applies only to CFE's (which comprise CFC's, CFP's and CFT's).

6 Subsection 995-1(1)

Insert:

associate-inclusive control interest in a company has the meaning given by section 975-160.

7 Subsection 995-1(1) (definition of *controller (for CGT purposes)*)

Omit "140-20", substitute "975-155".

8 Subsection 995-1(1)

Insert:

controller (for imputation purposes) has the meaning given by subsections 207-130(5) and (6).

9 Subsection 995-1(1)

Insert:

distribution event has the meaning given by subsection 207-120(5).

10 Subsection 995-1(1) (definition of *exempt institution that is eligible for a refund*)

Omit "207-130", substitute "207-115".

11 Subsection 995-1(1) (at the end of the definition of *exempt institution that is eligible for a refund*)

Add:

Note: This definition is affected by sections 207-119 to 207-136.

12 Subsection 995-1(1) (paragraph (d) of the definition of *residency requirement*)

Omit “207-135”, substitute “207-117”.

13 Subsection 995-1(1)

Insert:

trust share amount has the meaning given by subsection 207-120(4).

Part 2—Miscellaneous consequential and technical amendments

Income Tax Assessment Act 1936

14 Subsection 6(1)

Insert:

> ***corporate tax entity*** has the same meaning as in the *Income Tax Assessment Act 1997*.

15 Subsection 6(1)

Insert:

> ***corporate tax rate*** has the same meaning as in the *Income Tax Assessment Act 1997*.

16 Subsection 6(1)

Insert:

> ***distribution***, when used in a franking context, has the same meaning as in the *Income Tax Assessment Act 1997*.

17 Subsection 6(1)

Insert:

> ***frankable distribution*** has the same meaning as in the *Income Tax Assessment Act 1997*.

18 Subsection 6(1)

Insert:

> ***franking credit*** has the same meaning as in the *Income Tax Assessment Act 1997*.

19 Subsection 6(1)

Insert:

franking debit has the same meaning as in the *Income Tax Assessment Act 1997*.

20 Subsection 6(1)

Insert:

franking deficit tax has the same meaning as in the *Income Tax Assessment Act 1997*.

21 Subsection 6(1)

Insert:

franking surplus has the same meaning as in the *Income Tax Assessment Act 1997*.

22 Subsection 6(1)

Insert:

franks with an exempting credit has the same meaning as in the *Income Tax Assessment Act 1997*.

23 Subsection 6(1)

Insert:

over-franking tax has the same meaning as in the *Income Tax Assessment Act 1997*.

24 Subsection 6(1)

Insert:

venture capital deficit tax has the same meaning as in the *Income Tax Assessment Act 1997*.

25 Section 43A

Repeal the section, substitute:

43A Subdivision has effect subject to provisions of Division 216 of the *Income Tax Assessment Act 1997*

This Subdivision has effect subject to the provisions of Division 216 of the *Income Tax Assessment Act 1997* (which describes cum dividend sales in which a distribution to a member

of a corporate tax entity is treated as having been made to someone else).

26 Paragraph 46FB(4)(c)

After "but for", insert "subsection 46AB(1) or 46AC(2) or".

27 Paragraph 102AAM(10)(a)

Omit "general company tax rate (within the meaning of Part IIIAA)", substitute "corporate tax rate".

28 Subparagraph 102AAU(1)(c)(iii)

Omit "so much of a frankable dividend (within the meaning of Part IIIAA) as has been franked in accordance with section 160AQF or 160AQFA", substitute "the franked part of a distribution, or the part of a distribution that has been franked with an exempting credit".

29 Subparagraph 102AAU(1)(c)(iv)

Omit "section 160AQT", substitute "subsection 207-35(1) or (3) of the *Income Tax Assessment Act 1997*".

30 Subsection 105A(4AA)

Omit "to the extent that the whole, or a part, of the dividend has been franked in accordance with section 160AQF", substitute "to the extent of the franked part of the dividend".

31 Paragraph 108(2)(c)

Omit "other than Part IIIAA", substitute ", other than Part 3-6 of the *Income Tax Assessment Act 1997*".

32 Paragraph 108(2)(d)

Omit "sections 160APP and 160AQT", substitute "Part 3-6 of the *Income Tax Assessment Act 1997*".

33 At the end of paragraph 108(3)(a)

Add "and".

34 Paragraph 108(3)(b)

Repeal the paragraph.

35 Section 109B

Omit "for reducing the company's franking account credit (under section 160AQCNC)", substitute "for a debit arising in the company's franking account (under item 8 of the table in section 205-30 of the *Income Tax Assessment Act 1997*)".

36 Subsection 109Y(2) (subparagraph (b)(i) of the definition of *repayments of non-commercial loans*)

Omit "to the extent that the dividend has not been franked under section 160AQF", substitute "to the extent of the unfranked part of the dividend".

37 Subsection 109ZC(2)

Omit "except Part IIIAA (which deals with franking of dividends)", substitute ", except Part 3-6 of the *Income Tax Assessment Act 1997* (which deals with franking of distributions)".

38 Subsection 109ZC(2)

Omit "that has not been franked under section 160AQF or 160AQFA", substitute "that is not either the franked part of that dividend, or the part of that dividend that has been franked with an exempting credit".

39 Section 121AT (table item 12, column headed "Event")

Omit "a class A franking surplus, a class B franking surplus or a class C franking surplus (all within the meaning of Part IIIAA)", substitute "a franking surplus".

40 Section 121AT (table item 12, column headed "Modifications")

Omit "class A franking surplus, class B franking surplus or class C franking surplus (all within the meaning of Part IIIAA)", substitute "franking surplus".

41 Section 121AT (table item 13, column headed "Modifications")

Omit "(within the meaning of Part IIIAA)".

42 Subsection 121EG(4) (definition of *eligible fraction*)

Omit "general company tax rate (within the meaning of section 160APA)", substitute "corporate tax rate".

43 Paragraph 128B(3)(ga)

Repeal the paragraph, substitute:

(ga) income that consists of:

(i) the franked part of a dividend; or

(ii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) on a share acquired under an employee share scheme (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit; or

(iii) in relation to a dividend that is paid by a former exempting entity (within the meaning of the *Income Tax Assessment Act 1997*) to an eligible continuing substantial member (within the meaning of that Act)—the part of the dividend that is franked with an exempting credit;

other than a dividend in respect of which a determination is made under paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b) of this Act; or

44 Subsection 128TD(2)

Omit "section 160AQH", substitute "section 202-75 of the *Income Tax Assessment Act 1997*".

45 Subsection 128TD(3)

Omit "section 160AQH", substitute "subsection 202-80(2) of the *Income Tax Assessment Act 1997*".

46 Subsection 128TE(1)

Omit "section 160AQH", substitute "section 202-75 of the *Income Tax Assessment Act 1997*".

47 Subsection 128TE(2)

Repeal the subsection.

48 Before paragraph 159GZZZQ(8)(a)

Insert:

(aa) the seller is a corporate tax entity; and

49 Paragraph 159GZZZQ(8)(b)

Omit "a rebatable amount", substitute "an offsetable amount".

