Tax Laws Amendment (2006 Measures No. 7) Act 2007

No. 55, 2007

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax Laws Amendment (2006 Measures No. 7) Act 2007

No. 55, 2007

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

[*Assented to 12 April 2007*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2006 Measures No. 7) Act 2007*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Small business relief for CGT events

Income Tax Assessment Act 1936

1 Subsection 27A(1) (paragraph (jaa) of the definition of *eligible termination payment*)

After "subsection 152-310(2)", insert "or 152-325(7)".

2 Subsection 140M(6)

After "subsection 152-310(2)", insert "or 152-325(7)".

Income Tax Assessment Act 1997

3 Subsection 102-5(1) (note 2 to Step 4 of the method statement)

Repeal the note, substitute:

Note 2: Subdivision 152-C does not apply to CGT events J2, J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.

4 Subsection 102-25(2)

Omit "*CGT events J2 and J3", substitute "*CGT event J2".

5 Subsection 102-25(2A)

Repeal the subsection (including the example), substitute:

(2A) If the circumstances that gave rise to *CGT event J2 constitute another CGT event, CGT event J2 applies in addition to the other event.

Example: CGT event J2 happens because a replacement asset for a small business roll-over under Subdivision 152-E becomes your trading stock (in circumstances where CGT event K4 happens). Both CGT events apply.

6 Paragraph 103-25(3)(b)

Omit "writing; and", substitute "writing.".

7 Paragraph 103-25(3)(c)

Repeal the paragraph.

8 Section 104-5 (table item dealing with CGT event J2)

Repeal the item, substitute:

J2 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E *[See section 104-185]*	when the change happens	the amount mentioned in subsection 104-185(5)	*no capital loss*

9 Section 104-5 (table item dealing with CGT event J3)

Repeal the item.

10 Section 104-5 (after table item dealing with CGT event J4)

Insert:

J5 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E *[See section 104-197]*	at the end of the replacement asset period	the amount of the capital gain that you disregarded under Subdivision 152-E	*no capital loss*
J6 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain *[See section 104-198]*	at the end of the replacement asset period	the amount mentioned in subsection 104-198(3)	*no capital loss*

11 Paragraph 104-135(1A)(b)

Repeal the paragraph, substitute:

(b) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment; or

(c) an amount referred to in section 152-125 (which exempts a payment of a small business 15-year exemption amount) as an exempt amount.

12 Sections 104-185 and 104-190

Repeal the sections, substitute:

104-185 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2

(1) ***CGT event J2*** happens if you choose a small business roll-over under Subdivision 152-E for a *CGT event that happens in relation to a *CGT asset in an income year and:

(a) you *acquire a replacement asset (the ***replacement asset***), or you incur *fourth element expenditure in relation to a CGT asset (also the ***replacement asset***), or you do both, by the end of the period (the ***replacement asset period***) starting one year before, and ending 2 years after, the last CGT event in the income year for which you obtain the roll-over; and

(b) the replacement asset is your *active asset at the end of the replacement asset period; and

(c) if the replacement asset is a *share in a company or an interest in a trust, at the end of the replacement asset period:

(i) either you, or an entity *connected with you, is a *CGT concession stakeholder in the company or trust; or

(ii) CGT concession stakeholders in the company or trust have a *small business participation percentage in you of at least 90%; and

(d) a change of a kind specified in subsection (2) or (3) happens after the end of the replacement asset period.

Note 1: The replacement asset period may be modified or extended, see section 104-190.

Note 2: There is an exception: see subsection (8).

Note 3: There may be 2 or more replacement assets.

Note 4: CGT event J2 can also happen in relation to a capital gain you rolled-over under Division 17A of former Part IIIA of the *Income Tax Assessment Act 1936* or Division 123 of the *Income Tax Assessment Act 1997* if the status of the replacement asset changes: see section 104-185 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) For any replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c), the change is:

(a) the asset stops being your *active asset; or

(b) the asset becomes your *trading stock; or

(c) you make a testamentary gift of the asset under the Cultural Bequests Program; or

(d) you start to use the asset solely to produce your *exempt income or *non-assessable non-exempt income.

