Tax Laws Amendment (2004 Measures No. 7) Act 2005

No. 41, 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. 7) Act 2005

No. 41, 2005

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

[*Assented to 1 April 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2004 Measures No. 7) 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.	1 April 2005
2. Schedules 1 to 8	The day on which this Act receives the Royal Assent.	1 April 2005
3. Schedule 9, Part 1	Immediately after the commencement of item 3 of Schedule 8 to the *Tax Laws Amendment (2004 Measures No. 1) Act 2004*.	29 June 2004
4. Schedule 9, Part 2	The day on which this Act receives the Royal Assent.	1 April 2005
5. Schedule 10, Part 1	The day on which this Act receives the Royal Assent.	1 April 2005
6. Schedule 10, item 244	Immediately after the commencement of Schedule 2 to the *A New Tax System (Pay As You Go) Act 1999*.	22 December 1999
7. Schedule 10, item 245	Immediately after the commencement of the *Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003*.	1 July 2003
8. Schedule 10, item 246	1 April 2001.	1 April 2001
9. Schedule 10, item 247	Immediately after the commencement of the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*.	28 December 2002

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
10. Schedule 10, item 248	Immediately after the commencement of Schedule 7 to the *New Business Tax System (Consolidation and Other Measures) Act 2003*.	24 October 2002
11. Schedule 10, items 249 and 250	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*.	29 June 2002
12. Schedule 10, items 251 to 257	Immediately after the commencement of Schedule 13 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*.	29 June 2002
13. Schedule 10, item 258	Immediately after the commencement of item 84 of Schedule 2 to the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*.	30 June 2000
14. Schedule 10, item 259	Immediately after the start of the day on which the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* received the Royal Assent.	24 October 2002
15. Schedule 10, item 260	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*.	24 October 2002
16. Schedule 10, items 261 and 262	Immediately after the commencement of the *A New Tax System (Goods and Services Tax) Act 1999*.	1 July 2000
17. Schedule 10, items 263 and 264	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*.	29 June 2002
18. Schedule 10, item 265	Immediately after the commencement of the *New Business Tax System (Consolidation) Act (No. 1) 2002*.	24 October 2002
19. Schedule 10, item 266	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*.	24 October 2002

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
20. Schedule 10, item 267	Immediately after the start of the day on which the *Taxation Laws Amendment (Company Law Review) Act 1998* received the Royal Assent.	29 June 1998
21. Schedule 10, item 268	Immediately after the commencement of Schedule 4 to the *Taxation Laws Amendment (Research and Development) Act 2001*.	1 October 2001
22. Schedule 10, item 269	Immediately after the commencement of section 2 of the *Tax Laws Amendment (2004 Measures No. 2) Act 2004*.	25 June 2004
23. Schedule 10, Part 3	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (2004 Measures No. 6) Act 2005*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 April 2005
24. Schedule 11	The day on which this Act receives the Royal Assent.	1 April 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—25% entrepreneurs' tax offset

Income Tax Assessment Act 1997

1 Section 13-1 (after table item headed "eligible termination payments (ETPs)")

Insert:

entrepreneurs' tax offset

see *simplified tax system*

2 Section 13-1 (table item headed "partnerships")

After "*dividends*", insert "and *simplified tax system*".

3 Section 13-1 (after table item headed "sickness benefits")

Insert:

simplified tax system

25% entrepreneurs' tax offset..... Subdivision 61-J

4 Section 13-1 (table item headed "trusts")

After "*dividends*", insert "and *simplified tax system*".

5 After Subdivision 61-I

Insert:

Subdivision 61-J—25% entrepreneurs' tax offset

Guide to Subdivision 61-J

61-500 What this Subdivision is about

This Subdivision provides a 25% tax offset on your income tax liability related to the business income of a business in the simplified tax system with annual group turnover of less than $75,000.

Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on

whether the annual group turnover is $50,000 or less or is more than $50,000.

You may be entitled to more than 1 tax offset. For example, if you are an individual STS taxpayer running your own business, you may be entitled to a tax offset under section 61-505. If you are also a beneficiary of a trust that is an STS taxpayer, you may be entitled to a tax offset under section 61-520.

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61-510 25% entrepreneurs' tax offset: partner in a partnership
61-515 25% entrepreneurs' tax offset: trustee of a trust
61-520 25% entrepreneurs' tax offset: beneficiary of a trust
61-525 Meaning of *net STS income* and *STS annual turnover*

Operative provisions

61-505 25% entrepreneurs' tax offset: individual or company

Entitlement

(1) You are entitled to a *tax offset for an income year if:
  (a) you are an individual or a company; and
  (b) you are an *STS taxpayer for the year; and
  (c) your *STS group turnover for the year is less than $75,000; and
  (d) you have *net STS income for the year.

Amount

(2) The amount of your *tax offset is worked out in this way:

Method statement

Step 1. Work out your taxable income for the income year.

Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).

Step 3. Work out the percentage (the ***STS percentage***) using the formula:

$$\frac{\text{Your *net STS income for the year}}{\text{Your taxable income for the year}} \times 100$$

If that percentage is more than 100%, the STS percentage is 100%.

Step 4. If your *STS group turnover for the year is $50,000 or less, multiply the amount at step 2 by the STS percentage: the result is the amount of your *tax offset.

Step 5. If your *STS group turnover for the year is more than $50,000, work out the fraction (the ***STS phase-out fraction***) using the formula:

$$\frac{\$75,000 - \text{Your *STS group turnover for the year}}{\$25,000}$$

The amount of your *tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \text{STS percentage} \times \text{STS phase-out fraction}$$

Example: A company runs a local sports business. The company is an STS taxpayer for the year. The company's STS group turnover for the year is $50,000, the company's net STS income for the year is $40,000 and the company's taxable income for the year is $80,000.

The company is entitled to a tax offset.

The amount of the offset is worked out in this way:

The step 1 amount is $80,000.

The step 2 amount is $6,000: 25% of the company's basic income tax liability of $24,000 ($80,000 multiplied by the 30% company tax rate).

The step 3 STS percentage is:

$$\frac{\$40{,}000}{\$80{,}000} \times 100 = 50\%$$

The amount of the company's tax offset (step 4) is:

$$\$6{,}000 \times 50\% = \$3{,}000$$

61-510 25% entrepreneurs' tax offset: partner in a partnership

Entitlement

(1) You are entitled to a *tax offset for an income year if:
  (a) you are a partner in a partnership during the year; and
  (b) the partnership is an *STS taxpayer for the year; and
  (c) the partnership's *STS group turnover for the year is less than $75,000; and
  (d) the partnership has *net STS income for the year; and
  (e) your assessable income for the year includes a share (***your net STS income share***) of that net STS income.

Amount

(2) The amount of your *tax offset is worked out in this way:

Method statement

Step 1. Work out your taxable income for the income year.

Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).

Step 3. Work out the percentage (the ***STS percentage***) using the formula:

$$\frac{\text{Your net STS income share}}{\text{Your taxable income for the year}} \times 100$$

If that percentage is more than 100%, the STS percentage is 100%.

Step 4. If the partnership's *STS group turnover for the year is $50,000 or less, multiply the amount at step 2 by the STS percentage: the result is the amount of your *tax offset.

Step 5. If the partnership's *STS group turnover for the year is more than $50,000, work out the fraction (the ***STS phase-out fraction***) using the formula:

$$\frac{\$75,000 - \text{The partnership's *STS group turnover for the year}}{\$25,000}$$

The amount of your *tax offset is worked out using the formula:

Step 2 amount × STS percentage × STS phase-out fraction

61-515 25% entrepreneurs' tax offset: trustee of a trust

Entitlement

(1) You are entitled to a *tax offset for an income year if:
  (a) you are a trustee of a trust during the year; and
  (b) the trust is an *STS taxpayer for the year; and
  (c) the trust's *STS group turnover for the year is less than $75,000; and
  (d) the trust has *net STS income for the year; and
  (e) you are liable to be assessed under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* on a share (***your net STS income share***) of that net STS income.

Amount

(2) The amount of your *tax offset is worked out in this way:

Method statement

Step 1. Work out the *net income of the trust for the income year.

Step 2. Work out 25% of the amount of income tax you are liable to pay for the year on that *net income (apart from any *tax offsets).

Step 3. Work out the percentage (the ***STS percentage***) using the formula:

$$\frac{\text{Your net STS income share}}{\text{The *net income of the trust for the year}} \times 100$$

If that percentage is more than 100%, the STS percentage is 100%.

Step 4. If the trust's *STS group turnover for the year is $50,000 or less, multiply the amount at step 2 by the STS percentage: the result is the amount of your *tax offset.

Step 5. If the trust's *STS group turnover for the year is more than $50,000, work out the fraction (the ***STS phase-out fraction***) using the formula:

$$\frac{\$75,000 - \text{The trust's *STS group turnover for the year}}{\$25,000}$$

The amount of your *tax offset is worked out using the formula:

$$\text{Step 2 amount} \times \text{STS percentage} \times \text{STS phase-out fraction}$$

61-520 25% entrepreneurs' tax offset: beneficiary of a trust

Entitlement

(1) You are entitled to a *tax offset for an income year if:
  (a) you are a beneficiary of a trust during the year; and
  (b) the trust is an *STS taxpayer for the year; and

(c) the trust's *STS group turnover for the year is less than $75,000; and

(d) the trust has *net STS income for the year; and

(e) your assessable income for the year includes a share (***your net STS income share***) of that net STS income.

Amount

(2) The amount of your *tax offset is worked out in this way:

Method statement

Step 1. Work out your taxable income for the income year.

Step 2. Work out 25% of your basic income tax liability for the year (as worked out in step 2 of the method statement in subsection 4-10(3)).

Step 3. Work out the percentage (the ***STS percentage***) using the formula:

$$\frac{\text{Your net STS income share}}{\text{Your taxable income for the year}} \times 100$$

If that percentage is more than 100%, the STS percentage is 100%.

Step 4. If the trust's *STS group turnover for the year is $50,000 or less, multiply the amount at step 2 by the STS percentage: the result is the amount of your *tax offset.

Step 5. If the trust's *STS group turnover for the year is more than $50,000, work out the fraction (the ***STS phase-out fraction***) using the formula:

$$\frac{\$75,000 - \text{The trust's *STS group turnover for the year}}{\$25,000}$$

The amount of your *tax offset is worked out using the formula:

Step 2 amount × STS percentage × STS phase-out fraction

61-525 Meaning of *net STS income* and *STS annual turnover*

Net STS income

(1) An entity's ***net STS income*** for an income year is the amount by which the entity's *STS annual turnover for the year is more than the sum of the entity's deductions attributable to that turnover.

STS annual turnover

(2) An entity's ***STS annual turnover*** for an income year is the sum of the *value of the business supplies the entity made in the year.

(3) To the extent that the *taxable supplies an entity makes in an income year includes *gambling supplies, use an amount equal to 11 times the entity's *global GST amount for those supplies rather than the *value of the business supplies in working out the entity's *STS annual turnover.

(4) In working out the *value of the business supplies made by an entity, disregard:
   (a) any *supply made to the extent that the consideration for the supply is a payment or a supply by an insurer in settlement of a claim under an insurance policy; and
   (b) to the extent that a supply is constituted by a loan—any repayment of principal, and any obligation to repay principal.

6 At the end of section 328-5

Add:

Note: If you choose to become an STS taxpayer, you may be entitled to the 25% entrepreneurs' tax offset: see Subdivision 61-J.

7 Subsection 328-365(1) (note)

Omit "Note", substitute "Note 1".

8 At the end of subsection 328-365(1)

Add:

Note 2: If you choose to become an STS taxpayer, you may be entitled to the 25% entrepreneurs' tax offset: see Subdivision 61-J.

9 Subsection 995-1(1)

Insert:

net STS income has the meaning given by section 61-525.

10 Subsection 995-1(1)

Insert:

STS annual turnover has the meaning given by section 61-525.

11 Application

The amendments made by items 1 to 10 apply to assessments for the first income year starting on or after 1 July 2005 and later income years.

Taxation Administration Act 1953

12 Section 45-340 in Schedule 1 (before paragraph (a) of step 1 of the method statement)

Insert:

(aaa) Subdivision 61-J of the *Income Tax Assessment Act 1997* (the 25% entrepreneurs' tax offset); or

13 Application

The amendment made by item 12 applies in relation to the calculation of an entity's adjusted tax:

(a) for a base year that is the first income year starting on or after 1 July 2005 or is a later income year; and

(b) only for the purposes of a PAYG instalment period that includes, or starts after, the day on which this Act receives the Royal Assent.

Schedule 2—STS accounting method

Income Tax Assessment Act 1997

1 Subsection 6-5(4) (note)

Repeal the note.

2 Subsection 8-1(3) (note 1)

Omit “Note 1”, substitute “Note”.

3 Subsection 8-1(3) (note 2)

Repeal the note.

4 Subsection 70-15(3) (note 1)

Omit “Note 1”, substitute “Note”.

5 Subsection 70-15(3) (note 2)

Repeal the note.

6 Section 328-5

Omit “3”.

7 Section 328-5

Omit:

> • you use a cash accounting system for ordinary income, general deductions and deductions for tax-related expenses and repairs; and

8 Section 328-10

Repeal the section.

9 Subdivision 328-C

Repeal the Subdivision.

Income Tax (Transitional Provisions) Act 1997

10 Before Division 330

Insert:

Division 328—STS taxpayers

Table of sections

328-115 When you stop using the STS accounting method
328-120 Continuing to use the STS accounting method
328-125 Meaning of *STS accounting method*
328-440 Becoming an STS taxpayer after stopping to be one

328-115 When you stop using the STS accounting method

(1) This section sets out what happens to your ordinary income and general deductions, and deductions under section 25-5 or 25-10 of the *Income Tax Assessment Act 1997*, if:

(a) you are an STS taxpayer for an income year and for the following income year (the ***changeover year***); and

(b) you were using the STS accounting method for the income year before the changeover year; and

(c) you change to an accruals accounting method for the changeover year.

(2) This section also sets out what happens to your ordinary income and general deductions, and deductions under section 25-5 or 25-10 of the *Income Tax Assessment Act 1997*, if:

(a) you stop being an STS taxpayer for an income year (also the ***changeover year***); and

(b) you were using the STS accounting method for the income year before the changeover year; and

(c) you change to an accruals accounting method for the changeover year.

(3) Any ordinary income that, apart from paragraph 328-105(1)(a) of the *Income Tax Assessment Act 1997*, you would have derived before the changeover year (while you were an STS taxpayer) and you have not included in your assessable income because you have not received it is included in your assessable income for the changeover year.

(4) Any general deductions, and deductions under section 25-5 or 25-10 of the *Income Tax Assessment Act 1997*, that, apart from paragraph 328-105(1)(b) of that Act, you would have incurred before the changeover year (while you were an STS taxpayer) and that you have not deducted because you have not paid them can be deducted for the changeover year.

328-120 Continuing to use the STS accounting method

If you were an STS taxpayer for your first income year that started before 1 July 2005, you can continue to use the STS accounting method for your first income year starting on or after 1 July 2005 and later income years while you continue to be an STS taxpayer.

328-125 Meaning of *STS accounting method*

In sections 328-115 and 328-120, ***STS accounting method*** means the accounting method that was required by the *Income Tax Assessment Act 1997* to be used by STS taxpayers for the 2004-05 income year.