Note: The heading to subsection 159GZZZQ(8) is replaced by the heading "*Offsetable amount excluded from reduction where loss*".

50 Paragraph 159GZZZQ(8)(e)

Omit "rebatable amount", substitute "offsetable amount".

51 Subsection 159GZZZQ(9)

Repeal the subsection, substitute:

Meaning of offsetable amount

(9) For the purposes of subsection (8), if the seller is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* in the seller's assessment for a year of income in respect of the dividend, the dividend consists of an ***offsetable amount*** worked out using the formula:

$$\frac{\text{Amount of offset}}{\text{Corporate tax rate}}$$

52 Subsection 160AN(3A)

Omit "Division 2 of Part IIIAA (which deals with franking credits and debits)", substitute "Division 205 of the *Income Tax Assessment Act 1997* (which deals with franking accounts)".

53 Subsection 170BA(1) (paragraph (b) of the definition of *ruling affected tax*)

Repeal the paragraph, substitute:

(b) franking deficit tax; or

(ba) venture capital deficit tax; or

(bb) over-franking tax; or

54 Paragraph 276(4)(b)

Repeal the paragraph, substitute:

(b) the amount of the tax offsets (if any) to which the trustee of the fund, or the RSA provider, is entitled under Part 3-6 of the *Income Tax Assessment Act 1997* in relation to the notice year; and

55 Paragraph 365(3)(b)

Omit "frankable dividend, within the meaning of Part IIIAA, that has been franked in accordance with section 160AQF or 160AQFA", substitute "frankable distribution that has been franked in accordance with section 202-5 of the *Income Tax Assessment Act 1997*, or that has been franked with an exempting credit in accordance with section 208-60 of that Act".

56 Paragraph 389(b)

Omit "Part IIIAA", substitute "Part 3-6 of the *Income Tax Assessment Act 1997*".

57 Paragraph 402(2)(b)

Repeal the paragraph, substitute:

(b) so much of a frankable distribution, paid to the eligible CFC in the eligible period, as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;

58 Paragraph 436(1)(d)

Repeal the paragraph, substitute:

(d) so much of a frankable distribution as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;

59 Subsection 57-120(1) in Schedule 2D

Omit "class A franking surplus, a class B franking surplus or a class C franking surplus", substitute "franking surplus".

60 Paragraph 57-120(3)(a) in Schedule 2D

Omit "class A franking debits, class B franking debits or class C franking debits", substitute "franking debits".

61 Subparagraph 57-120(3)(c)(i) in Schedule 2D

Repeal the subparagraph, substitute:

(i) there was a franking surplus of the transition taxpayer that was less than the total of the pre-transition time components of all of the debits; or

62 Subparagraph 57-120(3)(c)(ii) in Schedule 2D

Omit "class A franking surplus, there was no class B franking surplus or there was no class C franking surplus", substitute "franking surplus".

63 Paragraph 57-120(3)(d) in Schedule 2D

Omit "or surpluses concerned".

64 Paragraph 57-120(3)(e) in Schedule 2D

Omit "of the class or classes concerned".

65 Paragraph 57-120(4)(a) in Schedule 2D

Omit "class A franking debits, class B franking debits or class C franking debits", substitute "franking debits".

66 Subparagraph 57-120(4)(c)(i) in Schedule 2D

Repeal the subparagraph, substitute:

(i) there was a franking surplus of the subsidiary that was less than the total of the pre-transition time components of all of the debits; or

67 Subparagraph 57-120(4)(c)(ii) in Schedule 2D

Omit "class A franking surplus, there was no class B franking surplus or there was no class C franking surplus", substitute "franking surplus".

68 Paragraph 57-120(4)(d) in Schedule 2D

Omit "or surpluses concerned".

69 Paragraph 57-120(4)(e) in Schedule 2D

Omit "of the class or classes concerned".

70 Subsection 57-120(5) in Schedule 2D

Repeal the subsection.

71 Subsection 326-120(1) in Schedule 2H

Omit “class C”.

72 Subsection 326-130(2) in Schedule 2H (definition of *value of franking surplus*)

Omit “class C”.

73 Subsection 326-170(4) in Schedule 2H

Omit “class C”.

74 Subsection 326-170(5) in Schedule 2H

Omit “class C”.

Income Tax Assessment Act 1997

75 Section 10-5 (table item headed “dividends”)

Omit:

franked dividends, credits on	**160AQT**

substitute:

franked dividends, credits on	207-20(1), 207-35(1), 207-35(3)

76 Section 12-5 (table item headed “dividends”)

Omit:

franking credits, companies and non-residents	**160AR, 160ARD**

substitute:

franking credits, companies and non-residents	207-95(2), 207-95(3), 220-405(3)

77 Section 12-5 (table item headed “tax avoidance schemes”)

Omit:

dividend stripping	**46A, 177E**

substitute:

dividend stripping	**177E**

78 Section 12-5 (table item headed "tax avoidance schemes")

After:

gifts	**78A**

insert:

imputation, manipulation of	207-150(2), 207-150(3)

79 Section 13-1 (table item headed "dividends")

Repeal the item, substitute:

dividends	
general	207-20(2), 207-45, 207-110(2)(c), 210-170(1)

80 Section 67-30

After "got those tax offsets", insert "and any tax offset under section 205-70".

81 Subsection 70-45(2) (table item 1)

Repeal the item.

82 Before paragraph 110-55(7)(a)

Insert:

(aa) you are a *corporate tax entity; and

83 Paragraph 110-55(7)(c)

Repeal the paragraph, substitute:

(c) you are entitled to a *tax offset under Division 207 on the part of the distribution that is a *dividend (the ***dividend amount***); and

84 Subsection 110-55(8)

Repeal the subsection, substitute:

(8) The amount of the reduction is:

$$\text{Attributable amount} \times \frac{\text{Amount of *tax offset}}{\text{Dividend amount} \times \text{*Corporate tax rate}}$$

85 Subsections 110-60(5) and (6)

Repeal the subsections.

86 Paragraph 118-20(1B)(b)

Omit "section 160AQT of that Act (which relates to franked dividends)", substitute "subsection 207-20(1), 207-35(1) or 207-35(3) of this Act (which relate to franked distributions)".

87 Section 208-115 (table item 2, column headed "A credit of:")

Omit "section 208-165", substitute "subsection 208-165(1)".

88 Section 208-115 (table item 3, column headed "A credit of:")

Omit "section 208-170", substitute "subsection 208-170(1)".

89 Section 208-130 (table item 2, column headed "A credit of:")

Omit "section 208-165", substitute "subsection 208-165(1)".

90 Section 208-130 (table item 3, column headed "A credit of:")

Omit "section 208-170", substitute "subsection 208-170(1)".

91 Section 208-130 (table item 5, column headed "A credit of:")

Omit "section 208-165", substitute "subsection 208-165(2)".

92 Section 208-130 (table item 6, column headed "A credit of:")

Omit "section 208-170", substitute "subsection 208-170(2)".