(3) In addition, for a *share in a company or an interest in a trust, the change is:

(a) *CGT event G3 or I1 happens in relation to it; or

(b) paragraph (1)(c) stops being satisfied.

Note: The full list of CGT events is in section 104-5.

(4) The time of the event is when the change happens.

(5) You make a ***capital gain*** equal to:

(a) if there is only one replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c)—the amount of the capital gain that you disregarded under Subdivision 152-E (the ***152-E amount***); or

(b) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and a change of a kind specified in subsection (2) or (3) occurs for all of them—the 152-E amount; or

(c) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and such a change occurs for one or more but not all of them—so much (if any) of the 152-E amount as exceeds the sum of the following:

(i) the first element of the *cost base of each of those replacement assets *acquired;

(ii) the *incidental costs you incurred to acquire each of those replacement assets (which can include giving property, see section 103-5);

(iii) the amount of *fourth element expenditure incurred in relation to each of those replacement assets;

in relation to which such a change did not occur.

(6) If *CGT event J6 has happened in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to the 152-E amount reduced by the amount of the capital gain under that event.

(7) If *CGT event J2 happens again in a later income year in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to any remaining part of the 152-E amount reduced by the amount of the capital gain under the earlier event.

(8) ***CGT event J2*** does not happen because of paragraph (2)(a) for a *share in a company or an interest in a trust if the share or interest ceased to be an *active asset only because of changes in the *market values of assets that were owned by the company or trust when you *acquired the share or interest or incurred the *fourth element expenditure.

(9) You incur ***fourth element expenditure*** in relation to a *CGT asset if you incur capital expenditure that is included, under subsection 110-25(5), in the fourth element of the *cost base of the asset.

104-190 Modifying or extending the replacement asset period

(1) The replacement asset period is modified if your *capital proceeds for the *CGT event are increased under subsection 116-45(2) after the end of that period. Instead, you have until 12 months after you receive those additional proceeds to *acquire a replacement asset, or incur *fourth element expenditure in relation to a *CGT asset, or do both.

Note: Section 116-45 applies if you do not receive your capital proceeds despite having taken all reasonable steps to get them.

(2) The Commissioner may extend the replacement asset period, or that period as modified by subsection (1).

13 At the end of Subdivision 104-J

Add:

104-197 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5

(1) ***CGT event J5*** happens if you choose a small business roll-over under Subdivision 152-E for a *CGT event that happens in relation to a *CGT asset in an income year and, by the end of the replacement asset period:

(a) you have not *acquired a replacement asset (the ***replacement asset***), and have not incurred *fourth element expenditure in relation to a CGT asset (also the ***replacement asset***); or

(b) the replacement asset does not satisfy the conditions set out in subsection (2).

(2) The conditions are:

(a) the replacement asset must be your *active asset; and

(b) if the replacement asset is a *share in a company or an interest in a trust:

(i) you, or an entity *connected with you, must be a *CGT concession stakeholder in the company or trust; or

(ii) CGT concession stakeholders in the company or trust must have a *small business participation percentage in you of at least 90%.

Example: Joseph owns 50% of the shares in Company A and Company B. He is therefore a CGT concession stakeholder in the companies: see section 152-60. The companies are connected with Joseph (see section 152-30) because he controls both of them.

Company A owns land which it leases to Joseph for use in a business. It sells the land at a profit and buys shares in Company B.

Subsection (2) is satisfied for the shares because Joseph is connected with Company A and is a CGT concession stakeholder in Company B.

(3) The time of the event is at the end of the replacement asset period.

(4) You make a ***capital gain*** equal to the amount of the *capital gain that you disregarded under Subdivision 152-E.

(5) The replacement asset period may be modified or extended as mentioned in section 104-190.