328-440 Becoming an STS taxpayer after stopping to be one

Subsection 328-440(3) of the *Income Tax Assessment Act 1997* does not apply to you, during the period of 5 years starting on 1 July 2005, if you chose to stop being an STS taxpayer for an income year before your first income year starting on or after 1 July 2005.

11 Application

The amendments made by this Schedule apply to assessments for the first income year starting on or after 1 July 2005 and later income years.

Schedule 3—Employee share schemes

Income Tax Assessment Act 1936

1 Section 139A (after table item dealing with Subdivision D)

Insert:

DA	Takeovers and restructures

2 Subsection 139C(4)

After "The taxpayer does not", insert "(except for the purposes of Subdivision DA)".

3 Paragraph 139CA(2)(b)

Before "the later of", insert "subject to subsection (4),".

4 At the end of section 139CA

Add:

(4) Paragraph (2)(b) does not apply in relation to a share that, because of section 139DQ, is treated, for the purposes of this Division, as if it were a continuation of a share acquired under an employee share scheme.

Note: Subdivision DA can affect whether the taxpayer is treated as having disposed of a share or ceased employment.

5 Paragraphs 139CB(1)(c) and (d)

Before "if the right is exercised", insert "subject to subsection (3),".

6 After paragraph 139CB(1)(d)

Insert:

(da) if subsection (3) applies—the time when the taxpayer disposes of the share referred to in paragraph (3)(b);

7 At the end of section 139CB

Add:

Note: Subdivision DA can affect whether the taxpayer is treated as having disposed of a right or ceased employment.

(3) Paragraphs (1)(c) and (d) do not apply in relation to a right if:

(a) a share has been or is acquired as a result of the exercise of the right; and

(b) because of section 139DQ, another share is treated, for the purposes of this Division, as if it were a continuation of that share.

8 At the end of section 139CC

Add:

Note: Section 139DS can affect the amount of consideration that the taxpayer is treated as having paid or given.

9 After subsection 139DD(2)

Insert:

(2A) To avoid doubt, the taxpayer does not lose the right if, because of section 139DQ, another right is treated, for the purposes of this Division, as if it were a continuation of that right.

10 After subsection 139DD(3)

Insert:

(3A) To avoid doubt, the company does not cease to be the employer of the taxpayer or a holding company of the employer of the taxpayer if, because of section 139DQ, the taxpayer's employment by another company is treated, for the purposes of this Division, as if it were a continuation of that employment.

11 After Subdivision D of Division 13A of Part III

Insert:

Subdivision DA—Takeovers and restructures

139DP Object of this Subdivision

The object of this Subdivision is to allow this Division to continue to apply, in appropriate circumstances, to 100% takeovers or restructures of companies that have employee share schemes.

139DQ The effect of 100% takeovers and restructures on employee share schemes

Treating acquisitions as continuations of existing shares etc.

(1) To the extent that:

(a) a taxpayer acquires:

(i) shares in a company (the ***new company***) that can reasonably be regarded as matching shares in another company (the ***old company***) that the taxpayer had acquired under an employee share scheme; or

(ii) rights in a company (the ***new company***) that can reasonably be regarded as matching rights in another company (the ***old company***) that the taxpayer had acquired under an employee share scheme; and

(b) the acquisition occurs in connection with a 100% takeover, or a restructure, of the old company; and

(c) as a result of the takeover or restructure, the taxpayer ceased to hold the shares or rights in the old company;

then, if the conditions in section 139DR are met, the matching shares or rights are treated, for the purposes of this Division, as if they were a continuation of the shares or rights in the old company.

Note: In determining to what extent something can reasonably be regarded as matching shares or rights in the old company, one of the factors to consider is the respective market values of that thing and of those shares or rights.

Treating acquisitions as disposals of existing shares etc.

(2) However, to the extent that, in connection with the takeover or restructure, the taxpayer acquires anything that:

(a) can reasonably be regarded as matching shares or rights in the old company that the taxpayer had acquired under an employee share scheme; but

(b) is not a matching share or right to which subsection (1) applies;

the taxpayer is treated, for the purposes of this Division, as having disposed of shares, or disposed of rights (other than by exercising them), that the taxpayer held, under an employee share scheme, in the old company immediately before the takeover or restructure.

Treating new employment as continuation of existing employment

(3) If subsection (1) applies, any employment of the taxpayer in:
  (a) the new company; or
  (b) a holding company of the new company; or
  (c) a subsidiary of the new company or of a holding company of the new company;

is treated, for the purposes of this Division, as a continuation of the employment in respect of which he or she acquired the shares or rights in the old company or in a subsidiary of the old company.

139DR Conditions for the continuation of shares or rights

(1) The first condition is that, immediately before the takeover or restructure, the taxpayer held shares or rights in the old company under an employee share scheme.

(2) The second condition is that, at or about the time the taxpayer acquires the matching shares or rights, the taxpayer is an employee of:
  (a) the new company; or
  (b) a holding company of the new company; or
  (c) a subsidiary of the new company or of a holding company of the new company.

(3) The third condition is that:
  (a) to the extent that the matching shares or rights are shares, they are ordinary shares; or
  (b) to the extent that the matching shares or rights are rights, they are rights to acquire ordinary shares.

(4) The fourth condition is that, if subsection 139DQ(1) did not apply, the cessation time, for the shares or rights in the old company to which the matching shares or rights relate, would occur as a result of the takeover or restructure.

(5) The fifth condition is that, at the time the taxpayer acquires the matching shares or rights, the taxpayer does not hold a legal or beneficial interest in more than 5% of the shares of the new company.

(6) The sixth condition is that, at that time, the taxpayer is not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of the new company.

139DS Apportionment rules

(1) If:

(a) subsection 139DQ(1) applies to shares or rights that the taxpayer has acquired; and

(b) the taxpayer had paid or given consideration (the ***original consideration***) for an acquisition, under an employee share scheme, of any of the shares or rights in the old company (the ***original shares or rights***);

the taxpayer is treated as having paid or given, for any of the apportionable assets for the original shares or rights, consideration of an amount worked out by spreading the original consideration proportionately among all the apportionable assets according to their market values immediately after the takeover or restructure.

Note: Subsection 139FA(4) alters the meaning of market value of a share or right for the purposes of this section.

(2) The ***apportionable assets*** for the original shares or rights are:

(a) all matching shares or rights held by the taxpayer that are treated because of this Division as a continuation of the original shares or rights; and

(b) anything else that the taxpayer acquired in connection with the takeover or restructure and that can reasonably be regarded as matching the original shares or rights; and

(c) in the case of a restructure—any shares or rights in the old company that the taxpayer held immediately before, and continues to hold immediately after, the restructure and that can reasonably be regarded as matching the original shares or rights.

12 At the end of section 139FA

Add:

(4) This section applies for the purposes of section 139DS as if references in this section to the one week period up to and

including that day were references to the period consisting of that day.

13 Section 139GC

Omit "*Corporations Law*", substitute "*Corporations Act 2001*".

14 After section 139GC

Insert:

139GCA Meaning of *subsidiary*

The expression ***subsidiary*** has the same meaning as in the *Corporations Act 2001*.

139GCB Meaning of *100% takeover*

A ***100% takeover*** of a company by another company is an arrangement that is intended to result in the company becoming a 100% subsidiary of the other company, or of a holding company or subsidiary of the other company.

139GCC Meaning of *restructure*

A ***restructure*** of a company is a change in the ownership, or the structure of the ownership, of the company as a result of which some or all shares or rights held in the company under an employee share scheme immediately before the change:

(a) are replaced; or

(b) could reasonably be regarded as having been replaced;

wholly or partly by shares or rights in one or more other companies.

15 Section 139GH (before the table item dealing with Acquiring a share or right)

Insert:

100% takeover	139GCB

16 Section 139GH (at the end of the table)

Add:

Restructure	139GCC
Subsidiary	139GCA

Income Tax Assessment Act 1997

17 Subsection 130-80(1)

Repeal the subsection, substitute:

(1) This section sets out what happens if you:

(a) *acquire a *share or right at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an *employee share scheme; or

(b) acquire a share or right that, because of section 139DQ of that Act, is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a share or right acquired under an employee share scheme.

18 After subsection 130-83(1)

Insert:

(1A) If:

(a) a *CGT event happens in relation to the *share or right (the ***original share or right***); and

(b) it happens in connection with an acquisition (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) of another share or right (the ***matching share or right***); and

(c) under section 139DQ of the *Income Tax Assessment Act 1936* the matching share or right is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of the original share or right;

any *capital gain or *capital loss you make from the CGT event is disregarded.

19 Section 130-90 (heading)

Repeal the heading, substitute:

130-90 Share or right acquired under an employee share trust—beneficiary absolutely entitled

20 Subsection 130-90(3)

Repeal the subsection, substitute:

(3) Either:

(a) the individual, *associate or affiliate company must have acquired the *share or right under an *employee share scheme; or

(b) the share or right must, because of section 139DQ of the *Income Tax Assessment Act 1936*, be a share or right that is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of a share or right acquired under an employee share scheme.

21 At the end of Subdivision 130-D

Add:

130-95 Share or right acquired under an employee share trust—100% takeover or restructure

If:

(a) a *CGT event happens in relation to a *share or right (the ***original share or right***); and

(b) it happens in connection with an acquisition (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) of another share or right (the ***matching share or right***) by the beneficiary of an *employee share trust; and

(c) under section 139DQ of the *Income Tax Assessment Act 1936* the matching share or right is treated, for the purposes of Division 13A of Part III of that Act, as if it were a continuation of the original share or right;

any *capital gain or *capital loss the trustee of the employee share trust makes from the CGT event is disregarded.

22 Application

(1) The amendments made by this Schedule apply, and are taken to have applied, to acquisitions of shares or rights on or after 1 July 2004.

(2) In this item:

acquisition, of a share or right, has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

Schedule 4—FBT exemption thresholds for long service award benefits

Fringe Benefits Tax Assessment Act 1986

1 Paragraph 58Q(1)(c) (formula)

Repeal the formula, substitute:

$$\$1{,}000 + \left(\$100 \times \left(\text{RLS} - 15\right)\right)$$

2 Paragraph 58Q(1)(d) (formula)

Repeal the formula, substitute:

$$\$100 \times \left(\text{RLS} - \text{ERLS}\right)$$

3 Application

The amendments made by this Schedule apply to FBT years beginning on or after 1 April 2005.

Schedule 5—Petroleum exploration incentives

Petroleum Resource Rent Tax Assessment Act 1987

1 Section 2

Insert:

designated frontier area means that block or those blocks that constitute both:

(a) an area or part of an area:

(i) specified in section 36A; or

(ii) specified in an instrument made under subsection 36B(1); and

(b) an exploration permit area.

2 Section 2

Insert:

designated frontier expenditure, in relation to a petroleum project and a financial year, means exploration expenditure that is actually incurred:

(a) by a person in that year where the eligible exploration or recovery area in relation to the project is a designated frontier area; and

(b) during the original period of the exploration permit concerned (before the permit is first renewed or ceases to be in force);

other than exploration expenditure that is incurred in evaluating or delineating a petroleum pool (within the meaning of the *Petroleum (Submerged Lands) Act 1967*) that has been discovered in a designated frontier area.

3 Section 2

Insert:

uplifted frontier expenditure has the meaning given by section 36C.

4 After section 36

Insert:

36A Designated frontier areas for 2004

For the purposes of the definition of ***designated frontier area***, the following areas are specified:

(a) Area T04-5, as first gazetted in the *Tasmanian Government Gazette* on 5 May 2004 under subsection 20(1) of the *Petroleum (Submerged Lands) Act 1967*;

(b) Areas W04-2, W04-4, W04-15 and W04-16, as first gazetted in the *Western Australia Government Gazette* on 30 March 2004 under subsection 20(1) of the *Petroleum (Submerged Lands) Act 1967*;

(c) Area NT04-3, as first gazetted in the *Northern Territory Government Gazette* on 14 April 2004 under subsection 20(1) of the *Petroleum (Submerged Lands) Act 1967*.

Note: An amount of exploration expenditure incurred in respect of an area that is specified under this section might be increased by 150% (before the GDP factor or the augmented bond rate is applied to the amount under the Schedule): see section 36C.

36B Designated frontier areas for 2005 to 2008

(1) For the purposes of the definition of ***designated frontier area***, the Minister administering the *Petroleum (Submerged Lands) Act 1967* may designate, in writing, up to (and including) 20% of potential exploration permit areas as frontier areas.

Note: An amount of exploration expenditure incurred in respect of an area that is specified under this section might be increased by 150% (before the GDP factor or the augmented bond rate is applied to the amount under the Schedule): see section 36C.

(2) The Minister must not specify new areas for a calendar year after 2008.

(3) The Minister must publish an instrument made under subsection (1) in the *Gazette*.

(4) An instrument made under subsection (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

(5) The Minister may, by signed instrument, delegate his or her power under subsection (1) to an SES employee or an acting SES employee in the Minister's Department.

Note: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 17AA of the *Acts Interpretation Act 1901*.

(6) In this section:

potential exploration permit area means an area or areas constituted by a block or blocks in respect of which applications for exploration permits have been invited, but not yet granted, under Division 2 of Part III of the *Petroleum (Submerged Lands) Act 1967*.

36C Uplifted frontier expenditure

For the purposes of this Act, the amount of ***uplifted frontier expenditure*** that a person is taken to have incurred in a financial year in relation to a petroleum project is worked out as follows:

$$\begin{array}{c}\text{Designated frontier expenditure}\\ \text{actually incurred by the person}\\ \text{in the financial year}\\ \text{in relation to the petroleum project}\end{array} \times 150\%$$

5 Subsection 45C(9)

Omit ", within 60 days of being given the notice, lodge with the Commissioner a written objection against the decision setting out fully and in detail the grounds on which the person relies", substitute "object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*".

6 Subsection 45C(10)

Repeal the subsection.

7 Clause 1 of the Schedule (definition of *incurred exploration expenditure amount*)

Repeal the definition, substitute:

incurred exploration expenditure amount, in relation to a petroleum project that is not a combined project and in relation to a financial year, means the sum of the following:

(a) any amounts of exploration expenditure (other than designated frontier expenditure) actually incurred by the person in the financial year in relation to the project;

(b) any amounts of uplifted frontier expenditure that the person is taken by section 36C to have incurred in the financial year in relation to the project;

(c) any amounts of expenditure that the person is taken by subparagraph 48(1)(a)(ia) or paragraph 48A(5)(c) to have incurred in the financial year in relation to the project.

Note: The effect of subsections 35A(2), 35B(2) and 45D(3) must be taken into account when working out an incurred exploration expenditure amount.

8 Clause 1 of the Schedule

Insert:

incurred exploration expenditure amount, in relation to a petroleum project that is a combined project and in relation to a financial year, means the sum of the following:

(a) any amounts of:

(i) exploration expenditure (other than designated frontier expenditure) actually incurred by the person; and

(ii) uplifted frontier expenditure that the person is taken by section 36C to have incurred;

in the financial year in relation to the project (not being amounts incurred before the project combination certificate in relation to the project came into force);

(b) any amounts of expenditure that the person is taken by subparagraph 48(1)(a)(ia) or paragraph 48A(5)(c) to have incurred in the financial year in relation to the project;

(c) if the project combination certificate came into force during the financial year:

(i) any amounts of exploration expenditure (other than designated frontier expenditure) actually incurred by the person in the financial year; and

(ii) any amounts of uplifted frontier expenditure that the person is taken by section 36C to have incurred in the financial year; and

(iii) any amounts of exploration expenditure that the person is taken by section 48 or 48A to have incurred in the financial year;

in relation to the pre-combination projects.