93 Paragraph 208-165(b)

Omit "or 5".

94 At the end of section 208-165

Add:

(2) Use the following formula to work out the amount of a *franking credit arising under item 5 of the table in section 208-130 because an *exempting entity receives a *distribution *franked with an exempting credit:

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

95 Paragraph 208-170(b)

Omit "or 6".

96 Section 208-170 (formula)

Omit the formula, substitute:

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

97 At the end of section 208-170

Add:

(2) Use the following formula to work out the amount of a *franking credit arising under item 6 of the table in section 208-130 because an *exempting entity receives *a distribution *franked with an exempting credit:

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

98 Paragraph 210-170(1)(e)

Omit “not”.

99 Subsection 995-1(1)

Insert:

> ***franked part*** of a *distribution has the meaning given by section 976-1.

100 Subsection 995-1(1)

Insert:

> ***part of a distribution that is franked with an exempting credit*** has the meaning given by section 976-10.

101 Subsection 995-1(1)

Insert:

> ***part of a distribution that is franked with a venture capital credit*** has the meaning given by section 976-15.

102 Subsection 995-1(1)

Insert:

> ***unfranked part*** of a *distribution has the meaning given by section 976-5.

Taxation Administration Act 1953

103 Section 14ZAAA (paragraph (b) of the definition of *income tax law*)

Repeal the paragraph, substitute:

(b) franking deficit tax, venture capital deficit tax, or over-franking tax, within the meaning of the *Income Tax Assessment Act 1997*.

104 Paragraph 14ZW(1)(aa)

Omit "or section 160AL, 160AQQ, 160ART or 175A of the *Income Tax Assessment Act 1936*", substitute ", section 160AL or 175A of the *Income Tax Assessment Act 1936* or subsection 202-85(6) of the *Income Tax Assessment Act 1997*".

105 Paragraphs 12-165(b) and (c) in Schedule 1

Repeal the paragraphs, substitute:

(b) the payment is a *distribution that has been franked in accordance with section 202-5 of the *Income Tax Assessment Act 1997*; and

(c) the *franking percentage for the distribution is 100%.

106 After paragraph 360-85(a) in Schedule 1

Insert:

(aa) subsection 207-20(2) of the *Income Tax Assessment Act 1997*; or

107 Section 360-85 in Schedule 1 (table item 15)

Repeal the item.

108 Section 360-115 in Schedule 1

Omit "This section covers a *tax offset to which you are entitled because of a provision of the *Income Tax Assessment Act 1936* listed in the table.", substitute:

This section covers a *tax offset to which you are entitled because of:

(a) section 207-45 of the *Income Tax Assessment Act 1997*, but only so far as it applies in relation to a person as a beneficiary of a trust; or

(b) a provision of the *Income Tax Assessment Act 1936* listed in the table.

109 Section 360-115 in Schedule 1 (table item 5)

Repeal the item.

Taxation Laws Amendment Act (No. 8) 2003

110 Item 16 of Schedule 7

Repeal the item.

Part 3—Application provisions

111 Application of amendments

(1) 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 Part 1 of this Schedule (other than items 5, 6 and 7) apply to events that occur on or after 1 July 2002.

(2) The amendments made by items 5, 6 and 7 of this Schedule apply to assessments for the 2002-03 year of income and later years of income.

(3) The amendments made by Part 2 of this Schedule, other than items 26 and 110, apply in relation to events that occur on or after 1 July 2002.

(4) Subject to subitem (5), the amendment made by item 26 of this Schedule applies to dividends paid on or after 1 July 2003.

(5) For a taxpayer to which section 46AC of the *Income Tax Assessment Act 1936* applies, the amendment made by item 26 of this Schedule applies to dividends paid on or after the consolidation day referred to in that section.

112 Modified application of section 109ZC in 2002-03

Section 109ZC of the *Income Tax Assessment Act 1936*, as it applies in relation to assessments for the 2002-03 income year, has effect as if subsection 109ZC(3) were replaced by the following subsection:

(3) Subsection (2) does not cause the amount taken not to be a dividend to be exempt income for the purposes of Part 3-6 of the *Income Tax Assessment Act 1997*.

113 Modified application of section 128TB in 2002-03 and 2003-04

Section 128TB of the *Income Tax Assessment Act 1936*, as it applies in relation to dividends paid in the period starting on 1 July 2002 and ending on 30 June 2004, has effect as if the definition of ***Co. tax rate*** in subsection 128TB(2) were amended by omitting “general company tax rate, within the meaning of section 160APA,” and substituting “corporate tax rate”.

114 Modified application of section 377 in 2002-03 and 2003-04

Section 377 of the *Income Tax Assessment Act 1936*, as it applies in relation to dividends paid in the period starting on 1 July 2002 and ending on 30 June 2004, has effect as if paragraph 377(1)(e) were replaced by the following paragraph:

(e) so much of a frankable distribution, paid to the company in the qualifying period, as is either the franked part of the distribution, or the part of the distribution that has been franked with an exempting credit;

Schedule 4—Deductible gift recipients

Income Tax Assessment Act 1997

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

Add:

2.1.12	a government school that: (a) provides special education for students each of whom has a disability that is permanent or is likely to be permanent; and (b) does not provide education for other students	none

2 Application for item 1

The amendment made by item 1 of this Schedule applies to gifts made on or after 1 April 2004.

3 Subsection 30-25(2) (at the end of the table)

Add:

2.2.32	The Clontarf Foundation Inc.	the gift must be made after 30 August 2004

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

Add:

4.2.28	International Social Service - Australian Branch	the gift must be made after 17 March 2004
4.2.29	the Victorian Crime Stoppers Program	the gift must be made after 22 April 2004

5 Subsection 30-50(2) (table item 5.2.1)

Omit “1 July 2005”, substitute “1 July 2007”.

6 Subsection 30-50(2) (table item 5.2.9)

Omit “20 October 2003”, substitute “20 October 2005”.

7 Subsection 30-50(2) (table item 5.2.17)

Omit “31 January 2004”, substitute “31 January 2006”.

8 Subsection 30-50(2) (table item 5.2.19)

Omit “15 August 2004”, substitute “15 August 2005”.

9 Subsection 30-50(2) (table item 5.2.21)

Omit “3 July 2004”, substitute “1 July 2006”.

10 Subsection 30-50(2) (at the end of the table)

Add:

5.2.22	the Coolgardie Honour Roll Committee Fund	the gift must be made after 1 June 2004 and before 2 June 2006
5.2.23	the Tamworth Waler Memorial Fund	the gift must be made after 19 April 2004 and before 20 April 2006
5.2.24	City of Onkaparinga Memorial Gardens Association Inc	the gift must be made after 28 April 2004 and before 25 April 2005
5.2.25	The Finding Sydney Foundation	the gift must be made after 26 August 2004 and before 27 August 2006

11 Section 30-65 (at the end of the table)

Add:

7.2.5	Australian Business Week Limited	the gift must be made after 8 December 2003

12 Subsection 30-80(2) (at the end of the table)

Add:

9.2.12	Lowy Institute for International Policy	the gift must be made after 13 August 2003

13 After section 30-100

Insert:

Fire and emergency services

30-102 Fire and emergency services

This table sets out specific fire and emergency services recipients.