104-198 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6

(1) ***CGT event J6*** happens if you choose a small business roll-over under Subdivision 152-E for a *CGT event that happens in relation to a *CGT asset in an income year and:

(a) by the end of the replacement asset period, you have done either or both of the following:

(i) *acquired a replacement asset (the ***replacement asset***);

(ii) incurred *fourth element expenditure in relation to a CGT asset (also the ***replacement asset***); and

(b) at the end of the replacement asset period, the replacement asset is your *active asset; and

(c) if the replacement asset is a *share in a company or an interest in a trust, at the end of the replacement asset period:

(i) you, or an entity *connected with you, are a *CGT concession stakeholder in the company or trust; or

(ii) CGT concession stakeholders in the company or trust have a *small business participation percentage in you of at least 90%; and

(d) the total (the ***amount incurred***) of the following, in relation to each replacement asset that satisfied paragraph (b) and, if applicable, paragraph (c), is less than the amount of the capital gain that you disregarded:

(i) the first element of the *cost base;

(ii) the *incidental costs you incurred (which can include giving property, see section 103-5);

(iii) the amount of fourth element expenditure incurred.

(2) The time of the event is at the end of the replacement asset period.

(3) You make a ***capital gain*** equal to the difference between:

(a) the amount of the *capital gain that you disregarded under Subdivision 152-E; and

(b) the amount incurred.

(4) The replacement asset period may be modified or extended as mentioned in section 104-190.

14 Section 110-10 (after table item H2)

Insert:

J5	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over	104-197
J6	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain	104-198

15 Section 112-115 (table item 3)

Repeal the item.

16 Paragraph 115-25(3)(hb)

Repeal the paragraph, substitute:

(hb) *CGT event J5;

(hc) *CGT event J6;

17 Subsection 116-30(1) (note)

Omit "and subsections 152-310(3) and 152-325(4)".

18 Paragraph 152-5(c)

Repeal the paragraph, substitute:

> (c) if the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust must have a small business participation percentage in the entity of at least 90%.

19 Section 152-5

Omit "The small business concessions (apart from small business roll-overs and the small business retirement exemption) are not available for CGT events J2 and J3.", substitute "There are limitations on the availability of the small business concessions for CGT events J2, J5 and J6.".

20 Subsection 152-10(2)

Repeal the subsection (including the example), substitute:

(2) If the *CGT asset is a *share in a company or an interest in a trust (the ***object company or trust***), one of these additional basic conditions must be satisfied just before the *CGT event:

(a) you are a *CGT concession stakeholder in the object company or trust; or

(b) CGT concession stakeholders in the object company or trust together have a *small business participation percentage in you of at least 90%.

Example: A discretionary trust sells shares in an operating company (the object company). Anna receives 90% of the distributions from the trust, and the trust has a 50% interest in the object company.

The trust cannot be a CGT concession stakeholder in the object company because it is not an individual and therefore cannot satisfy paragraph (2)(a).

However, the trust can satisfy paragraph (2)(b) because Anna is a CGT concession stakeholder in the object company (because her small business participation percentage in the object company is 45%, which is greater than 20%) and her small business participation percentage in the trust is 90%.

21 Subsection 152-10(4)

Omit "and J3.", substitute ", J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.".

22 Section 152-15

Repeal the section, substitute:

152-15 Maximum net asset value test

You satisfy the maximum net asset value test if, just before the *CGT event, the sum of the following amounts does not exceed $5,000,000:

(a) the *net value of the CGT assets of yours;

(b) the net value of the CGT assets of any entities *connected with you;

(c) the net value of the CGT assets of any *small business CGT affiliates of yours or entities connected with your small business CGT affiliates (not counting any assets already counted under paragraph (b)).

Note: Some assets are not included in the definition of ***net value of the CGT assets***: see subsections 152-20(2), (3) and (4).