Note: The effect of subsections 35A(2), 35B(2) and 45D(3) must be taken into account when working out an incurred exploration expenditure amount.

9 Paragraph 15(1)(a) of the Schedule

After "incurred exploration expenditure", insert ", or is taken to have incurred uplifted frontier expenditure,".

10 Subclause 15(1) of the Schedule

Omit "all of the exploration expenditure is non-transferable expenditure", substitute "the total of the amounts of exploration expenditure (other than designated frontier expenditure), and uplifted frontier expenditure, is taken to be non-transferable expenditure".

11 Paragraph 15(2)(b) of the Schedule

Repeal the paragraph, substitute:

(b) the total of:

(i) any amounts of exploration expenditure (other than designated frontier expenditure) actually incurred by the person; and

(ii) any amounts of uplifted frontier expenditure taken to be incurred by the person in respect of designated frontier expenditure actually incurred by the person;

in relation to the notional project in the financial year exceeds the excess referred to in paragraph (a) by an amount (the ***non-transferable amount***);

12 Subclause 15(2) of the Schedule

Omit "so much of the exploration expenditure as equals the non-transferable amount is non-transferable expenditure", substitute "so much of the expenditure as equals the non-transferable amount is taken to be non-transferable expenditure".

13 Paragraph 15(3)(b) of the Schedule

Omit “the exploration expenditure incurred”, substitute “any exploration expenditure (other than designated frontier expenditure) incurred, or any uplifted frontier expenditure taken to be incurred,”.

14 Paragraph 15(4)(c) of the Schedule

Repeal the paragraph, substitute:

(c) add amounts in accordance with the following rules:

(i) start with the oldest amount of any exploration expenditure (other than designated frontier expenditure) incurred, or any uplifted frontier expenditure taken to be incurred, by the person in the financial year;

(ii) add to that, in order starting with the next oldest amount, each of the other amounts incurred, or taken to be incurred, by the person in the financial year;

(iii) if adding an amount of expenditure would make the total exceed the non-transferable amount, add only so much of the amount as makes the total equal the non-transferable amount and do not add any later amount of expenditure;

15 Paragraph 15(4)(d) of the Schedule

Omit “subparagraphs (c)(i) and (ii)”, substitute “paragraph (c)”.

16 Paragraph 16(c) of the Schedule

Repeal the paragraph, substitute:

(c) the total of:

(i) any amounts of exploration expenditure (other than designated frontier expenditure) actually incurred by the person; and

(ii) any amounts of uplifted frontier expenditure taken to be incurred by the person in respect of designated frontier expenditure actually incurred by the person;

in relation to the notional project during the period starting on 1 July 1990 and ending at the end of the assessable year;

17 Application

(1) The amendments made by this Schedule (other than items 5 and 6) apply in respect of any exploration expenditure incurred (whether

before or after this Schedule commences) where the eligible exploration or recovery area is a designated frontier area.

(2) The amendments made by items 5 and 6 apply in respect of any objection made (whether before or after that item commences) that has not yet been finally determined or otherwise disposed of.

Schedule 6—Consolidation

Part 1—Application

1 Application

The amendments made by this Schedule apply on and after 1 July 2002.

Part 2—Amount of certain liabilities for purpose of calculating allocable cost amount on exit

Income Tax Assessment Act 1997

2 At the end of section 711-45

Add:

Adjustment where amount of liability differed for purpose of calculating allocable cost amount on entry

(8) If:

(a) a leaving entity's liability mentioned in any preceding subsection was taken into account in working out the *allocable cost amount for a *subsidiary member (whether or not the leaving entity) of the old group in accordance with Division 705 (the ***entry ACA***); and

(b) the amount (the ***entry amount***) of the liability that was so taken into account is different from the amount (the ***exit amount***) of the liability taken into account in applying the subsection; and

(c) the entry ACA was different from what it would have been if the exit amount, instead of the entry amount, had been taken into account in working it out;

then, for the purpose of applying the subsection, the liability is taken to be of an amount equal to the entry amount.

Part 3—Ensuring no double reduction in working out step 3 of allocable cost amount on entry

Income Tax Assessment Act 1997

3 Subsection 705-90(6)

Repeal the subsection, substitute:

Undistributed profits must have accrued to joined group

(6) Next, work out the extent to which the undistributed profits that satisfy the requirements of subsection (3) accrued to the joined group before the joining time (subsection (7) states what it means for a profit to accrue to the joined group before the joining time). The result is the step 3 amount.

Income Tax (Transitional Provisions) Act 1997

4 Paragraph 701-30(2)(a)

Omit “, and paragraph (6)(b),”.

Part 4—Bad debts

Division 1—Main amendment

Income Tax Assessment Act 1997

5 At the end of Division 709

Add:

Subdivision 709-D—Deducting bad debts

Guide to Subdivision 709-D

709-200 What this Subdivision is about

An entity can deduct a bad debt that:

(a) has for a period been owed to a member of a consolidated group; and

(b) has for another period been owed to an entity that was not a member of that group;

only if each entity that has been owed the debt for such a period could have deducted the debt had it been written off as bad at the end of the period. This applies even if the debt is owed to the same entity for different periods.

Table of sections

Application and object

709-205 Application of this Subdivision
709-210 Object of this Subdivision

Limit on deduction of bad debt

709-215 Limit on deduction of bad debt

Application and object

709-205 Application of this Subdivision

(1) This Subdivision affects whether an entity (the ***claimant***) that is or has been a *member of a *consolidated group and writes off a debt, or part of a debt, as bad may deduct the debt or part if the conditions in subsection (2) exist.

(2) The conditions are that, in the time starting when the debt was incurred (whether to the claimant or another entity) and ending when the claimant wrote off the debt or part:

(a) the debt was owed to an entity (whether the claimant or another entity) for a period (a ***debt test period***) when the entity was a *member of a *consolidated group; and

(b) the debt was owed to an entity (whether the claimant or another entity) for a period (also a ***debt test period***) when the entity was a *not* a member of that group.

Note 1: The debt must have been owed to the claimant for at least one of the debt test periods for the claimant to have been able to write it off.

Note 2: One effect of section 701-1 (Single entity rule) is that a debt is taken to be owed to the head company of a consolidated group while the debt is owed to a subsidiary member of the group.

(3) Ignore section 701-5 (Entry history rule) and section 701-40 (Exit history rule) in identifying a debt test period.

Note: Subsection (3) does not affect sections 701-5 and 701-40 so far as they operate to treat the debt, or part of the debt, as having been included in the claimant's assessable income. That inclusion is generally a condition under section 25-35 for the claimant to be able to deduct the debt.

(4) This Subdivision does not apply in relation to a debt merely because it is assigned:

(a) from an entity that is a *member of a *consolidated group to an entity that is not a member of that group; or

(b) from an entity that is not a member of a consolidated group to an entity that is a member of a consolidated group; or

(c) from an entity that is a member of a consolidated group to an entity that is a member of another consolidated group.

This subsection has effect despite subsections (1) and (2).

Note: There is not an assignment of a debt from one entity to another merely because section 701-1 (Single entity rule) starts or ceases to apply in relation to the entities so that the debt ceases to be a debt owed to one entity and becomes a debt owed to the other entity.

709-210 Object of this Subdivision

The main object of this Subdivision is to ensure that the claimant can deduct the debt, or part of it, only if each entity that was owed the debt for a debt test period could have deducted the debt if it had been written off as bad at the end of the period.

Limit on deduction of bad debt

709-215 Limit on deduction of bad debt

(1) The claimant can deduct the debt, or part of the debt, if, and only if:

(a) section 8-1 or 25-35 permits the deduction (ignoring subsection 25-35(5) and the provisions mentioned in that subsection); and

(b) the condition in subsection (2) is met for each debt test period.

(2) The condition is that the entity that was owed the debt for the debt test period could have deducted the debt for an income year (the ***debt test income year***) starting and ending at the times identified in subsection (3) if:

(a) the entity had written off the debt as bad at the end of the period; and

(b) these provisions (the ***modified provisions***) had effect as described in this section:

(i) sections 165-123 and 165-126 (which are about conditions that must be met for a company to be able to deduct a bad debt);

(ii) sections 266-35, 266-85, 266-120, 266-160 and 267-25 in Schedule 2F to the *Income Tax Assessment Act 1936* (which are about conditions that must be met for certain kinds of trusts to be able to deduct a bad debt);

(iii) other provisions of this Act so far as they relate to a section listed in subparagraph (i) or (ii); and

(c) these provisions did not apply:

(i) subsections 165-120(2) and (3);

(ii) section 267-65 in Schedule 2F to the *Income Tax Assessment Act 1936*.

Note 1: Some of the other provisions of this Act that relate to a section listed in subparagraph (2)(b)(i) are sections 165-120, 165-129 and 165-132 and Subdivision 166-C.

Note 2: Some of the other provisions of this Act that relate to a section listed in subparagraph (2)(b)(ii) are sections 266-40, 266-45, 266-90, 266-125, 266-165, 267-30, 267-35, 267-40 and 267-45 in Schedule 2F to the *Income Tax Assessment Act 1936*.

Debt test income year

(3) The table shows when the debt test income year starts and ends.

Start and end of debt test income year

	If:	The start of the debt test income year is:	The end of the debt test income year is:
1	Both these conditions are met: (a) the entity that is owed the debt for the debt test period is the claimant; (b) the period ends at the time (the ***write-off time***) the claimant actually writes off the debt or part of the debt	The later of these times (or either of them if they are the same): (a) the start of the income year in which the write-off time occurs; (b) the start of the debt test period	The end of the income year in which the write-off time occurs
2	Either: (a) the entity that is owed the debt for the debt test period is *not* the claimant; or (b) that entity is the claimant but that period ends before the claimant actually writes off the debt or part of the debt	The later of these times (or either of them if they are the same): (a) 12 months before the end of the debt test period; (b) the start of the debt test period	The end of the debt test period

Continuity periods, ownership test periods and test periods

(4) For the purposes of subsection (2), the modified provisions have effect as if:

(a) the *first continuity period started at the start time shown in the table and ended at the start of the debt test income year; and

(b) the *second continuity period were the debt test income year or, for the purposes of section 165-123 and Subdivision 166-C defining periods by reference to the second continuity period, the period:

(i) starting at the start of the debt test income year; and

(ii) ending at the end time shown in the table; and

(c) each section listed in subparagraph (2)(b)(ii) specified that the test period identified in the section:

(i) started at the start time shown in the table; and

(ii) ended at the end time shown in the table.

Start time and end time

	If:	**The start time is:**	**The end time is:**
1	All these conditions are met: (a) the entity that is owed the debt for the debt test period is the claimant; (b) the period ends at the time (the ***write-off time***) the claimant actually writes off the debt or part of the debt; (c) the claimant is the *head company of a *consolidated group at the write-off time	The start of the debt test period	The end of the income year in which the write-off time occurs
2	All these conditions are met: (a) the entity that is owed the debt for the debt test period is the claimant; (b) the period ends at the time (the ***write-off time***) the claimant actually writes off the debt or part of the debt; (c) the claimant is *not* the *head company of a *consolidated group at the write-off time	Just before the start of the debt test period	The end of the income year in which the write-off time occurs

Start time and end time			
	If:	**The start time is:**	**The end time is:**
3	The debt test period: (a) starts at a time other than a time when the entity that is owed the debt for the period ceases to be a *member of a *consolidated group; and (b) ends when the entity becomes a member of such a group; (whether or not the entity was the *head company of another such group during the period)	The start of the debt test period	Just after the end of the debt test period
4	Both these conditions are met: (a) the entity that is owed the debt for the debt test period is the *head company of a *consolidated group; (b) the period ends when: (i) a *subsidiary member of the group becomes a *member of another consolidated group; or (ii) the entity ceases to be the head company of the group without becoming a member of another consolidated group	The start of the debt test period	The end of the debt test period
5	The debt test period: (a) starts when the entity that is owed the debt for the period ceases to be a *member of a *consolidated group; and (b) ends later when the entity becomes a member of a consolidated group	Just before the start of the debt test period	Just after the end of the debt test period

(5) For the purposes of subsection (2), the modified provisions have effect as if section 267-25 in Schedule 2F to the *Income Tax Assessment Act 1936* applied in relation to debts whether they were incurred in the income year or an earlier income year.

Test time for same business test under section 165-126

(6) For the purposes of subsection (2), the modified provisions have effect as if subsection 165-126(2) specified that the test time were the later of these times (or either of them if they are the same):

(a) the first time at which it is not practicable to show that the company will meet the conditions in section 165-123 (as modified by this section);

(b) the time just after the start of the debt test period.

Business at and just after the end of the debt test period

(7) If:

(a) the debt test period ends when the entity that was owed the debt for the period becomes a *member of a *consolidated group; and

(b) under the modified provisions, the *business that the entity carried on at or just after the end of the period is relevant to the question whether the entity could have deducted the debt as described in subsection (2);

those provisions have effect for the purposes of that subsection as if the entity carried on at those times the business it carried on just before the end of the period.

Division 2—Consequential amendments

Income Tax Assessment Act 1936

6 At the end of subsection 266-35(1) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* modifies how this section operates in relation to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

7 At the end of subsection 266-85(3) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* modifies how this section operates in relation to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

8 At the end of subsection 266-120(1) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* modifies how this section operates in relation to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

9 At the end of subsection 266-160(2) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* modifies how this section operates in relation to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

10 At the end of subsection 267-25(1) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* affects the application of this section to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

11 At the end of subsection 267-65(1) in Schedule 2F

Add:

Note: Subdivision 709-D of the *Income Tax Assessment Act 1997* modifies how this section operates in relation to a trust that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

Income Tax Assessment Act 1997

12 Section 12-5 (table item headed “bad debts”)

After:

debt/equity swaps	**63E, 63F**

insert:

deduction of a debt that used to be owed to a member of a consolidated group by an entity that used to be a member of the group	Subdivision 709-D

13 Subsection 25-35(5) (at the end of the table)

Add:

6	An entity that used to be a member of a consolidated group can deduct a bad debt that used to be owed to a member of the group only if certain conditions are met	Subdivision 709-D

14 At the end of subsection 165-120(1)

Add:

Note 3: Subdivision 709-D modifies how this Subdivision operates in relation to a company that used to be a member of a consolidated group and that writes off as bad a debt that used to be owed to a member of the group.

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

After “707-135,”, insert “709-215,”.

Income Tax (Transitional Provisions) Act 1997

16 After Division 707

Insert:

Division 709—Other rules applying when entities become subsidiary members etc.

Table of Subdivisions

709-D Deducting bad debts

Subdivision 709-D—Deducting bad debts

Table of sections

709-200 Application of Subdivision 709-D of the *Income Tax Assessment Act 1997*

709-200 Application of Subdivision 709-D of the *Income Tax Assessment Act 1997*

Subdivision 709-D of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002.