Fire and emergency services—Specific			
Item	**Authority or institution**	**Established under legislation of the following State or Territory**	**Special conditions**
12A.2.1	State Emergency Service	New South Wales	the gift must be made after 22 December 2003
12A.2.2	Country Fire Authority	Victoria	the gift must be made after 22 December 2003
12A.2.3	Victoria State Emergency Service	Victoria	the gift must be made after 22 December 2003
12A.2.4	CFA & Brigades Donations Fund	Victoria	the gift must be made after 30 June 2004
12A.2.5	Queensland Fire and Rescue Service	Queensland	the gift must be made after 22 December 2003
12A.2.6	State Emergency Service	Queensland	the gift must be made after 22 December 2003
12A.2.7	Fire and Emergency Services Authority of Western Australia	Western Australia	the gift must be made after 22 December 2003
12A.2.8	State Emergency Service South Australia	South Australia	the gift must be made after 22 December 2003
12A.2.9	Tasmania Fire Service	Tasmania	the gift must be made after 22 December 2003

Fire and emergency services—Specific			
Item	**Authority or institution**	**Established under legislation of the following State or Territory**	**Special conditions**
12A.2.10	State Emergency Service	Tasmania	the gift must be made after 22 December 2003
12A.2.11	Rural Firefighting Service	Australian Capital Territory	the gift must be made after 22 December 2003 and before 1 July 2004
12A.2.12	ACT Emergency Service	Australian Capital Territory	the gift must be made after 22 December 2003 and before 1 July 2004
12A.2.13	ACT Rural Fire Service	Australian Capital Territory	the gift must be made after 30 June 2004
12A.2.14	ACT State Emergency Service	Australian Capital Territory	the gift must be made after 30 June 2004

14 Section 30-105 (table item 13.2.1)

Omit “25 February 2004”, substitute “1 July 2004”.

15 Section 30-105 (table item 13.2.5)

Omit “23 April 2004”, substitute “23 April 2006”.

16 Section 30-105 (at the end of the table)

Add:

13.2.7	Lord Somers Camp and Power House	the gift must be made after 4 March 2004
13.2.8	St George’s Cathedral Restoration Fund	the gift must be made after 27 September 2004 and before 28 September 2006

17 Subsection 30-315(2) (after table item 2)

Insert:

2AA	ACT Emergency Service	item 12A.2.12
2AB	ACT Rural Fire Service	item 12A.2.13
2AC	ACT State Emergency Service	item 12A.2.14

18 Subsection 30-315(2) (after table item 17A)

Insert:

17B	Australian Business Week Limited	item 7.2.5

19 Subsection 30-315(2) (after table item 30)

Insert:

30A	CFA & Brigades Donations Fund	item 12A.2.4

20 Subsection 30-315(2) (after table item 31)

Insert:

31A	City of Onkaparinga Memorial Gardens Association Inc	item 5.2.24
31B	Clontarf Foundation Inc.	item 2.2.32

21 Subsection 30-315(2) (after table item 38)

Insert:

38A	Coolgardie Honour Roll Committee Fund	item 5.2.22

22 Subsection 30-315(2) (after table item 40A)

Insert:

40AA	Country Fire Authority (Victoria)	item 12A.2.2

23 Subsection 30-315(2) (after table item 49)

Insert:

49A	Finding Sydney Foundation	item 5.2.25
49B	Fire and emergency services	section 30-102
49C	Fire and Emergency Services Authority of Western Australia	item 12A.2.7

24 Subsection 30-315(2) (after table item 63)

Insert:

63A	International Social Service - Australian Branch	item 4.2.28

25 Subsection 30-315(2) (after table item 68)

Insert:

68AA	Lord Somers Camp and Power House	item 13.2.7
68AB	Lowy Institute for International Policy	item 9.2.12

26 Subsection 30-315(2) (after table item 94)

Insert:

94AA	Queensland Fire and Rescue Service	item 12A.2.5

27 Subsection 30-315(2) (after table item 104B)

Insert:

104C	Rural Firefighting Service (ACT)	item 12A.2.11

28 Subsection 30-315(2) (after table item 112AA)

Insert:

112AB	State Emergency Service (New South Wales)	item 12A.2.1
112AC	State Emergency Service (Queensland)	item 12A.2.6
112AD	State Emergency Service South Australia	item 12A.2.8
112AE	State Emergency Service (Tasmania)	item 12A.2.10
112AF	St George's Cathedral Restoration Fund	item 13.2.8

29 Subsection 30-315(2) (after table item 112C)

Insert:

112D	Tamworth Waler Memorial Fund	item 5.2.23
112E	Tasmania Fire Service	item 12A.2.9

30 Subsection 30-315(2) (after table item 121)

Insert:

121A	Victorian Crime Stoppers Program	item 4.2.29
121B	Victoria State Emergency Service	item 12A.2.3

Schedule 5—Debt and equity interests

Income Tax Assessment Act 1997

1 Subsection 974-75(4) (heading)

Omit "*31 December 2002*", substitute "*30 June 2005*".

2 Paragraph 974-75(4)(d)

Omit "on or after 21 February 2001", substitute "on or before 30 June 2005".

3 Subsection 974-75(4)

Omit "1 January 2003", substitute "1 July 2005".

Schedule 6—Irrigation water providers

Income Tax Assessment Act 1997

1 After section 40-50

Insert:

40-53 Alterations etc. to certain depreciating assets

(1) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-F:

(a) a depreciating asset; and

(b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *water facility.

(2) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-G:

(a) a depreciating asset; and

(b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *landcare operation.

2 At the end of section 40-515

Add:

(5) Paragraph (4)(a) does not apply to a *water facility if the expenditure incurred on the construction, manufacture, installation or acquisition of the water facility was incurred by an *irrigation water provider.

Meaning of ***irrigation water provider***

(6) An ***irrigation water provider*** is an entity whose *business is primarily and principally the supply (otherwise than by using a *motor vehicle) of water to entities for use in *primary production businesses on land in Australia.

3 Subsection 40-520(1)

Repeal the subsection, substitute:

(1) A ***water facility*** is:

(a) *plant or a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to plant or a structural improvement, that is primarily and principally for the purpose of conserving or conveying water; or

(b) a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to conserving or conveying water.

Example: Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill. Examples of things reasonably incidental to conserving or conveying water include a culvert, a fence to prevent livestock entering an irrigation channel and a bridge over an irrigation channel.

4 Subsection 40-525(1)

Repeal the subsection, substitute:

Water facilities

(1) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility must have been incurred:

(a) primarily and principally for the purpose of conserving or conveying water for use in a *primary production business that you conduct on land in Australia; or

(b) for expenditure incurred by an *irrigation water provider—primarily and principally for the purpose of conserving or conveying water for use in primary production businesses conducted by other entities on land in Australia, being entities supplied with water by the irrigation water provider.