23 Subsection 152-20(1)

Repeal the subsection, substitute:

Meaning of ***net value of the CGT assets***

(1) The ***net value of the CGT assets*** of an entity is the amount (whether positive, negative or nil) obtained by subtracting from the sum of the *market values of those assets the sum of:

(a) the liabilities of the entity that are related to the assets; and

(b) the following provisions made by the entity:

(i) provisions for annual leave;

(ii) provisions for long service leave;

(iii) provisions for unearned income;

(iv) provisions for tax liabilities.

24 Before subsection 152-20(2)

Insert:

Assets to be disregarded

25 Subparagraphs 152-20(2)(b)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) assets being used solely for the personal use and enjoyment of the individual, or the individual's *small business CGT affiliate (except a *dwelling, or an *ownership interest in a dwelling, that is the individual's main residence, including any adjacent land to which the main residence exemption can extend because of section 118-120); and

(ii) except for an amount included under subsection (2A), the *market value of a dwelling, or an ownership interest in a dwelling, that is the individual's main residence (including any relevant adjacent land); and

26 After subsection 152-20(2)

Insert:

Individual's dwelling

(2A) In working out the ***net value of the CGT assets*** of an individual, if:

(a) a*dwelling of the individual, an *ownership interest in such a dwelling or any relevant adjacent land, was used, during all or part of the *ownership period of the dwelling, by the

individual to produce assessable income to a particular extent; and

(b) the individual satisfied paragraph 118-190(1)(c) (about interest deductibility) at least to some extent;

include such amount as is reasonable having regard to the extent to which that paragraph was satisfied.

Note: The net value of the CGT assets of the individual will be reduced by the same proportion of the individual's liabilities related to the dwelling, ownership interest or adjacent land.

27 Subsections 152-20(3) and (4)

Repeal the subsections, substitute:

Net value of the CGT assets of others

(3) In working out the ***net value of the CGT assets*** of:

(a) your *small business CGT affiliate; or

(b) an entity that is *connected with your small business CGT affiliate;

include only those assets that are used, or held ready for use, in the carrying on of a *business by you or another entity *connected with you (whether the business is carried on alone or jointly with others).

(4) However, disregard assets under subsection (3) that are used, or held ready for use, in the carrying on of a *business by an entity that is *connected with you only because of your *small business CGT affiliate.

Example: You and your husband sell a florist's business that you jointly carry on. Your husband also wholly owns a company that carries on a newsagency business. You yourself have no other involvement with the newsagency business.

Under subsection (4), you disregard the newsagency company's assets in working out whether you satisfy the maximum net asset value test because, although the company is "connected" with you, it is so connected only because of your small business CGT affiliate (your husband).

28 Subsection 152-25(2)

Repeal the subsection, substitute:

(2) However, a person is not your ***small business CGT affiliate*** merely because of the nature of the business relationship you and the person share.

Example: A partner in a partnership would not be a small business CGT affiliate of another partner merely because the first partner acts, or could reasonably be expected to act, in accordance with the directions or wishes of the second partner, or in concert with the second partner, in relation to the affairs of the partnership.

Directors of the same company and trustees of the same trust, or the company and a director of the company, would be in a similar position.

29 Subsection 152-30(5)

Omit "if, for any of the 4 income years before the income year for which relief is sought for a *CGT event under this Division", substitute "for an income year if, for any of the 4 income years before that year".

30 Subsection 152-30(6A)

Repeal the subsection (not including the note), substitute:

(6A) The trustee of a discretionary trust may nominate not more than 4 beneficiaries as being controllers of the trust for an income year for which the trustee did not make a distribution of income or capital if the trust had a *tax loss, or no taxable income, for that year.

31 Section 152-35

Repeal the section, substitute:

152-35 Active asset test

(1) A *CGT asset satisfies the active asset test if:

(a) you have owned the asset for 15 years or less and the asset was an *active asset of yours for a total of at least half of the period specified in subsection (2); or

(b) you have owned the asset for more than 15 years and the asset was an active asset of yours for a total of at least 7 1/2 years during the period specified in subsection (2).