Part 5—Insurance companies

Income Tax Assessment Act 1997

17 At the end of section 67-25

Add:

Life insurance company's subsidiary joining consolidated group

(5) The *tax offset available under subsection 713-545(5) is subject to the refundable tax offset rules.

18 Subsection 320-175(2) (notes)

Repeal the notes, substitute:

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

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

19 Subsection 320-230(2) (notes)

Repeal the notes, substitute:

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

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

20 Group heading before section 713-505

Repeal the heading, substitute:

General modifications for life insurance companies

21 Section 713-510

Repeal the section, substitute:

713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group

(1) An entity cannot be a *subsidiary member of a *consolidated group or *consolidatable group of which a *life insurance company is a *member if:

(a) the life insurance company owns, either directly or indirectly through one or more interposed entities, all the *membership interests in the entity and either:

(i) some, but not all, of the membership interests described in subsection (3) (the ***key interests***) are *virtual PST assets of the life insurance company; or

(ii) some, but not all, of the key interests are *segregated exempt assets of the life insurance company; or

(b) the life insurance company owns, either directly or indirectly through one or more interposed entities, only some of the membership interests in the entity and any of the key interests are virtual PST assets or segregated exempt assets of the life insurance company.

Note: The entity could, however, be a member of another consolidated group or consolidatable group.

(2) An entity cannot continue to be a *subsidiary member of a *consolidated group of which a *life insurance company is a *member if:

(a) the life insurance company owns, either directly or indirectly through one or more interposed entities, all the *membership interests in the entity and, had the entity not been a subsidiary member of the group, either:

(i) some, but not all, of the membership interests described in subsection (3) (the ***key interests***) would be *virtual PST assets of the life insurance company; or

(ii) some, but not all, of the key interests would be *segregated exempt assets of the life insurance company; or

(b) the life insurance company owns, either directly or indirectly through one or more interposed entities, only some of the membership interests in the entity and, had the entity not been a subsidiary member of the group, any of the key interests would be virtual PST assets or segregated exempt assets of the life insurance company.

(3) The key interests are the *membership interests the *life insurance company owns directly in:
  (a) the entity; or
  (b) an interposed entity.

Life insurance companies' liabilities on joining consolidated group

713-511 Treatment of certain liabilities for income year when life insurance company joins consolidated group

(1) This section affects how paragraph 320-15(1)(h) and section 320-85 apply if:
  (a) a *life insurance company becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and
  (b) just before the joining time, the life insurance company had one or more liabilities under the *net risk components of life insurance policies.

Note: Paragraph 320-15(1)(h) and section 320-85 both operate on the basis of a comparison of the value of the company's liabilities under the net risk components of life insurance policies at the end of the current year with the value of those liabilities at the end of the previous year, so that:

(a) that paragraph includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and

(b) that section allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

(2) The object of this section is to ensure that the *head company of the *consolidated group bears the income tax consequences relating to a change in *value of the liabilities only after the joining time.

Note: The life insurance company bears the income tax consequences relating to a change in value of the liabilities before the joining time, because section 701-30 ensures that paragraph 320-15(1)(h) and section 320-85 apply in relation to a part of the income year before that time when the company was not a subsidiary member of a consolidated group as if that part were an income year.

(3) Paragraph 320-15(1)(h) and section 320-85 apply for the head company core purposes set out in section 701-1 (Single entity rule)

as if the *value of the liabilities at the end of the last income year ending before the joining time were the value of the liabilities (for the *life insurance company) just before the joining time.

22 Before section 713-515

Insert:

Tax cost setting rules for life insurance companies joining consolidated group

23 Section 713-515 (heading)

Repeal the heading, substitute:

713-515 Certain assets taken to be retained cost base assets where life insurance company joins group

24 Section 713-520 (heading)

Repeal the heading, substitute:

713-520 Valuing certain liabilities where life insurance company joins group

25 Sections 713-525 and 713-530

Repeal the sections, substitute:

713-525 Obligation to value certain assets and liabilities at joining time

Division 320 has effect as if the time when a *life insurance company becomes a *subsidiary member of a *consolidated group were a *valuation time for the purposes of sections 320-175 and 320-230.

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

Losses of life insurance companies joining consolidated group

713-530 Treatment of certain losses of life insurance company

(1) This section applies if:
  (a) a *life insurance company becomes a *member of a *consolidated group at a time (the ***joining time***); and
  (b) just before the joining time, the life insurance company had either:
    (i) a *tax loss of the *complying superannuation class; or
    (ii) a *net capital loss from *virtual PST assets.

(2) This Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the joining time as if:
  (a) the *head company of the *consolidated group had made the loss for the income year in which the joining time occurs; and
  (b) the *life insurance company had not made the loss for the income year for which it made the loss.

(3) The *head company is not prevented from *utilising the loss for the income year in which the joining time occurs merely because this Act operates as if the head company had made the loss for that year.

(4) Division 707 does not apply in relation to the *net capital loss or the *tax loss at the joining time.

Losses of life insurance companies' subsidiaries joining consolidated group

713-535 Losses of entities whose membership interests are virtual PST assets of life insurance company

(1) This section applies if:
  (a) a *life insurance company becomes a *member of a *consolidated group at a time (the ***joining time***); and
  (b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, all the *membership interests in yet another entity (the ***life***

insurance subsidiary) that becomes a *subsidiary member of the group at that time; and

(c) all the following membership interests are *virtual PST assets of the life insurance company:

(i) the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary;

(ii) the membership interests (if any) that the life insurance company owns directly in the interposed entities; and

(d) the *head company of the group makes a *tax loss or *net capital loss under Subdivision 707-A because of a transfer from the life insurance subsidiary.

(2) This Act operates for the purposes of income years ending after the transfer as if:

(a) the *tax loss were of the *complying superannuation class; or

(b) the *net capital loss were from *virtual PST assets.

(3) Subdivisions 707-B, 707-C and 707-D do not affect the *utilisation of the loss by the *head company of the *consolidated group.

713-540 Losses of entities whose membership interests are segregated exempt assets of life insurance company

(1) This section applies if:

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

(b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, all the *membership interests in yet another entity (the ***life insurance subsidiary***) that becomes a *subsidiary member of the group at that time; and

(c) all the following membership interests are *segregated exempt assets of the life insurance company:

(i) the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary;

(ii) the membership interests (if any) that the life insurance company owns directly in the interposed entities.

(2) A *tax loss or *net capital loss of the life insurance subsidiary for an income year ending before the joining time cannot be *utilised

by the life insurance subsidiary for an income year ending after that time.

Note: This prevents the loss from being transferred to the head company of the consolidated group under Subdivision 707-A (because it means the life insurance subsidiary could not have utilised the loss for the trial year). As a result, section 707-150 prevents any other entity from utilising the loss for an income year ending after the joining time.

Imputation rules for life insurance companies joining consolidated group

713-545 Treatment of franking surplus in franking account of life insurance subsidiary joining group

(1) This section applies if:

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

(b) at the joining time, the life insurance company owns, either directly or indirectly through one or more interposed entities, *membership interests in yet another entity (the ***life insurance subsidiary***) that becomes a *subsidiary member of the group at that time; and

(c) the life insurance subsidiary's *franking account is in surplus just before the joining time.

(2) Paragraph 709-60(2)(b) does not apply in relation to the life insurance subsidiary.

(3) A *franking credit arises at the joining time in the *franking account of the *head company of the group. The amount of the credit is the amount worked out under subsection (4).

(4) The amount is equal to the amount of the *franking credit that would arise in the *life insurance company's *franking account just before the joining time under item 5 of the table in subsection 219-15(2) if:

(a) the life insurance subsidiary made a *franked distribution to the life insurance company just before the joining time; and

(b) the amount of the franking credit on the distribution were equal to the surplus mentioned in paragraph (1)(c).

(5) The *head company of the group is entitled to a *tax offset for the income year in which the joining time occurs. The amount of the tax offset is:

(a) if all the *membership interests (if any) that the *life insurance company owns directly in the life insurance subsidiary, and all the membership interests (if any) that the life insurance company owns directly in interposed entities, are *segregated exempt assets of the life insurance company—the surplus mentioned in paragraph (1)(c), reduced by the amount worked out under subsection (4); or

(b) if all the membership interests (if any) that the life insurance company owns directly in the life insurance subsidiary, and all the membership interests (if any) that the life insurance company owns directly in interposed entities, are *virtual PST assets of the life insurance company—the amount worked out under subsection (6); or

(c) otherwise—nil.

(6) The amount is worked out using the following formula (or is nil if it would otherwise be negative):

$$\left(\begin{array}{c}\text{Surplus mentioned}\\ \text{in paragraph (1)(c)}\end{array} - \begin{array}{c}\text{Amount worked out}\\ \text{under subsection (4)}\end{array}\right) \times \frac{\begin{array}{c}\text{Complying}\\ \text{superannuation}\\ \text{class tax rate}\end{array}}{\begin{array}{c}\text{Ordinary class}\\ \text{tax rate}\end{array}}$$

where:

complying superannuation class tax rate means the rate of tax in respect of the *complying superannuation class of the taxable income of a *life insurance company for the income year in which the joining time occurs (see paragraph 23A(b) of the *Income Tax Rates Act 1986*).

ordinary class tax rate means the rate of tax in respect of the *ordinary class of the taxable income of a life insurance company for the income year in which the joining time occurs (see subparagraph 23A(a)(ii) of the *Income Tax Rates Act 1986*).

713-550 Treatment of head company's franking account after joining

Sections 709-70 and 709-75 do not apply in relation to a *subsidiary member of a *consolidated group if:

(a) the subsidiary member is a *life insurance company; or

(b) a life insurance company that is a *member of the group owns *membership interests, either directly or indirectly through one or more interposed entities, in the subsidiary member.

Annuity payable by life insurance company to another member of a consolidated group

713-553 Special rules relating to segregated exempt assets

Conditions for sections 713-555 and 713-560 to apply

(1) Sections 713-555 and 713-560 apply only if both the conditions in subsections (2) and (3) are met.

Note: Each of those sections sets out extra conditions that must also be met for the section to apply.

(2) The first condition is that there is a time (the ***fusion time***) when it starts to be the case that both these entities (the ***fused entities***) are *members of a single *consolidated group:

(a) a *life insurance company;

(b) an entity (the ***policyholder***) holding an *exempt life insurance policy (the ***fused entities' policy***) that:

(i) was issued when the policyholder and the life insurance company were not both members of a single consolidated group; and

(ii) provided for the life insurance company to pay an *immediate annuity to the policyholder.

(3) The second condition is that the *head company of the *consolidated group determines the following amounts:

(a) the total *transfer value of the head company's *segregated exempt assets;

(b) the amount of the head company's *exempt life insurance policy liabilities;

as at a time (the ***determination time***) that is the fusion time or, if the head company does not determine those amounts as at the fusion time, the first time after the fusion time as at which the head company determines those amounts.

Note: If the life insurance company becomes a subsidiary member of the consolidated group, that company's segregated exempt assets become segregated exempt assets of the head company of the group because of section 701-5 (Entry history rule) and section 713-505 (Head company treated as a life insurance company).

Object of sections 713-555 and 713-560

(4) The object of sections 713-555 and 713-560 is to ensure that the *head company of the *consolidated group:

(a) does not have excessive amounts included in its assessable income because section 701-1 (Single entity rule) treats the fused entities as one so liabilities under the fused entities' policy do not contribute to the amount of the head company's *exempt life insurance policy liabilities as at the determination time; and

(b) has amounts included in its assessable income, or is allowed deductions, to reflect what would have happened to the fused entities if they had not both been *members of the group at any time between the fusion time and the determination time when they were both members of the group.

713-555 Transfer from segregated exempt assets because policyholder and life insurance company are in group

Application

(1) This section applies if:

(a) as at the determination time, the total *transfer value of the *segregated exempt assets of the *head company of the *consolidated group exceeds the amount of that company's *exempt life insurance policy liabilities, wholly or partly because:

(i) those assets include assets out of which exempt life insurance policy liabilities attributable to the fused entities' policy were to have been discharged; and

(ii) while both the fused entities are members of the group, the liability to pay the *annuity is taken not to exist for

the head company core purposes set out in section 701-1 (Single entity rule), because one or more applications of that section treat the fused entities as one entity; and

(b) because of that excess, the head company transfers under subsection 320-235(1) or 320-250(2), from its segregated exempt assets, assets (the ***policy assets***) whose total transfer value equals the amount of the excess attributable to the matters described in subparagraphs (a)(i) and (ii).

However, this section does not apply if the policyholder ceases to be a *member of the consolidated group between the fusion time and the determination time.

Note: Subsections 320-235(1) and 320-250(2) require a life insurance company to transfer assets from its segregated exempt assets if, at certain times, the total transfer value of the segregated exempt assets exceeds the amount of the company's exempt life insurance policy liabilities.

Policy assets' transfer value not included in assessable income

(2) Paragraph 320-15(1)(f) does not apply to the transfer of the policy assets.

Note: Paragraph 320-15(1)(f) includes in a life insurance company's assessable income the transfer values of assets transferred by the company from the company's segregated exempt assets under subsection 320-235(1) or 320-250(2).

Extra assessable income if policy is not a qualifying security

(3) If the fused entities' policy is not a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), the assessable income of the *head company of the *consolidated group for the income year in which the company transfers the policy assets includes the amount worked out using the formula:

$$\text{Total *transfer value of the policy assets} - \text{Reduced purchase price of the annuity}$$

where:

reduced purchase price of the annuity means the reduced purchase price of the *annuity as at the determination time worked out under Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* as if the determination time (rather than the fusion time) had been the first time at which both the fused entities were *members of the *consolidated group.

Assessable income or deduction if policy is a qualifying security

(4) If the fused entities' policy is a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), section 159GS (Balancing adjustment on transfer of qualifying security) of that Act applies as if:

(a) the *head company of the *consolidated group:

(i) had been the holder (as defined in section 159GP of that Act) of the policy; and

(ii) had transferred the policy when it transferred the policy assets; and

(b) the transfer price had equalled the total *transfer value of the policy assets; and

(c) the determination time (rather than the fusion time) had been the first time at which both the fused entities were *members of the consolidated group.

Note: If the policyholder becomes a subsidiary member of the consolidated group, section 701-5 (Entry history rule) treats the head company as if anything that had happened to the policyholder before it became a subsidiary member of the group had happened to the head company.

713-560 If valuation of segregated exempt assets is delayed

Application

(1) This section applies if there is a period (the ***gap***) between:

(a) the fusion time; and

(b) the determination time or the time at which the policyholder ceases to be a *member of the *consolidated group, whichever is earlier;

when the fused entities are both members of the consolidated group.

Continuation of exempt life insurance policy during the gap

(2) For the head company core purposes mentioned in section 701-1 (Single entity rule), Division 320 applies in relation to the fused entities' policy as if it continued to be an *exempt life insurance policy during the gap, even though both the fused entities were *members of the *consolidated group.

Transfer from segregated assets to provide for annuity payments

(3) During the gap, the *head company of the *consolidated group may transfer an asset from the head company's *segregated exempt assets to provide for payments of the *immediate annuity under the fused entities' policy.

Effect of transfer

(4) If the *head company of the *consolidated group transfers an asset under subsection (3):
  (a) section 320-255 applies to the asset in the same way as that section applies to an asset transferred under subsection 320-250(2); and
  (b) whichever one of subsections (5) and (6) is relevant affects the *head company of the *consolidated group for the income year in which the gap occurs.