5 At the end of subsection 40-555(1)

Add:

Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset that is a water facility are not the same depreciating asset for the purposes of section 40-50 and this Subdivision: see section 40-53.

6 Subsection 40-555(2)

Repeal the subsection.

7 After subsection 40-630(1)

Insert:

(1A) A *rural land irrigation water provider can deduct capital expenditure it incurs at a time in an income year on a *landcare operation for:

(a) land in Australia that other entities use at the time for carrying on *primary production businesses; or

(b) rural land in Australia that other entities use at the time for carrying on *businesses for a *taxable purpose from the use of that land (except a business of *mining operations);

being entities supplied with water by the rural land irrigation water provider.

(1B) A ***rural land irrigation water provider*** is:

(a) an *irrigation water provider; or

(b) an entity whose *business is primarily and principally the supply (otherwise than by using a *motor vehicle) of water to entities for use in carrying on *businesses (except businesses of *mining operations) using rural land in Australia.

8 After subsection 40-630(2)

Insert:

(2A) In applying paragraph (2)(b) to capital expenditure incurred by a *rural land irrigation water provider on a dam or structural improvement, the requirement in paragraph 45-40(1)(c) that the land on which the dam or structural improvement is situated be used for agricultural or pastoral operations is to be disregarded.

Exception: deduction available under Subdivision 40-F

(2B) A *rural land irrigation water provider cannot deduct an amount under this Subdivision for capital expenditure if the entity can deduct an amount for that expenditure under Subdivision 40-F.

9 At the end of section 40-630

Add:

(4) Subsection (3) does not apply to expenditure incurred by a *rural land irrigation water provider. Instead, a rural land irrigation water provider must reduce its deduction in relation to particular land by a reasonable amount to reflect an entity's use of the land in the income year after the rural land irrigation water provider incurred the expenditure for a purpose other than a *taxable purpose.

10 Paragraph 40-635(1)(f)

Omit "an extension, alteration or addition", substitute "a repair of a capital nature, or an alteration, addition or extension,".

11 At the end of subsection 40-635(1)

Add:

; or (g) constructing a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to an asset described in paragraph (c) or (d).

Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset are not the same asset for the purposes of section 40-50 and this Subdivision: see section 40-53.

12 Subsection 995-1(1)

Insert:

irrigation water provider has the meaning given by section 40-515.

13 Subsection 995-1(1)

Insert:

rural land irrigation water provider has the meaning given by section 40-630.

14 Application

The amendments made by this Schedule apply to expenditure incurred on or after 1 July 2004.

Schedule 7—FBT housing benefits

Fringe Benefits Tax Assessment Act 1986

1 Paragraph 58C(1)(b)

After "sells", insert ", or proposes to sell,".

2 Paragraphs 58C(1)(d) and (e)

Repeal the paragraphs, substitute:

and (d) at the notice time, the employee occupied, or proposed to occupy, the dwelling, or proposed to occupy the proposed dwelling, as his or her usual place of residence;

3 After paragraph 58C(2)(a)

Insert:

(aa) the employee or associate entered into a contract for the sale of the interest or right within 2 years after the day (the ***new employment day***) on which the employee commenced to perform the duties of that employment at the employee's new place of employment;

4 Paragraph 58C(3)(c)

Repeal the paragraph, substitute:

(c) the employee or associate entered into a contract for the acquisition of the interest or right on a day (the ***contract day***) within 4 years after the new employment day;

(ca) if, on the contract day, the employee or associate holds an interest or right in another dwelling in a situation where:

(i) if that interest or right were sold within 2 years after the new employment day; and

(ii) if a benefit of a kind referred to in subsection (2) were provided in relation to that interest or right;

the benefit would be an exempt benefit under subsection (2)—not more than 2 years have elapsed since the new employment day;

5 At the end of section 58C

Add:

(5) If:

(a) a benefit is an exempt benefit in relation to a year of tax under subsection (3); and

(b) paragraph (3)(ca) applied to the employee; and

(c) the employee or associate does not enter into a contract for the sale of the interest or right in the other dwelling referred to in that paragraph within 2 years after the new employment day;

this Act has effect as if:

(d) a benefit equivalent to the exempt benefit were provided in respect of the employment of the employee in, or in respect of, the year of tax in which that period of 2 years expired; and

(e) that equivalent benefit were not an exempt benefit.

6 Application

The amendments made by this Schedule apply to benefits provided in a year of tax that begins on or after 1 April 2004.

Schedule 8—CGT event G3

Income Tax Assessment Act 1997

1 Section 104-5 (table item dealing with CGT event G3)

Repeal the item, substitute:

G3 Liquidator or administrator declares shares or financial instruments worthless *[See section 104-145]*	when declaration was made	*no capital gain*	shares' or financial instruments' reduced cost base

2 Section 104-145

Repeal the section, substitute:

104-145 Liquidator or administrator declares shares or financial instruments worthless: CGT event G3

(1) ***CGT event G3*** happens if you own *shares in a company, or financial instruments issued by or created by or in relation to a company, and a liquidator or administrator of the company declares in writing that the liquidator or administrator has reasonable grounds to believe (as at the time of the declaration) that:

(a) for shares—there is no likelihood that shareholders in the company, or shareholders of the relevant class of shares, will receive any further distribution for their shares; or

(b) for financial instruments—the instruments, or a class of instruments that includes instruments of that kind, have no value or have only negligible value.

(2) The time of the event is when the declaration was made.

(3) Examples of financial instruments referred to in subsection (1) are:

(a) *debentures, bonds or promissory notes issued by the company; and

(b) loans to the company; and

(c) futures contracts, forward contracts or currency swap contracts relating to the company; and

(d) rights or options to acquire an asset referred to in a preceding paragraph of this subsection; and

(e) rights or options to acquire *shares in the company.

(4) You can choose to make a ***capital loss*** equal to the *reduced cost base of your *shares or financial instruments (as at the time of the declaration).

(5) If you make the choice, the *cost base and *reduced cost base of the *shares or financial instruments are reduced to nil just after the declaration was made.

Note: This is for the purpose of working out if you make a capital gain or loss from any later CGT event in relation to the shares or financial instruments.

Exceptions

(6) You cannot choose to make a *capital loss if:

(a) you *acquired the shares or financial instruments before 20 September 1985; or

(b) the shares or financial instruments were *revenue assets at the time when the declaration was made.

(7) You cannot choose to make a *capital loss for a *qualifying share if:

(a) you did not make an election for the *share under section 139E of the *Income Tax Assessment Act 1936* for the income year in which you acquired (within the meaning of Subdivision C of Division 13A of Part III of that Act) the share; and

(b) the declaration was made no later than 30 days after the *cessation time for the share.

(8) You cannot choose to make a *capital loss for a financial instrument that is a right you acquired (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*), or would have so acquired apart from section 139DD of that Act, under an *employee share scheme.

3 Section 112-45 (table item dealing with CGT event G3)

Omit “A liquidator declares shares to be worthless”, substitute “A liquidator or administrator declares shares or financial instruments to be worthless”.