(2) The period:

(a) begins when you *acquired the asset; and

(b) ends at the earlier of:

(i) the *CGT event; and

(ii) if the relevant business ceased to be carried on in the 12 months before that time or any longer period that the Commissioner allows—the cessation of the business.

32 Subsection 152-40(1)

Repeal the subsection, substitute:

(1) A *CGT asset is an ***active asset*** at a time if, at that time:

(a) you own the asset (whether the asset is tangible or intangible) and:

(i) you use it, or hold it ready for use, in the course of carrying on a *business; or

(ii) it is used, or held ready for use, in the course of carrying on a business by your *small business CGT affiliate, or by another entity that is *connected with you; or

(b) if the asset is an intangible asset—you own it and it is inherently connected with a business that you, your small business CGT affiliate, or another entity that is connected with you, carries on (for example, goodwill or the benefit of a restrictive covenant).

Note: An intangible asset need satisfy only paragraph (a) or paragraph (b).

33 Subparagraph 152-40(3)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the market value of any financial instruments of the company or trust that are inherently connected with a business that the company or trust carries on; and

(iii) any cash of the company or trust that is inherently connected with such a business;

34 Subsection 152-40(3) (note)

Repeal the note.

35 After subsection 152-40(3)

Insert:

(3A) A *share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an ***active asset*** at a time (the ***later time***) if:

(a) the share or interest was an active asset at an earlier time; and

(b) it is reasonable to conclude that the share or interest is still an active asset at the later time.

Note: This ensures that the 80% test does not need to be applied on a day to day basis.

(3B) A *share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an ***active asset*** at a time if:

(a) the share or interest fails to meet the requirements under subsection (3) at that time; and

(b) the failure is of a temporary nature only.

Note: If a share in a company or an interest in a trust is chosen as a replacement asset, this ensures that a temporary failure of the 80% test does not automatically lead to CGT event J2 happening.

36 Paragraphs 152-40(4)(b) and (c)

Repeal the paragraphs, substitute:

(b) shares in a company, other than:

(i) shares in a *widely held company that are covered by subsection (3), (3A) or (3B) and held by a *CGT concession stakeholder of the company; and

(ii) shares in any other company that are covered by subsection (3), (3A) or (3B);

(c) interests in a trust, other than:

(i) interests in a trust to which subsection (5) applies that are covered by subsection (3), (3A) or (3B) and held by a CGT concession stakeholder of the trust; and

(ii) interests in any other trust that are covered by subsection (3), (3A) or (3B);

37 At the end of section 152-40

Add:

(5) This subsection applies to a trust if:

(a) interests in the trust are listed for quotation in the official list of an *approved stock exchange; or

(b) the trust has more than 50 *members, unless the trust is a discretionary trust or a trust where at least one of the following conditions is met during an income year:

(i) no more than 20 persons held, or had the right to acquire or become the holders of, *membership interests

representing at least 75% of the value of the membership interests in the trust;

(ii) if there are *trust voting interests in the trust—at least 75% of the trust voting interests in the trust was capable of being controlled by no more than 20 persons;

(iii) at least 75% of the amount of any distribution made by the trustee during the year was made to no more than 20 persons;

(iv) if no distribution was made by the trustee during the year—the Commissioner is of the opinion that, if a distribution had been made during the year, at least 75% of the distribution would have been made to no more than 20 persons.

38 Group heading before section 152-50

Repeal the heading, substitute:

Significant individual test

39 Sections 152-50, 152-55 and 152-60

Repeal the sections, substitute:

152-50 Significant individual test

An entity satisfies the significant individual test if the entity had at least one *significant individual just before the *CGT event.

152-55 Meaning of *significant individual*

An individual is a ***significant individual*** in a company or a trust at a time if, at that time, the individual has a *small business participation percentage in the company or trust of at least 20%.

CGT concession stakeholder

152-60 Meaning of *CGT concession stakeholder*

An individual is a ***CGT concession stakeholder*** of a company or trust at a time if the individual is:

(a) a *significant individual in the company or trust; or

(b) a spouse of a significant individual in the company or trust, if the spouse has a *small business participation percentage in the company or trust at that time that is greater than zero.