Income if policy is not a qualifying security

(5) If the fused entities' policy is not a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*), the *head company's assessable income includes the amount that, if the fused entities had not been *members of the *consolidated group:
  (a) would have been included in the policyholder's assessable income under section 27H of that Act in connection with the policy; and
  (b) would have been derived in the gap.

Income or deduction if policy is a qualifying security

(6) If the fused entities' policy is a qualifying security (as defined in section 159GP of the *Income Tax Assessment Act 1936*):
  (a) the *head company's assessable income includes the amount (if any) that, if the fused entities had not been *members of the *consolidated group:
    (i) would have been included in the policyholder's assessable income under section 159GQ of that Act in connection with the policy; and
    (ii) would have been attributable to the gap; or

(b) the head company may deduct the amount (if any) that, if the fused entities had not been members of the consolidated group:

(i) would have been a deduction allowable to the policyholder under section 159GQ of that Act in connection with the policy; and

(ii) would have been attributable to the gap.

Liabilities for life insurance companies leaving consolidated group

713-565 Treatment of certain liabilities for income year when life insurance company leaves consolidated group

(1) This section affects how paragraph 320-15(1)(h) and section 320-85 apply if:

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

(b) at the leaving time, the *life insurance company has one or more liabilities under the *net risk components of life insurance policies.

Note: Paragraph 320-15(1)(h) and section 320-85 both operate on the basis of a comparison of the value of a life insurance company's liabilities under the net risk components of life insurance policies at the end of the current year with the value of those liabilities at the end of the previous year, so that:

(a) that paragraph includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and

(b) that section allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

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

(a) the *head company of the *consolidated group bears the income tax consequences relating to a change in *value of the liabilities before the leaving time; and

(b) the *life insurance company bears the income tax consequences relating to a change in value of the liabilities after the leaving time.

Head company's income or deduction from liabilities

(3) For the head company core purposes set out in section 701-1 (Single entity rule) relating to the income year in which the leaving time occurs (but not later income years), paragraph 320-15(1)(h) and section 320-85 have effect as if:

(a) the *head company of the *consolidated group had the liabilities at the end of that income year; and

(b) the *value of the liabilities at the end of that income year had been the amount that was actually the value of the liabilities (for the *life insurance company) at the leaving time.

Life insurance company's income or deduction from liabilities

(4) For the entity core purposes set out in section 701-1 (Single entity rule) relating to the *life insurance company and the income year in which the leaving time occurs, paragraph 320-15(1)(h) and section 320-85 have effect as if the *value of the liabilities at the end of the previous income year had been the amount that was actually the value of the liabilities (for the life insurance company) at the leaving time.

Losses for life insurance companies leaving consolidated group

713-570 Certain losses transferred to leaving company

(1) This section applies if:

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

(b) ignoring section 713-505, at the leaving time, no other *member of the group is a life insurance company that has a *virtual PST; and

(c) at the leaving time, the *head company has either:

(i) a *tax loss of the *complying superannuation class; or

(ii) a *net capital loss from *virtual PST assets.

(2) This Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the leaving time as if:

(a) the *life insurance company had made the loss for the income year in which the leaving time occurs; and

(b) the *head company had not made the loss for the income year for which it made the loss.

Note: Section 707-410 (Exit history rule does not treat entity as having made a loss) does not prevent the life insurance company from having the loss under this section, because that section merely states that the company is not taken under section 701-40 (Exit history rule) to have made a loss.

(3) The *life insurance company is not prevented from *utilising the loss for the income year in which the leaving time occurs merely because this Act operates as if the life insurance company had made the loss for that year.

Tax cost setting rules for life insurance companies leaving consolidated group

713-575 Terminating value of certain assets where life insurance company leaves group

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

(2) For the purposes of applying section 711-25 in relation to the leaving entity, the *head company's ***terminating value*** for an asset that it holds at the leaving time because the leaving entity is taken by subsection 701-1(1) to be a part of the head company is the *transfer value of the asset at the leaving time, if the asset is:

(a) a *virtual PST asset, or a *segregated exempt asset, of the head company; or

(b) held by the head company for the purpose of discharging its liabilities under the *net investment component of ordinary life insurance policies (except policies that provide for *participating benefits or *discretionary benefits under *life insurance business carried on in Australia).

713-580 Valuing certain liabilities where life insurance company leaves group

(1) Despite section 711-45, if the leaving entity mentioned in step 4 in the table in section 711-20 is a *life insurance company, the

leaving entity's liabilities mentioned in this section are to be valued as mentioned in this section.

(2) To avoid doubt, those liabilities are the liabilities that become those of the leaving entity because section 701-1 (Single entity rule) ceases to apply to the leaving entity when it ceases to be a *subsidiary member of the group.

(3) The value of the leaving entity's *virtual PST liabilities (if any) is the amount worked out under section 320-190 at the leaving time.

(4) The value of the leaving entity's *exempt life insurance policy liabilities (if any) is the amount worked out under section 320-245 at the leaving time.

(5) Subsection (6) applies to a liability of the leaving entity if:
  (a) the liability is under the *net risk component of a *life insurance policy; and
  (b) the leaving entity could deduct under section 320-80 an amount for the *risk component of claims paid under the policy on or after the time it ceased to be a *member of the *consolidated group.

(6) The value of that liability is the *current termination value of the *net risk component of the *life insurance policy at the leaving time (calculated by an *actuary).

(7) The value of the leaving entity's liabilities under the *net investment component of ordinary life insurance policies is the amount worked out for those liabilities under subsection 320-190(2) as if those liabilities were *virtual PST liabilities.

713-585 Obligation to value certain assets and liabilities at leaving time

Division 320 has effect as if the time when a *life insurance company ceases to be a *subsidiary member of a *consolidated group were a *valuation time for the purposes of sections 320-175 and 320-230.

Note: This means that there must be a valuation of the virtual PST assets and virtual PST liabilities under section 320-175 (with the consequences set out in section 320-180), and a valuation of the segregated exempt assets and exempt life insurance policy liabilities under

section 320-230 (with the consequences set out in section 320-235), as at that time.

26 At the end of Division 713

Add:

Subdivision 713-M—General insurance companies

Guide to Subdivision 713-M

713-700 What this Subdivision is about

This Subdivision sets out special rules for a general insurance company becoming or ceasing to be a subsidiary member of a consolidated group.

Table of sections

Tax cost setting rules for general insurance companies joining consolidated group

713-705 Certain assets taken to be retained cost base assets where general insurance company joins group

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713-715 If general insurance company joins consolidated group
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Tax cost setting rules for general insurance companies joining consolidated group

713-705 Certain assets taken to be retained cost base assets where general insurance company joins group

(1) This section applies if:

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

(b) that company has demutualised under Division 9AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) in the period starting just after the company demutualises and ending at the joining time, all of the *membership interests in the company were owned by the same group.

(2) A goodwill asset of the company just before the joining time is a ***retained cost base asset***.

(3) The goodwill asset's *tax cost setting amount is its amount (worked out in accordance with subsection 121AN(2) of the *Income Tax Assessment Act 1936*) on the applicable accounting day (see subsection 121AN(4) of that Act).

Liabilities and reserves of general insurance companies joining and leaving consolidated groups

713-710 Treatment of liabilities and reserves for income year when general insurance company joins or leaves group

Sections 713-715 and 713-720 affect how sections 321-10, 321-15, 321-50 and 321-55 in Schedule 2J to the *Income Tax Assessment Act 1936* (the ***affected sections***) apply in relation to these values (the ***affected values***):

(a) the value of the outstanding claims liability of a *general insurance company under *general insurance policies that is worked out under section 321-20 in Schedule 2J to the *Income Tax Assessment Act 1936*;

(b) the value of the unearned premium reserve of a general insurance company under general insurance policies that is worked out under section 321-60 in that Schedule.

Note 1: Sections 321-10 and 321-15 in that Schedule both operate on the basis of a comparison of the value of the outstanding claims liability of a general insurance company at the end of the current year with the value of that liability at the end of the previous income year, so that:

(a) section 321-10 includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and

(b) section 321-15 allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

Note 2: Sections 321-50 and 321-55 in that Schedule both operate on the basis of a comparison of the value of the unearned premium reserve of a general insurance company at the end of the current year with the value of that reserve at the end of the previous income year, so that:

(a) section 321-50 includes an amount in the company's assessable income for the current year if the value at the end of the current year is less than the value at the end of the previous income year; and

(b) section 321-55 allows a deduction for the current year if the value at the end of the current year is more than the value at the end of the previous income year.

713-715 If general insurance company joins consolidated group

(1) This section applies if a *general insurance company becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***).

(2) The object of this section is to ensure that the *head company of the *consolidated group bears the income tax consequences relating to changes after the joining time in the affected values.

Note: The general insurance company bears the income tax consequences relating to a change in the affected values before the joining time, because section 701-30 ensures that the affected sections apply in relation to a part of the income year before that time when the company was not a subsidiary member of a consolidated group as if that part were an income year.

(3) The affected sections apply for the head company core purposes set out in section 701-1 (Single entity rule) as if each of the affected values at the end of the last income year ending before the joining time were the amount that would have been that value had that income year ended just before the joining time.

713-720 If general insurance company leaves consolidated group

(1) This section applies if a *general insurance company ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***) in an income year (the ***leaving year***).

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

(a) the *head company of the *consolidated group bears the income tax consequences relating to changes before the leaving time in the affected values; and

(b) the *general insurance company bears the income tax consequences relating to changes after the leaving time in the affected values.

Head company's income or deduction

(3) For the head company core purposes set out in section 701-1 (Single entity rule) relating to the leaving year (but not later income years), the affected sections have effect as if each of the affected values at the end of the leaving year for the *head company of the *consolidated group were increased by the relevant value for the *general insurance company at the end of the previous income year worked out under subsection (5).

General insurance company's income or deduction

(4) For the entity core purposes set out in section 701-1 (Single entity rule) relating to the *general insurance company and the leaving year, the affected sections have effect as if each of the affected values for the general insurance company at the end of the previous income year were worked out under subsection (5).

Working out affected values at the end of the previous income year

(5) Work out each of the affected values for the *general insurance company at the end of the previous income year as if it had ended at the leaving time.

27 Subsection 995-1(1) (definition of *retained cost base asset*)

Omit "subsection 705-25(5) and 713-515(1)", substitute "subsections 705-25(5), 713-515(1) and 713-705(2)".

28 Subsection 995-1(1) (definition of *terminating value*)

Omit "705-30 and 711-30", substitute "705-30, 711-30 and 713-575".

Income Tax (Transitional Provisions) Act 1997

29 After paragraph 707-325(1)(e)

Insert:

(ea) neither of these sections applies in relation to the value donor as joining entity at the time the group became a consolidated group:

(i) section 713-535 (Losses of entities whose membership interests are virtual PST assets of life insurance company);

(ii) section 713-540 (Losses of entities whose membership interests are segregated exempt assets of life insurance company); and

30 At the end of subsection 707-325(5)

Add:

Note: For the purposes of paragraph (5)(a), ignore losses to which section 713-535 (Losses of entities whose membership interests are virtual PST assets of life insurance companies) of the *Income Tax Assessment Act 1997* applies. See section 707-355 of this Act.

31 At the end of subsection 707-327(5)

Add:

Note: For the purposes of subparagraph (5)(a)(i), ignore losses to which section 713-535 (Losses of entities whose membership interests are virtual PST assets of life insurance companies) of the *Income Tax Assessment Act 1997* applies. See section 707-355 of this Act.

32 At the end of subsection 707-328A(4)

Add:

Note: For the purposes of subparagraph (4)(a)(i), ignore losses to which section 713-535 (Losses of entities whose membership interests are virtual PST assets of life insurance companies) of the *Income Tax Assessment Act 1997* applies. See section 707-355 of this Act.

33 At the end of subsection 707-350(5)

Add:

Note: For the purposes of paragraph (5)(a), ignore losses to which section 713-535 (Losses of entities whose membership interests are virtual PST assets of life insurance companies) of the *Income Tax Assessment Act 1997* applies. See section 707-355 of this Act.

34 At the end of Subdivision 707-C

Add:

707-355 Ignore certain losses in working out when a choice can be made under this Subdivision

In working out when a choice may be made under subsection 707-325(5), 707-327(5), 707-328A(4) or 707-350(5), ignore losses to which section 713-535 of the *Income Tax Assessment Act 1997* applies.

Note: That section deals with losses transferred under Subdivision 707-A of that Act from certain wholly-owned subsidiaries of life insurance companies that are members of a consolidated group.

35 At the end of Division 713

Add:

Subdivision 713-M—General insurance companies

Table of sections

713-700 Application

713-700 Application

Subdivision 713-M of the *Income Tax Assessment Act 1997* applies on and after 1 July 2002.

Schedule 7—STS roll-over

Income Tax Assessment Act 1997

1 Subsection 40-340(3) (note 2)

Repeal the note, substitute:

Note 2: Subdivision 328-D sets out what the relief is for STS taxpayers.

2 Paragraph 40-340(4)(b)

After “this Division”, insert “or Subdivision 328-D”.

3 Subsection 328-175(3) (note)

Repeal the note, substitute:

Note: A choice made by a transferor under this subsection for an asset applies also to the transferee if roll-over relief under subsection 40-340(3) is chosen: see section 328-245.

4 Subsection 328-190(4) (note)

Repeal the note, substitute:

Note: The amounts that a transferor and transferee can deduct under this section are modified if roll-over relief under subsection 40-340(3) is chosen: see section 328-247.

5 Section 328-200 (note)

Repeal the note, substitute:

Note: A transferor does not subtract anything for certain balancing adjustment events under paragraph (a) of step 2 if roll-over relief under subsection 40-340(3) is chosen: see section 328-245.

6 Subsection 328-205(1) (note 3)

Repeal the note, substitute:

Note 3: This subsection does not apply to a transferee for certain assets if roll-over relief under subsection 40-340(3) is chosen: see section 328-257.

7 At the end of section 328-220

Add:

(3) This section applies to a transferee referred to in subsection 328-243(1) who is not an *STS taxpayer for the income year in which the relevant *balancing adjustment events occurred as if the transferee had been an STS taxpayer and stopped being one for that year. This rule applies even if roll-over relief is not chosen.

8 Subsection 328-225(1) (note)

Repeal the note, substitute:

Note: This section is modified in its application to a transferee for certain assets if roll-over relief under subsection 40-340(3) is chosen: see section 328-257.

9 Section 328-240

Repeal the section.

10 Section 328-243 (heading)

Repeal the heading, substitute:

328-243 Roll-over relief

11 Subsection 328-243(1)

Repeal the subsection, substitute:

(1) Roll-over relief can be chosen under subsection 40-340(3) if:
- (a) *balancing adjustment events occur for *depreciating assets on a day (the ***BAE day***) because of subsection 40-295(2); and
- (b) deductions for the assets are calculated under this Subdivision; and
- (c) the entity or entities that had an interest in the assets just before the balancing adjustment events occurred (the ***transferor***) and the entity or entities that have an interest in the assets just after the events occurred (the ***transferee***) jointly choose the roll-over relief; and
- (d) the condition in subsection (2) is met.