4 Section 136-10 (table item dealing with CGT event G3)

Repeal the item, substitute:

G3	Liquidator or administrator declares shares or financial instruments worthless	the shares or financial instruments	3, 5, 7, 8, 9

5 Paragraph 165-115GB(1)(b)

Repeal the paragraph, substitute:

(b) a liquidator or administrator of the company declares that shares or financial instruments are worthless (CGT event G3).

6 Subsection 165-115H(2)

After “declaration by a liquidator”, insert “or administrator”.

7 Section 165-115N

Repeal the section, substitute:

165-115N Alteration time—declaration by liquidator or administrator

If a liquidator or administrator makes a declaration referred to in section 104-145 in relation to a company, the time of the declaration is also an ***alteration time*** in respect of the company.

8 Application

The amendments made by this Schedule apply to declarations by liquidators or administrators made after the day on which this Act receives the Royal Assent.

Schedule 9—GST: Supplies to offshore owners of Australian real property

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

1 After subsection 38-190(2)

Insert:

(2A) A supply covered by any of items 2 to 4 in the table in subsection (1) is *not* *GST-free if the acquisition of the supply relates (whether directly or indirectly, or wholly or partly) to the making of a supply of *real property situated in Australia that would be, wholly or partly, *input taxed under Subdivision 40-B or 40-C.

Note: Subdivision 40-B deals with the supply of premises (including a berth at a marina) by way of lease, hire or licence. Subdivision 40-C deals with the sale of residential premises and the supply of residential premises by way of long-term lease.

2 Subsection 38-190(3)

After "(2)", insert "or (2A)".

3 Application

(1) The amendments made by this Schedule apply to a supply covered by any of items 2 to 4 in the table in subsection 38-190(1) of the *A New Tax System (Goods and Services Tax) Act 1999* made on or after the first day of the first quarterly tax period that commences after the day on which this Act receives the Royal Assent.

(2) In this item:

quarterly tax period means a period of 3 months that commences on 1 January, 1 April, 1 July or 1 October.

Schedule 10—Baby bonus adoption amendments

Income Tax Assessment Act 1997

1 At the end of section 61-350

Add:

> If you are entitled to a tax offset because you adopt a child, you might also be entitled to an offset if the child was in your care before the adoption.

2 Group heading before section 61-355

Repeal the heading, substitute:

Entitlement to a first child tax offset

3 Section 61-355 (heading)

Repeal the heading, substitute:

61-355 Who is entitled to a tax offset under this section

4 At the end of subsection 61-355(1)

Add:

Note: If you are entitled to a tax offset because you adopt a child, you might also be entitled to an offset if the child was in your care before the adoption (see section 61-440).

5 Section 61-365

After "*tax offset", insert "under section 61-355".

6 Section 61-370

After "*tax offset", insert "under section 61-355".

7 Paragraph 61-370(b)

Omit "the offset", substitute "a tax offset".

8 Subsection 61-375(2)

After "*tax offset", insert "under section 61-355".

9 Subsection 61-380(1)

After "*tax offset", insert "under section 61-355".

10 Group heading before section 61-385

Repeal the heading, substitute:

Transferring an entitlement

11 Section 61-385 (heading)

Repeal the heading, substitute:

61-385 You may transfer your entitlement to a tax offset

12 Subsection 61-385(1)

After "61-355", insert "or 61-440".

13 After subsection 61-385(1)

Insert:

(1A) However, if you are entitled to a *tax offset for a child for a particular income year under both of sections 61-355 and 61-440, you may only transfer one of those entitlements to another person if you also transfer the other entitlement to the same person.

14 Group heading before section 61-405

Repeal the heading, substitute:

Claiming a first child tax offset

15 Group heading before section 61-415

Repeal the heading, substitute:

Amount of a first child tax offset

16 Section 61-415

After "*tax offset", insert "under sections 61-355 and 61-440".

17 Subsections 61-425(1) and (2)

After "*tax offset", insert "under either or both of sections 61-355 and 61-440".

18 At the end of subsection 61-430(1)

Add:

Note: If a child is in your care before you adopt the child, your base year can instead be the year the child was first in your care or the year before that (see section 61-450).

19 Subsection 61-430(3)

Repeal the subsection, substitute:

(3) A choice cannot be made:
  (a) after you have claimed the *tax offset under section 61-355 for any income year; or
  (b) after you have transferred your entitlement to the tax offset under section 61-355 for any income year.

20 Section 61-430 (link note)

Repeal the link note, substitute:

Additional tax offset if a child is in your care before you legally adopt the child

61-440 Additional tax offset if a child is in your care before you legally adopt the child

(1) You are entitled to a *tax offset for a child for an income year if:
  (a) you meet the conditions in paragraph (3)(a) at any time in the income year; and
  (b) you meet the conditions in paragraphs (3)(b), (c) and (d).

Note: You are not entitled to a tax offset under this section if section 61-455 applies to you.

(2) To meet those conditions for a child at a given time is to have a ***primary entitlement*** to the *tax offset for the child at that time.

(3) The conditions are that:
  (a) at the time:

(i) the child is less than 5; and

(ii) the child is in your care (but you are not legally responsible for the child); and

(iii) you are an Australian resident; and

(b) you meet the conditions in subsection 61-355(3) in relation to the child in that year or a later income year; and

(c) you have become legally responsible for the child by adopting the child; and

(d) the time is on or after 1 July 2001 and before 1 July 2004.

Note: See section 61-445 for when a child is first in your care.

61-445 When a child is first in your care

For the purposes of sections 61-440 and 61-450, a child is first in your care on the date evidenced in writing by a court or relevant department of the relevant State or Territory.

61-450 What is your base year if a child is in your care before you legally adopt the child?

Your base year can relate to a year during which a child was in your care before you adopted the child

(1) This section defines your ***base year*** if you are entitled to a *tax offset for a child under section 61-440 (which is where a child is in your care before you legally adopt the child).

Primary entitlement

(2) Your ***base year*** for a *tax offset under sections 61-355 and 61-440 is:

(a) if you were an Australian resident at any time in the income year (the ***previous income year***) just before the income year in which the child was first in your care—the later of the following years:

(i) the previous income year;

(ii) the income year commencing on 1 July 2000; and

(b) otherwise—the later of the following years:

(i) the earliest income year in which you were an Australian resident and the child was in your care;

(ii) the income year commencing on 1 July 2001.

Note: See section 61-445 for when a child is first in your care.

(3) If paragraph (2)(a) applies to you, you may choose, in the *approved form, the later of the following years to be your base year:

(a) the year the child was first in your care;

(b) the income year commencing on 1 July 2001.

A choice cannot be revoked.

(4) A choice cannot be made:

(a) after you have claimed the *tax offset under section 61-440 for any income year; or

(b) after you have transferred your entitlement to the tax offset under section 61-440 for any income year.

Transferred entitlement

(5) Your ***base year*** for an entitlement transferred to you under section 61-385 is the income year before the first income year for which the entitlement for the child was transferred to you.