Small business participation percentage

152-65 Small business participation percentage

An entity's ***small business participation percentage*** in another entity at a time is the percentage that is the sum of:

(a) the entity's *direct small business participation percentage in the other entity at that time; and

(b) the entity's *indirect small business participation percentage in the other entity at that time.

152-70 Direct small business participation percentage

(1) An entity holds a ***direct small business participation percentage*** at the relevant time in an entity equal to the percentage worked out using this table:

An entity's *direct small business participation percentage*

	In this entity:	Is:
1	A company	This percentage that the entity has because of holding the legal and equitable interests in *shares in the company: (a) the percentage of the voting power in the company; or (b) the percentage of any *dividend that the company may pay; or (c) the percentage of any distribution of capital that the company may make; or, if they are different, the smaller or smallest.
2	A trust (where entities have entitlements to all the income and capital of the trust)	This percentage: (a) the percentage of any distribution of income that the trustee may make to which the entity would be beneficially entitled; or (b) the percentage of any distribution of capital that the trustee may make to which the entity would be beneficially entitled;

An entity's *direct small business participation percentage*		
	In this entity:	**Is:**
		or, if they are different, the smaller.
3	A trust (where entities do not have entitlements to all the income and capital of the trust)	This percentage: (a) if the trustee makes distributions of income during the income year (the ***current year***) in which that time occurs—the percentage of the distributions to which the entity was beneficially entitled; or (b) if the trustee makes distributions of capital during the current year—the percentage of the distributions to which the entity was beneficially entitled; or, if 2 different percentages are applicable, the smaller.

(2) For item 1 in the table, ignore *redeemable shares.

152-75 Indirect small business participation percentage

(1) Work out the ***indirect small business participation percentage*** that an entity (the ***holding entity***) holds at a particular time in another entity (the ***test entity***) by multiplying:

(a) the holding entity's *direct small business participation percentage (if any) in another entity (the ***intermediate entity***) at that time; by

(b) the sum of:

(i) the intermediate entity's direct small business participation percentage (if any) in the test entity at that time; and

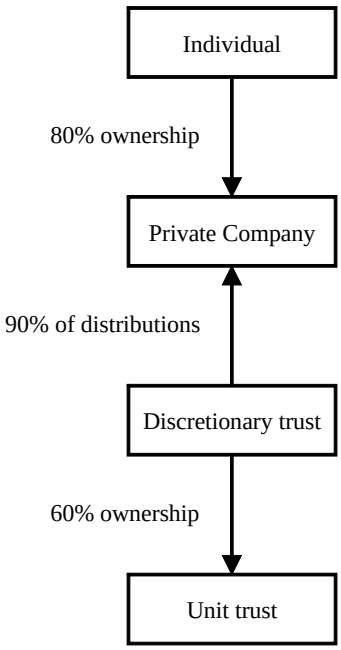
(ii) the intermediate entity's indirect small business participation percentage (if any) in the test entity at that time (as worked out under one or more other applications of this section).

Note: When testing an intermediate entity's indirect small business participation percentage in another entity, the intermediate entity becomes the holding entity.

(2) If there is more than one intermediate entity to which paragraph (1)(a) applies at that time, the holding entity's ***indirect small business participation percentage*** is the sum of the

percentages worked out under subsection (1) in relation to each of those intermediate entities.

Example: The individual mentioned in the diagram has an indirect small business participation percentage in the unit trust.



Multiplying the percentages as mentioned in subsection (1) produces small business participation percentage of 43.2%.

If the individual had a direct small business participation percentage of 10% in the unit trust, that would be added to the individual's indirect small business participation percentage to produce a small business participation percentage in the trust of 53.2%.