12 Subsection 328-247(1)

Omit “BAE year” (first occurring), substitute “income year (the ***BAE year***) in which the *balancing adjustment events occurred”.

13 Paragraph 328-247(1)(b)

Repeal the paragraph, substitute:

(b) if there are 2 or more occurrences of balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

14 Paragraph 328-250(2)(b)

Repeal the paragraph, substitute:

(b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

15 Subparagraph 328-250(3)(b)(ii)

Repeal the subparagraph, substitute:

(ii) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned (except ones that did not use the asset or have it installed ready for use).

16 Paragraph 328-253(2)(b)

Repeal the paragraph, substitute:

(b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

17 Paragraph 328-253(3)(b)

Omit “328-180(1) or 328-190(2)”, substitute “328-180(2) or 328-190(3)”.

18 Subparagraph 328-253(3)(b)(ii)

Repeal the subparagraph, substitute:

(ii) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned.

19 Paragraph 328-255(2)(b)

Repeal the paragraph, substitute:

(b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

20 Application

The amendments made by this Schedule apply to assessments for the income year following the income year in which this Act receives the Royal Assent and later income years.

Schedule 8—Family trust elections

Income Tax Assessment Act 1936

1 Subsection 272-80(2) in Schedule 2F

Repeal the subsection, substitute:

How election made

(2) The election must be in writing and in the approved form.

2 After subsection 272-80(4) in Schedule 2F

Insert:

Earlier year may be the specified year

(4A) The specified income year may be a year before the one in which the election is made if:

(a) at all times in the period from the beginning of the specified income year until 30 June in the income year before the one during which the election is made, the trust passes the family control test (see section 272-87); and

(b) either:

(i) any conferrals of present entitlement to income or capital of the trust made by the trustee during that period have been made on; or

(ii) any distributions of income or capital of the trust made by the trustee during that period have been made to;

the individual specified in the election or members of that individual's family group.

3 Subsection 272-85(2) in Schedule 2F

Repeal the subsection, substitute:

How election made

(2) The election must be in writing and in the approved form.

4 After subsection 272-85(4) in Schedule 2F

Insert:

Earlier year may be the specified year

(4A) The specified income year may be a year before the one in which the election is made if:

(a) at all times in the period from the beginning of the specified income year until 30 June in the income year before the one during which the election is made, the company, partnership or trust passes the family control test (see section 272-87); and

(b) either:

(i) any conferrals of present entitlement to income or capital of the trust made by the trustee during that period have been made on; or

(ii) any distributions of income or capital of the trust made by the trustee during that period have been made to;

the individual specified in the family trust election or members of that individual's family group.

5 Application

The amendments made by this Schedule apply to elections specifying the income year in which this Act receives the Royal Assent or a later income year.

Schedule 9—Non-commercial loans

Part 1—Amendment commencing on 29 June 2004

Income Tax Assessment Act 1936

1 After subsection 109XC(2)

Insert:

Modified operation of section 109D

(2A) A loan referred to in this Subdivision that is made during a year of income of a trust estate is taken to have been fully repaid at the end of the year for the purposes of paragraph 109D(1)(b) if it is fully repaid before the earlier of the due date for lodgment and the date of lodgment of the trustee's return of income for the trust for that year of income of the trust.

2 Application of item 1

The amendment made by item 1 of this Schedule applies to loans made on or after 12 December 2002.

Part 2—Amendments commencing on Royal Assent

Income Tax Assessment Act 1936

3 Paragraph 109D(1)(b)

Omit "by the end of", substitute "before the lodgment day for".

4 After subsection 109D(1)

Insert:

Amount of dividend

(1AA) The amount of the dividend taken under subsection (1) to have been paid is the amount of the loan that has not been repaid before the lodgment day for the current year, subject to section 109Y.

Note: Section 109Y limits the total amount of dividends taken to have been paid by a private company under this Division to the company's distributable surplus.

5 Subsection 109D(2)

After "taken", insert "under subsection (1A)".

6 At the end of section 109D

Add:

When is the lodgment day?

(6) In this Division, the ***lodgment day*** for a private company's year of income is the earlier of:

(a) the due date for lodgment of the private company's return of income for the year of income; and

(b) the date of lodgment of the private company's return of income for the year of income.

7 Paragraph 109E(3)(a)

Omit "at the end of", substitute "before the lodgment day for".

8 Subsection 109E(3)

Omit “been repaid at the end of”, substitute “been repaid before the lodgment day for”.

9 Subsection 109N(1)

After “if”, insert “, before the lodgment day for the year of income”.

10 Paragraph 109N(1)(a)

Repeal the paragraph, substitute:

(a) the agreement that the loan was made under is in writing; and

11 Subsections 109XC(2A), (3) and (5)

Repeal the subsections.

12 Section 109ZD

Insert:

lodgment day for a private company’s year of income has the meaning given by subsection 109D(6).

13 Application

The amendments made by items 3 to 12 of this Schedule apply in relation to loans made in the 2004-2005 year of income or a later year of income.

Schedule 10—Technical corrections and amendments

Part 1—Technical corrections and amendments commencing on Royal Assent

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

1 Subsection 29-15(2)

Omit “33-15(b)”, substitute “33-15(1)(b)”.

2 Application

The amendment made by item 1 applies, and is taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.

3 Subsection 60-5(1)

Omit “*in existence”, substitute “in existence”.

4 Paragraph 60-15(1)(a)

Omit “*in existence”, substitute “in existence”.

5 Subsection 60-20(1)

Omit “*in existence”, substitute “in existence”.

6 Paragraphs 69-5(3)(h) and (i)

Repeal the paragraphs, substitute:

(h) section 51AK of the *ITAA 1936 (Agreements for the provision of non-deductible non-cash business benefits).

7 Paragraph 80-90(a)

Omit “*nominal defendant settlement arrangement”, substitute “*nominal defendant settlement sharing arrangement”.

8 Paragraph 80-95(a)

Omit “*nominal defendant settlement arrangement”, substitute “*nominal defendant settlement sharing arrangement”.

9 Application

The amendments made by items 7 and 8 apply, and are taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.

10 Subsection 132-5(1)

Omit "*decreasing adjustment", substitute "***decreasing adjustment***".

11 Section 195-1 (table item 6 of the definition of *decreasing adjustment*)

Omit "Section 132-15", substitute "Section 132-5".

12 Application

The amendment made by item 11 applies, and is taken to have applied, in relation to net amounts for tax periods starting, or that started, on or after 1 July 2000.

13 Section 195-1 (table item 6 of the definition of *increasing adjustment*)

Repeal the item.

14 Section 195-1 (definition of *in existence*)

Repeal the definition.

A New Tax System (Wine Equalisation Tax) Act 1999

15 Subparagraph 5-15(1)(a)(ii)

Omit "associate", substitute "*associate".

Fringe Benefits Tax Assessment Act 1986

16 Subsection 58ZC(2)

Omit "For the purposes of this section, a", substitute "A".

17 Subsection 136(1)

Insert:

> ***remote area housing benefit*** has the meaning given by subsection 58ZC(2).

18 Application

The amendments made by items 16 and 17 apply in respect of the FBT year beginning on 1 April 2000 and in respect of all later FBT years.

Income Tax Assessment Act 1936

19 Subsection 6(1) (definition of *insurance funds*)

Repeal the definition, substitute:

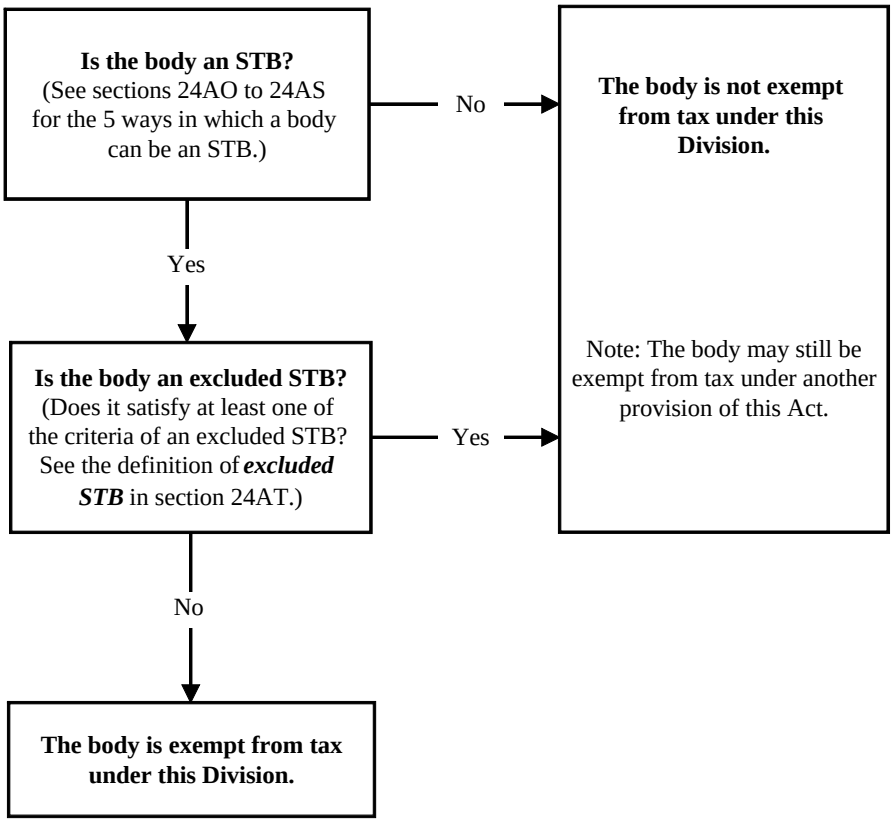
> ***insurance funds***, in relation to a company, means all the Australian statutory funds of the company and all other funds maintained by the company in respect of the life assurance business of the company.

20 Paragraph 23AH(12)(b)

Omit “subsections 432(2) and (3)”, substitute “subsection 432(3)”.

21 Section 24AL (diagram)

Repeal the diagram, substitute:



22 Paragraph 47(2B)(b)

Omit "is not dissolved", substitute "does not cease to exist".

23 Section 63CA (the section 63CA inserted by item 10 of Schedule 10 to the *Taxation Laws Amendment Act (No. 2) 2000*)

Renumber as section 63CB.

24 Subsection 63CA(1) (the subsection 63CA(1) inserted by item 10 of Schedule 10 to the *Taxation Laws Amendment Act (No. 2) 2000*)

Omit "section 63CB", substitute "section 63CC".

25 Section 63CB

Renumber as section 63CC.

Note: The heading to section 63CC (as renumbered) is altered by omitting "**section 63CA**" and substituting "**section 63CB**".

26 Section 63CC (as renumbered)

Omit "63CA" (wherever occurring), substitute "63CB".

27 Sections 63CB and 63CC (as renumbered)

Relocate to after section 63CA (the section 63CA inserted by the *Income Tax (Consequential Amendments) Act 1997*).

28 Subsection 159GZZT(1)

Omit "in existence (within the meaning of that Act)", substitute "in existence".

29 Section 159S (definition of *tax threshold*)

Repeal the definition, substitute:

tax threshold means:

(a) the lower of the amounts specified in item 1 of the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*; or

(b) if, because of section 20 of the *Income Tax Rates Act 1986*, that Act applies to the taxpayer as if the reference in the table in Part I of Schedule 7 to that Act to the amount referred to in paragraph (a) were a reference to a different amount—that different amount.

30 Application

The amendment made by item 29 applies to assessments for the 2000-2001 year of income and later years of income.

31 Paragraph 214A(2)(e)

Omit "or 12C", substitute ", 12AE or 12C".

32 Paragraph 262A(5)(b)

Omit "been finally dissolved", substitute "finally ceased to exist".

33 Paragraph 410(c)

After "exempt income", insert "etc.".

34 Subsection 432(2)

Repeal the subsection.

35 Subparagraph 437(2)(c)(ii)

Omit "(within the meaning of section 432)".

Income Tax Assessment Act 1997

36 Subsection 4-15(2) (table item 4)

Omit "not an Australian resident", substitute "a foreign resident".

37 Subsection 6-5(3)

Omit "*not* an Australian resident", substitute "a foreign resident".

38 Subsection 6-10(5)

Omit "*not* an Australian resident", substitute "a foreign resident".

39 Section 11-55 (at the end of the table)

Add:

withholding taxes

see *foreign aspects of income taxation* and *mining*

40 Section 12-5 (table item headed "interest")

Repeal the item, substitute:

interest

convertible notes, interest on, generally	**82L to 82T**
foreign residents, debt creation involving, generally	**159GZY to 159GZZF**
foreign residents, delayed deduction for interest paid to until withholding tax payable has been paid	26-25
life assurance premiums, interest etc. on loans to finance, no deduction for	**67AAA**
superannuation contributions, interest etc. on loans to finance, no deduction for	**67AAA**
underpayment or late payment of tax, interest for	25-5
see also *infrastructure borrowings*	

41 Section 12-5 (table item headed "royalties")

Omit “non-resident”, substitute “foreign resident”.

42 Subsection 27-10(1)

Omit “or 132”.

43 Subdivision 27-B (heading)

Repeal the heading, substitute:

Subdivision 27-B—Effect of input tax credits etc. on capital allowances

44 Subsection 34-10(1)

Omit “*non-compulsory uniform”, substitute “*non-compulsory *uniform”.

45 Section 34-15 (heading)

Repeal the heading, substitute:

34-15 What is a *non-compulsory* uniform?

46 Subsection 34-25(1)

Omit “*non-compulsory uniform”, substitute “*non-compulsory *uniform”.

47 Subsection 36-20(2)

Omit “*not* an Australian resident”, substitute “a foreign resident”.

48 Subsection 40-430(3)

Renumber as subsection (2).

49 Subsection 102-5(1) (method statement, step 4, note 2)

After “roll-overs”, insert “and the small business retirement exemption”.

50 Section 104-5 (table item dealing with CGT event I1)

Omit “a resident”, substitute “an Australian resident”.

51 Subsection 104-47(5) (at the end of the example)

Add:

She reduces the cost base of the land by the part that is apportioned to the covenant:

$\$200,000 - \$6,780 = \$193,220$

52 Subsection 104-135(6)

Omit "is dissolved", substitute "ceases to exist".

53 Section 104-160 (heading)

Repeal the heading, substitute:

104-160 Individual or company stops being an Australian resident: CGT event I1

54 Subsection 104-160(1)

Omit "*Australian resident", substitute "Australian resident".

55 Subsection 104-160(5) (note 1)

Omit "resident", substitute "Australian resident".

56 Subsection 104-160(5) (note 2)

Omit "a resident", substitute "an Australian resident".

57 Section 104-165 (heading)

Repeal the heading, substitute:

104-165 Exception for individual who stops being an Australian resident

58 Subsection 104-165(1) (heading)

Repeal the heading, substitute:

Short term Australian residents

59 Subsection 104-165(1)

Omit "*Australian resident", substitute "Australian resident".

60 Paragraph 104-165(3)(b)

Omit "*Australian resident", substitute "Australian resident".

61 Paragraph 104-215(1)(e)

Repeal the paragraph, substitute:

(c) is a foreign resident.

62 Subsection 104-215(2)

Omit "not an *Australian resident", substitute "a foreign resident".

63 Paragraph 104-215(2)(a)

Omit "*Australian resident", substitute "Australian resident".