61-455 Old Subdivision applies if you would be worse off

This Subdivision as in force on 30 June 2004 (instead of this Subdivision as amended by Schedule 10 to the *Tax Laws Amendment (2004 Measures No. 6) Act 2005*) continues to apply to you if the amount of all *tax offsets to which you would be entitled under this Subdivision as in force on that date is more than the amount of all tax offsets to which you would be entitled under the amended Subdivision.

Note: The effect of this is that:

(a) you are only entitled to a tax offset in respect of days for which you are legally responsible for the child (and not days during which the child is in your care); and

(b) your base year is the income year in which the child event happened or the year before.

21 Subsection 995-1(1) (both definitions of *base year*)

Repeal the definitions, substitute:

base year:

(a) for an entitlement to a *tax offset under Subdivision 61-I—has the meaning given by sections 61-430 and 61-450; and

(b) otherwise—has the meaning given by sections 45-320 and 45-470 in Schedule 1 to the *Taxation Administration Act 1953*.

22 Subsection 995-1(1) (definition of *primary entitlement*)

Omit "subsection 61-355(2)", substitute "subsections 61-355(2) and 61-440(2)".

23 Application of amendments

The amendments made by this Schedule apply to assessments for income years that commence on or after 1 July 2001.

Schedule 11—Technical correction

Taxation Laws Amendment Act (No. 8) 2003

1 Subsection 2(1) (table item 5)

Repeal the item, substitute:

5. Schedule 7, items 6 to 8	Immediately after the commencement of Schedule 7 to the *Taxation Laws Amendment Act (No. 1) 2004*.	30 June 2003

Schedule 12—Transfer of life insurance business

Income Tax Assessment Act 1997

1 After section 138-20

Insert:

138-25 Transfers of life insurance business

For the purposes of applying this Division, if the trigger event happens because all or part of the *life insurance business of a *life insurance company (the ***originating company***) is transferred to another life insurance company (the ***recipient company***):

(a) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or

(b) under the *Financial Sector (Transfers of Business) Act 1999*;

an amount equal to the *market value of any liabilities assumed by the recipient company in respect of the transfer is taken to be money received by the originating company in respect of the transfer (except to the extent that the amount is otherwise taken into account as *capital proceeds in respect of the transfer).

2 At the end of subsection 320-30(1)

Add:

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-340.

3 At the end of subsection 320-37(1)

Add:

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-325.

4 At the end of subsection 320-40(1)

Add:

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-345.

5 At the end of Division 320

Add:

Subdivision 320-I—Transfers of business

Guide to Subdivision 320-I

320-300 What this Subdivision is about

This Subdivision contains special rules that apply when all or part of the life insurance business of a life insurance company is transferred to another life insurance company under the *Life Insurance Act 1995* or the *Financial Sector (Transfers of Business) Act 1999*.

Table of sections

Operative provisions

320-305 When this Subdivision applies
320-310 Special deductions and amounts of assessable income
320-315 Virtual PST and segregated exempt assets
320-320 Certain amounts treated as life insurance premiums
320-325 Friendly societies
320-330 Immediate annuities
320-335 Parts of assets treated as separate assets
320-340 Continuous disability policies
320-345 Exemption of management fees

Operative provisions

320-305 When this Subdivision applies

The rules in this Subdivision have effect if all or part of the *life insurance business of a *life insurance company (the ***originating company***) is transferred to another life insurance company (the ***recipient company***):

(a) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or

(b) under the *Financial Sector (Transfers of Business) Act 1999*.

320-310 Special deductions and amounts of assessable income

Deduction for originating company

(1) If the originating company pays an amount to the recipient company in respect of liabilities under the *net risk components of *life insurance policies transferred to the recipient company, the originating company can deduct that amount for the income year in which the transfer took place.

Amount included in originating company's assessable income

(2) If the originating company receives an amount from the recipient company in respect of liabilities under the *net risk components of *life insurance policies transferred to the recipient company, that amount is included in the assessable income of the originating company for the income year in which the transfer took place.

Deduction for recipient company

(3) If the recipient company pays an amount to the originating company in respect of liabilities under the *net risk components of *life insurance policies transferred to the recipient company, the recipient company can deduct that amount for the income year in which the transfer took place.

320-315 Virtual PST and segregated exempt assets

(1) Assets that were *virtual PST assets of the originating company just before the transfer took place and that are transferred to the recipient company become virtual PST assets of the recipient company.

(2) Assets that were *segregated exempt assets of the originating company just before the transfer took place and that are transferred to the recipient company become segregated exempt assets of the recipient company.

320-320 Certain amounts treated as life insurance premiums

(1) This Division applies to the recipient company as if the amount or value of any consideration received by the recipient company in respect of liabilities under *life insurance policies transferred to the company were *life insurance premiums paid to the company at the time the transfer took place.

(2) However, subsection (1) does not apply to consideration:

(a) that relates to liabilities that, just before the transfer took place, were discharged out of the originating company's *virtual PST assets or *segregated exempt assets; or

(b) that relates to the part of a *life insurance policy that has been reinsured under a *contract of reinsurance (except consideration that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies).

320-325 Friendly societies

(1) This section has effect if the originating company and the recipient company were *friendly societies just before the transfer took place.

(2) For the purposes of paragraph 320-37(1)(d), an *income bond, *funeral policy, *sickness policy or *scholarship plan issued by the recipient company in substitution for an income bond, funeral policy, sickness policy or scholarship plan (the ***original policy***) transferred from the originating company is taken to have been issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

320-330 Immediate annuities

For the purposes of section 320-246, a *life insurance policy that provides for an *immediate annuity issued by the recipient company in substitution for a policy (also the ***original policy***) transferred from the originating company is taken to have been issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

320-335 Parts of assets treated as separate assets

If:

(a) an asset is transferred to the recipient company from the originating company; and

(b) parts of that asset were, under section 320-170 or 320-225 of the *Income Tax (Transitional Provisions) Act 1997*, treated as separate assets of the originating company just before the transfer took place;

those parts of that asset are also treated as separate assets of the recipient company.

320-340 Continuous disability policies

(1) This section has effect if:

(a) the originating company and the recipient company were members of the same *wholly-owned group just before the transfer took place; and

(b) all of the liabilities under the *continuous disability policies of the originating company are transferred to the recipient company; and

(c) the transfer took place before the income year in which 1 July 2005 occurs; and

(d) an amount (the ***section 320-30 amount***) would have been included in the assessable income of the originating company under section 320-30 for the income year in which the transfer took place if the transfer had not taken place.

(2) Section 320-30 does not apply to the originating company for the income year in which the transfer took place or a later income year.

(3) The amount worked out using this formula is included in the assessable income of the originating company for the income year in which the transfer took place:

$$\text{Section 320-30 amount} \times \frac{\text{Continuous disability policy days}}{365}$$

where:

continuous disability policy days means the number of days during the income year in which the transfer took place that the originating company held *continuous disability policies.

(4) The section 320-30 amount, reduced by the amount included in the assessable income of the originating company under subsection (3), is included in the assessable income of the recipient company for the income year in which the transfer took place.

(5) For each income year after the year in which the transfer took place and that is a relevant income year for the purposes of section 320-30, the recipient company's assessable income includes the amount that would have been included in the originating company's assessable income under that section for that year if the transfer had not taken place.

320-345 Exemption of management fees

(1) This section has effect if:

(a) the originating company and the recipient company were members of the same *wholly-owned group just before the transfer took place; and

(b) a *life insurance policy (also the ***original policy***):

(i) is constituted by a contract made with the originating company before 1 July 2000; and

(ii) is transferred to the recipient company before 1 July 2005.

(2) For the purposes of section 320-40, a *life insurance policy issued by the recipient company in substitution for the original policy is taken to have been constituted by a contract made with the recipient company before 1 July 2000 if the terms of the substituted policy are not materially different from those of the original policy.

(3) Subsection 320-40(4) applies to so much of the sum of the amounts applicable in respect of the substituted policy under subsections 320-40(5), (6) and (7) as does not exceed any fees or charges made by the recipient company that the originating company would have been entitled to make under the terms of the original policy as applying just before 1 July 2000.

6 Subsection 995-1(1) (at the end of the definition of *life insurance premium*)

Add:

Note: Certain other amounts are treated as life insurance premiums when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-320.

Income Tax (Transitional Provisions) Act 1997

7 Division 126 (heading)

Repeal the heading, substitute:

Division 126—Roll-overs

Subdivision 126-A—Merger of qualifying superannuation funds

8 At the end of Division 126

Add:

Subdivision 126-B—Transfer of life insurance business

Table of sections

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126-150 Roll-over on transfer of life insurance business

(1) There may be a roll-over if:

(a) a CGT event happens because all or part of the life insurance business of a life insurance company (the ***originating company***) is transferred to another life insurance company (the ***recipient company***):

(i) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or

(ii) under the *Financial Sector (Transfers of Business) Act 1999*; and

(b) the originating company and the recipient company were members of the same wholly-owned group just before the transfer; and

(c) one of these happens:

(i) a CGT asset (the ***original asset***) of the originating company becomes an asset of the recipient company; or

(ii) a CGT asset of the originating company ends and the recipient company acquires an equivalent replacement asset; or

(iii) the originating company creates a CGT asset in the recipient company; and

(d) the transfer takes place:

(i) before 30 June 2004; or

(ii) if the originating company and the recipient company are members of the same consolidated group or consolidatable group and the head company of that group has a substituted accounting period—before the end of the head company's income year in which 30 June 2004 occurs.

(2) The CGT asset involved (the ***roll-over asset***) must not be trading stock of the recipient company just after the time of the transfer.

(3) If:

(a) the roll-over asset is a right or convertible note referred to in Division 130, or an option referred to in Division 134, of the *Income Tax Assessment Act 1997*; and

(b) the recipient company acquires another CGT asset by exercising the right or option or by converting the convertible note;

the other asset cannot become trading stock of the recipient company just after the recipient company acquired it.

126-155 When there is a roll-over

(1) There is a roll-over if:

(a) either:

(i) the CGT event would have resulted in the originating company making a capital gain, or making no capital loss and not being entitled to a deduction; or

(ii) the originating company acquired the roll-over asset before 20 September 1985; and

(b) the originating company and recipient company both choose in writing to obtain a roll-over.

(2) There is also a roll-over if the CGT event would have resulted in the originating company making a capital loss and the originating company and recipient company both choose in writing to obtain a roll-over.

(3) Any such choice must be made by the later of:

(a) 12 months after the day on which the *Tax Laws Amendment (2004 Measures No. 6) Act 2005* received the Royal Assent; and

(b) a later day allowed by the Commissioner.

126-160 Effects of roll-over

(1) A capital gain or capital loss the originating company makes from the CGT event is disregarded.

(2) The first element of the cost base of the original asset or the replacement asset for the recipient company is the cost base of the original asset for the originating company just before the time of the CGT event.

(3) The first element of the reduced cost base of the original asset or the replacement asset for the recipient company is worked out similarly.

(4) For a case where the originating company creates a CGT asset in the recipient company, the first element of the asset's cost base (in the hands of the recipient company) is the amount applicable under this table. The first element of its reduced cost base is worked out similarly.

Creating a CGT asset	
CGT event number	**Applicable amount**
D1	the incidental costs the originating company incurred that relate to the CGT event
D2	the expenditure the originating company incurred to grant the option
D3	the expenditure the originating company incurred to grant the right

Creating a CGT asset	
CGT event number	**Applicable amount**
F1	the expenditure the originating company incurred on the grant, renewal or extension of the lease

The expenditure can include giving property: see section 103-5 of the *Income Tax Assessment Act 1997*.

(5) If the originating company acquired the original asset before 20 September 1985, the recipient company is taken to have acquired the original asset or the replacement asset before that day.

126-165 References to Subdivision 126-B of the *Income Tax Assessment Act 1997*

A reference in an Act to a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* includes a reference to a roll-over under this Subdivision.

Example: Examples of the operation of this provision include:

(a) CGT event J1 may happen if the recipient company stops being a 100% subsidiary of a member of a company group after a roll-over under this Subdivision; and

(b) a tax cost setting amount may be affected under section 705-50 because of a roll-over under this Subdivision; and

(c) an allocable cost amount may be affected under section 705-150 because of a roll-over under this Subdivision.

9 Subsection 126-150(3)

Repeal the subsection, substitute:

(3) If:

(a) the roll-over asset is a right or convertible interest referred to in Division 130, or an option referred to in Division 134, of the *Income Tax Assessment Act 1997* or an exchangeable interest; and

(b) the recipient company acquires another CGT asset by exercising the right or option or by converting the convertible interest or in exchange for the disposal or redemption of the exchangeable interest;

the other asset cannot become trading stock of the recipient company just after the recipient company acquired it.

10 At the end of Division 170

Add:

Subdivision 170-D—Transfer of life insurance business

170-300 Transfer of life insurance business

If:

(a) all or part of the life insurance business of a life insurance company (the ***originating company***) is transferred to another life insurance company (the ***recipient company***):

(i) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or

(ii) under the *Financial Sector (Transfers of Business) Act 1999*; and

(b) the originating company makes a capital loss from a CGT asset as a result of the transfer; and

(c) that capital loss is disregarded because of Subdivision 126-B of this Act;

Subdivision 170-C of the *Income Tax Assessment Act 1997* has effect as if:

(d) that capital loss were a net capital loss transferred by the originating company to the recipient company by an agreement under section 170-150 of that Act; and

(e) the application year referred to in section 170-225 of that Act were the year in which the transfer of life insurance business took place.

11 Application

(1) The amendments made by this Schedule (except the amendment made by item 9) apply to transfers of life insurance business that take place on or after 1 July 2000.

(2) The amendment made by item 9 of this Schedule applies to the conversion of a convertible interest, or the disposal or redemption of an exchangeable interest, on or after 1 July 2001.

[*Minister's second reading speech made in—*
House of Representatives on 18 November 2004
Senate on 7 March 2005]

(207/04)