64 Subsection 104-215(5) (note)

Repeal the note, substitute:

Note: There is also an exception for certain philanthropic testamentary gifts: see section 118-60.

65 Subsection 104-230(7)

Omit "not an *Australian resident", substitute "a foreign resident".

66 Section 104-250 (heading)

Repeal the heading, substitute:

104-250 Direct value shifts: CGT event K8

67 Section 109-55 (table item 7)

Omit "*prospecting or mining entitlement", substitute "prospecting or mining entitlement".

68 Section 109-55 (table item 17)

Repeal the item, substitute:

17	There is a roll-over under Subdivision 126-B for a CGT event and you are the company owning the roll-over asset just after the roll-over and you stop being a 100% subsidiary of another company in the wholly-owned group	when you stop	section 104-175

69 Section 109-60 (after table item 2)

Insert:

2A	Lender acquires a replacement security	before 20 September 1985	**subsection 26BC(6A)**

70 Section 109-60 (table items 13 and 14)

Repeal the items.

71 Section 112-45 (after table item dealing with CGT event E1)

Insert:

E2	A CGT asset is transferred to a trust	First element of cost base and reduced cost base	104-60

72 Section 112-97 (after table item 2)

Insert:

2A	Lender acquires a replacement security	First element of cost base and reduced cost base	**subsection 26BC(6B)**

73 Section 112-97 (table items 23 and 24)

Repeal the items.

74 Subparagraph 116-30(3)(a)(ii)

Omit “statutory licence”, substitute “*statutory licence”.

75 Paragraph 118-37(4)(a)

Omit “*Australian resident”, substitute “Australian resident”.

76 Paragraph 118-415(2)(a)

Omit “*tax-exempt non-resident”, substitute “*tax-exempt foreign resident”.

77 Paragraph 118-420(1)(a)

Omit “*tax-exempt non-resident”, substitute “*tax-exempt foreign resident”.

78 Subsection 118-420(3)

Omit "***tax-exempt non-resident***", substitute "***tax-exempt foreign resident***".

79 Subparagraph 118-420(6)(b)(ii)

Omit "*tax-exempt non-resident", substitute "*tax-exempt foreign resident".

80 Section 118-435 (heading)

Repeal the heading, substitute:

118-435 Special rule relating to investment in foreign resident holding companies

81 Section 118-500

Omit "non-resident", substitute "foreign resident".

82 Paragraph 118-515(1)(a)

Omit "not an Australian resident", substitute "a foreign resident".

83 Paragraph 121-25(4)(b)

Omit "that has been finally dissolved", substitute "that has finally ceased to exist".

84 Subsection 122-25(6) (table items 2 and 3)

Omit "Not an Australian resident", substitute "A foreign resident".

85 Subsection 122-25(7) (table item 3)

Omit "Not an Australian resident", substitute "A foreign resident".

86 Subsection 122-135(6) (table items 2 and 3)

Omit "Not an Australian resident", substitute "A foreign resident".

87 Subsection 122-135(7) (table item 3)

Omit "Not an Australian resident", substitute "A foreign resident".

88 Subsection 122-140(1) (note)

Omit "section 122-45", substitute "section 122-145".

89 Paragraph 124-70(3)(a)

Omit “not an Australian resident”, substitute “a foreign resident”.

90 Subsection 124-85(2) (table item 3)

After “your *net capital”, insert “gain”.

91 Subparagraph 124-240(f)(ii)

Omit “not an Australian resident”, substitute “a foreign resident”.

92 Subparagraph 124-245(e)(ii)

Omit “not an Australian resident”, substitute “a foreign resident”.

93 Paragraph 124-295(7)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

94 Paragraph 124-300(7)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

95 Paragraph 124-365(4)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

96 Paragraph 124-375(4)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

97 Paragraph 124-450(4)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

98 Paragraph 124-460(4)(b)

Omit “not an Australian resident”, substitute “a foreign resident”.

99 Paragraph 124-520(1)(a)

Omit “other than *company law”, substitute “(other than the *Corporations Act 2001* or a similar *foreign law relating to companies)”.

100 Paragraph 124-520(1)(b)

Omit “company law”, substitute “the *Corporations Act 2001* or a similar foreign law relating to companies”.

101 Subparagraph 124-520(1)(e)(ii)

Omit “not an Australian resident”, substitute “a foreign resident”.

102 Subsection 124-520(2)

Repeal the subsection.

103 Subsection 124-520(3)

Renumber as subsection (2).

104 Paragraphs 124-710(1)(a) and (2)(a)

Omit “foreign law”, substitute “*foreign law”.

105 Subsection 124-795(1)

Omit “not an Australian resident”, substitute “a foreign resident”.

106 Subsection 124-795(1) (note)

Repeal the note, substitute:

Note: If you are a foreign resident and the replacement entity is an Australian resident, the replacement interest has the necessary connection with Australia: see Division 136.

107 Subsection 124-795(4)

Omit “not an Australian resident” (wherever occurring), substitute “a foreign resident”.

108 Subparagraph 124-795(5)(b)(ii)

Omit “not an Australian resident”, substitute “a foreign resident”.

109 Subsection 124-870(3)

Omit “not an Australian resident”, substitute “a foreign resident”.

110 Subsection 125-80(7)

Omit “proportion, but not all of,”, substitute “proportion, but not all, of”.

111 Subsection 125-80(7) (note)

Omit “dispose your interests”, substitute “dispose of your interests”.

112 Section 128-10 (note 1)

Omit “not an Australian resident”, substitute “a foreign resident”.

113 Subsection 128-15(1) (note)

Omit “not an Australian resident”, substitute “a foreign resident”.

114 Subsection 128-25(2) (note 2)

Repeal the note, substitute:

Note 2: If the beneficiary is a foreign resident, Subdivision 136-B sets out what happens if the beneficiary becomes an Australian resident. The beneficiary is taken to have acquired each asset owned just before becoming an Australian resident for the market value of the asset at that time.

115 Division 136 (heading)

Repeal the heading, substitute:

Division 136—Foreign residents

116 Section 136-1

Omit “non-resident” (wherever occurring), substitute “foreign resident”.

117 Section 136-1

Omit “becomes a resident”, substitute “becomes an Australian resident”.

118 Section 136-5 (heading)

Repeal the heading, substitute:

136-5 What if you are a foreign resident just before a CGT event

119 Paragraph 136-5(a)

Omit “not an Australian resident”, substitute “a foreign resident”.

120 Section 136-10 (table heading)

Omit “**Non-resident**”, substitute “**Foreign resident capital**”.

121 Section 136-20 (table item dealing with CGT event I1)

Omit “resident”, substitute “an Australian resident”.

122 Section 136-25 (table items 8 and 9)

Omit “not an Australian resident”, substitute “a foreign resident”.

123 Section 136-25 (note)

Omit “non-resident”, substitute “foreign resident”.

124 Subdivision 136-B (heading)

Repeal the heading, substitute:

Subdivision 136-B—Becoming an Australian resident

125 Section 136-40 (heading)

Repeal the heading, substitute:

136-40 Individual or company becomes an Australian resident

126 Section 152-5

After “apart from small business roll-overs”, insert “and the small business retirement exemption”.

127 Paragraph 152-25(1)(a)

Omit “spouse or child”, substitute “*spouse or *child”.

128 Subdivision 152-C (heading)

Repeal the heading, substitute:

Subdivision 152-C—Small business 50% reduction

129 Section 152-215

Repeal the section, substitute:

152-215 15-year rule has priority

This Subdivision does not apply to a *capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

130 At the end of Subdivision 152-D

Add:

152-330 15-year rule has priority

This Subdivision does not apply to a *capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

131 At the end of Subdivision 152-E

Add:

152-430 15-year rule has priority

This Subdivision does not apply to a *capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

132 Subsection 165-115ZC(3)

Repeal the subsection, substitute:

Foreign resident controlling entity to be disregarded in certain circumstances

(3) If:

(a) apart from this subsection, an entity that is a foreign resident would be a controlling entity of a *loss company; and

(b) there is an entity that is an Australian resident and would be a controlling entity of the loss company if all the foreign residents that held direct or indirect interests in the Australian resident were individuals;

then, for the purposes of this section, the entity referred to in paragraph (a) is taken not to be a controlling entity of the company but the Australian resident is taken to be a controlling entity of the company.

133 Subsection 165-235(1) (heading)

Repeal the heading, substitute:

Notice about foreign resident non-fixed trust

134 Subsection 165-235(4) (heading)

Repeal the heading, substitute:

Foreign resident trust

135 Paragraph 165-235(4)(a)

Omit “non-resident”, substitute “foreign resident”.

136 Subsections 170-30(1) and (2)

Omit “*in existence”, substitute “in existence”.

137 Subsection 170-30(4) (table items 1, 2 and 3)

Omit “*in existence”, substitute “in existence”.

138 Subsections 170-32(4) and (5)

Omit “*in existence”, substitute “in existence”.

139 Subsection 170-115(1) (at the end of the note)

Add “or 102-10”.

140 Subsections 170-130(1) and (2)

Omit “*in existence”, substitute “in existence”.

141 Subsection 170-130(4) (table items 1, 2 and 3)

Omit “*in existence”, substitute “in existence”.

142 Subsections 170-132(4) and (5)

Omit “*in existence”, substitute “in existence”.

143 Subsections 170-133(2) and (3)

Omit “*in existence”, substitute “in existence”.

144 Subsection 170-140(2) (at the end of note 2)

Add “or 102-10”.

145 Paragraphs 170-210(1)(e) and (2)(f)

Omit “*in existence”, substitute “in existence”.

146 Paragraphs 170-215(1)(e) and (2)(f)

Omit "*in existence", substitute "in existence".

147 Paragraphs 170-220(1)(e) and (2)(f)

Omit "*in existence", substitute "in existence".

148 Paragraphs 170-225(1)(e) and (2)(f)

Omit "*in existence", substitute "in existence".

149 Subparagraph 170-255(1)(d)(i)

Omit "a resident", substitute "an Australian resident".

150 Subparagraph 170-255(1)(d)(v)

Omit "non-resident", substitute "foreign resident".

151 Section 180-1

Repeal the section, substitute:

180-1 What this Division is about

> If a company would only avoid the tax consequences of Division 165 or 175 because of interests held by a foreign resident family trust, the Commissioner may require the company to give certain information about the family trust. If it is not given, the company does not avoid the tax consequences of that Division.

152 Subsection 180-5(4) (heading)

Repeal the heading, substitute:

Foreign resident trust

153 Paragraph 180-5(4)(a)

Omit "non-resident", substitute "foreign resident".

154 Subsection 180-15(4) (heading)

Repeal the heading, substitute:

Foreign resident trust

155 Paragraph 180-15(4)(a)

Omit “non-resident”, substitute “foreign resident”.

156 Section 202-10

Omit “resident”, substitute “an Australian resident”.

157 Paragraph 202-15(c)

Omit “*company”, substitute “company”.

158 Paragraph 202-20(a)

Repeal the paragraph, substitute:

(a) in the case of a company—the company is an Australian resident at that time; and

159 Subsections 204-25(4), (5) and (6)

Omit “*company”, substitute “company”.

160 Paragraph 204-30(8)(a)

Omit “not an Australian resident”, substitute “a foreign resident”.

161 Paragraph 205-25(1)(a)

Omit “*company”, substitute “company”.

162 Subparagraph 205-25(1)(a)(i)

Omit “*Australian resident”, substitute “Australian resident”.

163 Section 205-30 (table item 9)

Omit “*company”, substitute “company”.

164 Paragraph 207-75(a)

Omit “*Australian resident”, substitute “Australian resident”.

165 Paragraph 207-75(b)

Repeal the paragraph, substitute:

(b) in the case of a company—the company is an Australian resident at that time; and

166 Subsection 207-95(4) (example)

Omit “non-resident individual”, substitute “foreign resident individual”.

167 Paragraph 208-40(1)(a)

Omit “not an *Australian resident”, substitute “a foreign resident”.

168 Paragraph 208-40(4)(a)

Omit “not an *Australian resident”, substitute “a foreign resident”.

169 Paragraph 208-45(1)(a)

Omit “*company”, substitute “company”.

170 Subsection 208-45(2)

Omit “*company”, substitute “company”.

171 Subsection 208-80(2)

Omit “*Australian residents”, substitute “Australian residents”.

172 Paragraph 208-155(2)(a)

Omit “*company”, substitute “company”.

173 Paragraph 208-155(3)(a)

Omit “not an *Australian resident”, substitute “a foreign resident”.

174 Subsection 208-155(4)

Omit “if not an *Australian resident”, substitute “if a foreign resident”.

175 Paragraph 208-205(a)

Omit “*company”, substitute “company”.

176 Section 208-215

Omit “*company”, substitute “company”.

177 Paragraph 208-235(a)

Omit “*company”, substitute “company”.

178 Paragraph 208-240(b)

Omit “*Australian residents”, substitute “Australian residents”.

179 Paragraph 215-10(1)(a)

Omit “*Australian resident”, substitute “Australian resident”.

180 Subparagraph 215-10(2)(a)(ii)

Omit "*Australian resident", substitute "Australian resident".

181 Division 218

Relocate the Division so it appears immediately after Division 216.

182 Paragraph 220-215(1)(c)

Omit "not an Australian resident", substitute "a foreign resident".

183 Subparagraph 220-605(1)(c)(i)

Omit "not an Australian resident", substitute "a foreign resident".

184 Paragraph 320-37(1)(c)

Omit "non-resident proportion", substitute "foreign resident proportion".

185 Subsection 320-37(2)

Repeal the subsection, substitute:

(2) For the purposes of paragraph (1)(c), the ***foreign resident proportion*** of the *foreign establishment amounts is the amount worked out using the formula:

$$\text{Foreign establishment amounts} \times \frac{\text{Foreign resident foreign establishment policy liabilities}}{\text{All foreign establishment policy liabilities}}$$

where:

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

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

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

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

(a) are *foreign resident life insurance policies; and

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

186 Paragraph 328-375(1)(a)

Omit "business supplies", substitute "*business *supplies".

187 Subsections 328-375(2) and (3)

Omit "business supplies", substitute "*business *supplies".

188 Subsection 328-380(1)

Omit "business supplies", substitute "*business *supplies".

189 Subparagraph 376-5(1)(d)(ii)

Omit "is not an Australian resident", substitute "is a foreign resident".

190 Subparagraph 376-15(1)(a)(ii)

Omit "is not an Australian resident", substitute "is a foreign resident".

191 Subparagraph 376-50(a)(i)

Omit "is not an Australian resident", substitute "is a foreign resident".

192 Subsection 396-75(2) (example)

Omit "is not an Australian resident", substitute "is a foreign resident".

193 Subsection 405-50(5) (table heading)

Omit "***not* an Australian resident**", substitute "**a foreign resident**".

194 Subsection 405-50(5) (note)

Omit "not an Australian resident", substitute "a foreign resident".

195 Section 703-25 (table item 3)

Omit "resident unit trust (as defined in whichever one of sections 102H and 102Q of the *Income Tax Assessment Act 1936* is relevant)", substitute "*resident unit trust".

196 Subsection 721-15(2)

Omit "Australian law", substitute "*Australian law".

197 Subsection 960-60(1) (table items 1 and 2)

Omit "*Australian resident", substitute "Australian resident".

198 Subsection 960-60(1) (table item 2)

Omit "*foreign resident", substitute "foreign resident".

199 Subsection 960-80(1) (table items 1 and 2)

Omit "*Australian resident", substitute "Australian resident".

200 Subsection 960-80(1) (table item 2)

Omit "*foreign resident", substitute "foreign resident".

201 Subsection 960-90(1) (table items 1 and 2)

Omit "*Australian resident", substitute "Australian resident".

202 Subsection 960-90(1) (table item 2)

Omit "*foreign resident", substitute "foreign resident".

203 Paragraph 960-140(a)

Omit "*company", substitute "company".

204 Paragraph 960-345(1)(a)

Omit "business supplies", substitute "*business *supplies".

205 Subsection 960-345(2)

Repeal the subsection, substitute:

(2) The ***value*** of the *business *supplies an entity makes in an income year is the sum of:

(a) for *taxable supplies (if any) the entity made during the year in the ordinary course of carrying on a business—the value

(as defined by section 9-75 of the *GST Act) of the supplies; and

(b) for other supplies the entity made during the year in the ordinary course of carrying on a business—the prices (as defined by section 9-75 of the GST Act) of the supplies.

206 Section 975-100

Repeal the section.

207 Subsection 995-1(1) (definition of *company law*)

Repeal the definition.

208 Subsection 995-1(1)

Insert:

foreign resident life insurance policy means a *life insurance policy that:

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

(b) is held by an entity that is neither an *associate of the company nor a Part X Australian resident (within the meaning of Part X of the *Income Tax Assessment Act 1936*).

209 Subsection 995-1(1) (definition of *group turnover*) (the definition inserted by item 2 of Schedule 6 to the *New Business Tax System (Capital Allowances) Act 1999*)

Omit "section 960-345", substitute "subsection 960-345(1)".

Note: This was the first insertion of a definition of ***group turnover***.

210 Subsection 995-1(1) (definition of *group turnover*) (the definition inserted by item 9 of Schedule 5 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act (No. 2) 1999*)

Repeal the definition.

Note: This was the second insertion of a definition of ***group turnover***.

211 Subsection 995-1(1) (definition of *in existence*)

Repeal the definition.

212 Subsection 995-1(1) (all of the definitions of *member*)

Repeal the definitions.

213 Subsection 995-1(1)

Insert:

member:

(a) in relation to a *GST group—has the meaning given by section 195-1 of the *GST Act; and

(b) in relation to a *consolidated group or *consolidatable group—has the meaning given by section 703-15; and

(c) in relation to an entity—has the meaning given by section 960-130; and

(d) in relation to a *copyright collecting society, means:

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

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

214 Subsection 995-1(1) (definition of *non-compulsory uniform*)

Repeal the definition.

215 Subsection 995-1(1) (definition of *non-resident life insurance policy*)

Repeal the definition.

216 Subsection 995-1(1) (definition of *taxable supply*) (the definition inserted by item 7 of Schedule 6 to the *New Business Tax System (Capital Allowances) Act 1999*)

Repeal the definition.

Note: This was the first insertion of a definition of ***taxable supply***.

217 Subsection 995-1(1)

Insert:

tax-exempt foreign resident has the meaning given by subsection 118-420(3).

218 Subsection 995-1(1) (definition of *tax-exempt non-resident*)

Repeal the definition.

219 Subsection 995-1(1) (the 2 definitions of *value*)

Repeal the definitions.

220 Subsection 995-1(1)

Insert:

value:

(a) the ***value*** of the liabilities of a *life insurance company under the *risk components of *life insurance policies means the value worked out under section 320-85; and

(b) the ***value*** of an item of *trading stock has the meaning given by Subdivision 70-C; and

Note 1: For the value of trading stock at the start of the 1997-98 income year, see section 70-40 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: For the value of oysters acquired by using the traditional stick farming method and held as trading stock at the start of the 2001-2002 income year, see section 70-41 of the *Income Tax (Transitional Provisions) Act 1997*.

(c) the ***value*** of the *business *supplies of an entity has the meaning given by subsection 960-345(2).

221 Subsection 995-1(1) (the 2 definitions of *value of the business supplies*)

Repeal the definitions.

Income Tax (Transitional Provisions) Act 1997

222 Subdivision 104-J (heading)

Repeal the heading, substitute:

Subdivision 104-J—CGT events relating to roll-overs

223 Subdivision 175-C

Repeal the Subdivision, substitute:

Subdivision 175-C—Tax benefits from unused bad debt deductions

Table of sections

175-78 Application of Subdivision 175-C of the *Income Tax Assessment Act 1997*

175-78 Application of Subdivision 175-C of the *Income Tax Assessment Act 1997*

Subdivision 175-C of the *Income Tax Assessment Act 1997* (about companies obtaining tax benefits from unused bad debt deductions) applies to assessments for the 1998-99 income year and later income years.

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

224 Item 3 of Schedule 7

The item is taken never to have had effect.

Petroleum Resource Rent Tax Assessment Act 1987

225 Section 2

Insert:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Forms previously approved by the Commissioner under this Act continue in effect: see item 230 of Schedule 10 to the *Tax Laws Amendment (2004 Measures No. 7) Act 2005*.

226 Subsection 45A(6) (definition of *transfer notice*)

Omit “form approved by the Commissioner for the purposes of this section”, substitute “approved form”.

227 Subsection 45B(6) (definition of *transfer notice*)

Omit “form approved by the Commissioner for the purposes of this section”, substitute “approved form”.

228 Paragraph 59(2)(a)

Omit “form provided or authorised by the Commissioner for the purposes of this section”, substitute “approved form”.

229 Subsection 98(1)

Omit “a form approved by the Commissioner”, substitute “the approved form”.

230 Transitional

An approval of a form for the purposes of the *Petroleum Resource Rent Tax Assessment Act 1987* that was in force immediately before the commencement of this item has effect after that commencement as if it had been done under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Product Grants and Benefits Administration Act 2000

231 Paragraph 35(1)(b)

Omit “section 36”, substitute “subsection 284-75(1) in Schedule 1 to the *Taxation Administration Act 1953*”.

Superannuation Guarantee (Administration) Act 1992

232 Subsection 19(3)

Omit “subsection (2)”, substitute “subsection (1)”.

Taxation Administration Act 1953

233 Paragraph 12-47(c) in Schedule 1

Omit “enterprise that the entity carries on”, substitute “*enterprise that the entity *carries on”.

234 Subsection 12-60(1) in Schedule 1

Omit “carries on”, substitute “*carries on”.

235 Paragraph 12-155(a) in Schedule 1

Omit “carried on”, substitute “*carried on”.

236 Subsection 12-315(1) in Schedule 1

Omit “carries on”, substitute “*carries on”.

237 Subsection 18-75(3) in Schedule 1

Renumber as subsection (2).

238 Subsection 18-75(4) in Schedule 1

Renumber as subsection (3).

239 Subdivision 260-D in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 260-D—From agent winding up business for foreign resident principal

240 Section 260-105 in Schedule 1 (heading)

Repeal the heading, substitute:

260-105 Obligation of agent winding up business for foreign resident principal

241 Paragraph 260-105(1)(a) in Schedule 1

Omit “is not an Australian resident”, substitute “is a foreign resident”.

Taxation Laws Amendment Act (No. 5) 2002

242 Items 6 and 7 of Schedule 1

The items are taken never to have had effect.

Venture Capital Act 2002

243 Paragraph 21-5(3)(b)

Omit “*tax-exempt non-resident”, substitute “*tax-exempt foreign resident”.

Part 2—Technical corrections and amendments commencing otherwise than on Royal Assent

A New Tax System (Pay As You Go) Act 1999

244 Item 85 of Schedule 2

Repeal the item, substitute:

85 Subparagraph 12A(1)(a)(i)

After "under" (last occurring), insert "section 163AA, section 170AA,".

Energy Grants (Credits) Scheme (Consequential Amendments) Act 2003

245 Item 16 of Schedule 4

Omit "definition" (last occurring), substitute "paragraph".

Fringe Benefits Tax Assessment Act 1986

246 Subsection 136(1) (definition of *approved form*) (the definition inserted by item 136 of Schedule 2 to the *A New Tax System (Pay As You Go) Act 1999*)

Repeal the definition.

Note: This was the first insertion of a definition of ***approved form***.

Income Tax Assessment Act 1997

247 Section 118-315 (the section 118-315 inserted by item 18 of Schedule 1 to the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2001*)

Renumber as section 118-313.

248 Subsection 165-115BB(2) (definition of *previous capital losses, deductions or trading stock losses*)

Repeal the definition, substitute:

previous capital losses, deductions or trading stock losses means the total of the following:

(a) capital losses that the company made, deductions to which the company became entitled, or trading stock losses that the company made, as a result of events earlier than the relevant event in respect of assets that the company owned at the *changeover time;

(b) each reduction that section 715-105 (as applying to the company as the *head company of a *consolidated group or *MEC group) makes in respect of such an asset because an entity ceased before the time of the relevant event to be a *subsidiary member of the group (but counting only the greater or greatest such reduction if 2 or more are made for the same asset);

or nil if there are none.

249 Subsection 205-50(2)

Omit "A *refund of income tax for an income year is taken to have been paid to an entity immediately before the end of that year, for the purposes of subsection 205-45(2), if:", substitute "An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 205-45(2) if:".

250 Subsection 205-50(3)

Omit "If an entity ceases to be a *franking entity during an income year, a *refund of income tax is taken to have been paid to it immediately before it ceased to be a franking entity, for the purposes of subsection 205-45(3), if:", substitute "If an entity ceases to be a *franking entity during an income year, the entity is taken to have *received a refund of income tax immediately before it ceased to be a franking entity for the purposes of subsection 205-45(3) if:".

251 Section 210-120 (table item 2)

Omit "a *refund of income tax", substitute "*receiving a refund of income tax".

252 Subsection 210-150(2)

Omit "A *refund of income tax for an income year is taken to have been paid to an entity immediately before the end of that year for the purposes of subsection 210-135(2), if:", substitute "An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 210-135(2) if:".

253 Subsection 210-150(3)

Omit "If an entity ceases to be a *PDF during an income year, a *refund of income tax is taken to have been paid to it immediately before it ceased to be a PDF, for the purposes of subsection 210-135(3), if:", substitute "If an entity ceases to be a *PDF during an income year, it is taken to have *received a refund of income tax immediately before it ceased to be a PDF for the purposes of subsection 210-135(3) if:".

254 Paragraph 214-45(1)(a)

Omit "receives a *refund of income tax", substitute "*receives a refund of income tax".

255 Paragraph 214-45(2)(a)

Omit "receives a *refund of income tax", substitute "*receives a refund of income tax".

256 Paragraph 214-105(1)(b)

Omit "received a *refund of income tax", substitute "*received a refund of income tax".

257 Paragraph 214-150(4)(a)

Omit "receives a *refund of income tax", substitute "*receives a refund of income tax".

258 Subsection 320-195(1)

Omit all the words after "does not exceed", substitute "the company's liabilities in respect of the policy".

259 Paragraphs 705-90(4)(a) and (9)(a)

Omit "*refund of income tax", substitute "refund of income tax".

260 Subsection 820-617(1)

Omit “section 820-A515”, substitute “section 820-599”.

261 Subsection 995-1(1) (definition of *government entity*) (the definition inserted by item 16 of Schedule 18 to the *A New Tax System (Tax Administration) Act 1999*)

Repeal the definition.

Note: This was the first insertion of a definition of ***government entity***.

262 Subsection 995-1(1) (definition of *participant*) (the definition inserted by item 46 of Schedule 3 to the *A New Tax System (Pay As You Go) Act 1999*)

Repeal the definition.

Note: This was the first insertion of a definition of ***participant***.

263 Subsection 995-1(1)

Insert:

> ***receives a refund of income tax*** has the meaning given by section 205-35.

264 Subsection 995-1(1) (definition of *refund of income tax*)

Repeal the definition.

New Business Tax System (Consolidation) Act (No. 1) 2002

265 Paragraph (2)(a) of item 23 of Schedule 3

After “originating company”, insert “or the recipient company”.

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

266 Item 6 of Schedule 21

Omit “705-35”, substitute “705-35(1)”.

Taxation Laws Amendment (Company Law Review) Act 1998

267 Subsection 2(2)

Repeal the subsection, substitute:

(2) Items 23, 24, 54, 55, 56 and 57 of Schedule 5 commence on 1 July 1998.

Taxation Laws Amendment (Research and Development) Act 2001

268 Item 2 of Schedule 4

Omit "73(3)(b)", substitute "73C(3)(b)".

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

269 Subsection 2(1) (table item 9)

Omit "*New Business Tax System (Miscellaneous) Act (No. 4) 2003*", substitute "*Taxation Laws Amendment Act (No. 4) 2003*".

Part 3—Removal of link notes

Note: A link note is a note included at the end of one group of units to indicate the number of the next unit, or a note indicating the end of a Guide.

Income Tax Assessment Act 1936

270 Link notes

Repeal the link notes.

Income Tax Assessment Act 1997

271 Section 2-30

Repeal the section, substitute:

2-30 Gaps in the numbering

There are gaps in the numbering system to allow for the insertion of new Divisions and sections.

272 Subsection 995-1(1) (definition of *link note*)

Repeal the definition.

273 Link notes

Repeal the link notes.

Income Tax (Transitional Provisions) Act 1997

274 Link notes

Repeal the link notes.

Taxation Administration Act 1953

275 Link notes

Repeal the link notes.

Venture Capital Act 2002

276 Link notes

Repeal the link notes.

Schedule 11—Film tax offset amendments

Income Tax Assessment Act 1936

1 After subsection 124ZAB(6)

Insert:

(6A) The Minister may, by signed writing, revoke a certificate in respect of a proposed film that has been issued under subsection (3) if:

(a) the person who applied for the certificate applies to the Minister for the revocation in the approved form; and

(b) the person provides a statutory declaration stating that:

(i) no taxpayer has claimed a deduction under this Division in respect of the film; and

(ii) a final certificate in respect of the film has not been issued under this Division; and

(iii) a taxpayer intends to claim a tax offset under Division 376 of the *Income Tax Assessment Act 1997* in respect of the film; and

(iv) financial assistance has not been provided by the Film Finance Corporation Australia Limited (incorporated under the *Companies Act 1981* on 12 July 1988) in respect of the film.

A certificate that is revoked under this subsection is, for the purposes of this Act, taken never to have been in force.

Note: Revocation of a certificate under this subsection allows a person to claim the tax offset under Division 376 of the *Income Tax Assessment Act 1997* in respect of the film.

2 Subsection 124ZAB(7)

Omit “or (6)”, substitute “, (6) or (6A)”.

3 Subsection 124ZAB(9)

After “(6)”, insert “, (6A)”.

Income Tax Assessment Act 1997

4 Paragraph 376-5(2)(b)

Repeal the paragraph, substitute:

(b) either:

(i) a provisional certificate for the film (other than a provisional certificate that has been revoked under subsection 124ZAB(6A) of the *Income Tax Assessment Act 1936*); or

(ii) a final certificate for the film;

has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force).

5 Application

The amendments made by this Schedule apply to any expenditure incurred in respect of a film (whether before or after this Schedule commences).

[*Minister's second reading speech made in—*
House of Representatives on 8 December 2004
Senate on 7 March 2005]

(256/04)