CGT event happens to asset held by legal personal representative or beneficiary

152-80 CGT event happens to asset held by legal personal representative or beneficiary within 2 years of death of individual

(1) This section applies if:

(a) a *CGT asset forms part of the estate of a deceased individual; and

(b) the asset devolves to the individual's *legal personal representative or *passes to a beneficiary of the individual; and

(c) the individual would have been entitled to reduce or disregard a *capital gain under this Division if a *CGT event had happened in relation to the CGT asset immediately before his or her death; and

(d) a CGT event happens in relation to the CGT asset within 2 years of the individual's death.

(2) The *legal personal representative or the beneficiary is entitled to reduce or disregard a *capital gain under this Division in the same way as the individual would have been entitled to as if:

(a) paragraph 152-105(d) only required the individual to have been 55 or over, or permanently incapacitated, at the time of the *CGT event referred to in paragraph (1)(c) of this section; and

(b) paragraph 152-305(1)(b) did not apply.

(3) The Commissioner may extend the time limit in paragraph (1)(d).

40 Section 152-100

Omit "controlling individual throughout the period of ownership and the individual who was the controlling individual", substitute "significant individual for a total of at least 15 years during which the entity owned the asset and the individual who was the significant individual".

41 Paragraph 152-105(c)

Repeal the paragraph (including the note), substitute:

(c) if the CGT asset is a *share in a company or an interest in a trust—the company or trust had a *significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which you owned the CGT asset;

Note: There is an exception for discretionary trusts that have tax losses or no taxable income for an income year: see section 152-120.

42 Paragraph 152-110(1)(c)

Repeal the paragraph (including the note), substitute:

(c) the entity had a *significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which the entity owned the CGT asset;

Note: There is an exception for discretionary trusts that have tax losses or no taxable income for an income year: see section 152-120.

43 Paragraph 152-110(1)(d)

Omit "controlling individual", substitute "significant individual".

44 Section 152-115

Omit "controlling individual" (wherever occurring), substitute "significant individual".

45 Sections 152-120 and 152-125

Repeal the sections, substitute:

152-120 Discretionary trusts need not have a significant individual in a loss year or nil income year

Paragraphs 152-105(c) and 152-110(1)(c) apply for a trust referred to in item 3 of the table in subsection 152-70(1) as if the trust had a *significant individual during an income year for which the trustee did not make a distribution of income or capital, if the trust had a *tax loss, or no taxable income, for that income year.

Note: This is because the trust might not have had the funds to make a distribution during that income year, which would prevent it from having a significant individual in that year.

152-125 Payments to company's or trust's CGT concession stakeholders are exempt

(1) This section applies if:

(a) one of the following applies:

(i) under section 152-110, a *capital gain (the ***exempt amount***) of a company or trust is disregarded;

(ii) under section 152-110, an amount of income (the ***exempt amount***) is *non-assessable non-exempt income of a company or trust;

(iii) subparagraph (i) of this paragraph would have applied to an amount (the ***exempt amount***) except that the capital gain was disregarded anyway because the relevant *CGT asset was *acquired before 20 September 1985; and

(b) the company or trust makes one or more payments (whether directly or indirectly through one or more interposed entities) in relation to the exempt amount within 2 years after the relevant *CGT event to an individual who was a *CGT concession stakeholder of the company or trust just before the event.

Note: A normal business payment, for example, a payment of wages, would not be made "in relation to the exempt amount".

(2) In determining the taxable income of the company, the trust, the individual, or any of the interposed entities, disregard the total amount of the payment or payments made to the *CGT concession stakeholder, up to the following limit:

$$\text{Stakeholder's participation percentage} \times \text{Exempt amount}$$

where:

stakeholder's participation percentage means:

(a) in the case of a company or a trust referred to in item 2 of the table in subsection 152-70(1)—the stakeholder's *small business participation percentage in the company or trust just before the relevant *CGT event; or

(b) in the case of a trust referred to in item 3 of that table—the amount (expressed as a percentage) worked out using the following formula:

$$\frac{100}{\text{Number of *CGT concession stakeholders of the trust just before the *CGT event}}$$

(3) If a company makes such a payment, this Act applies to the payment, to the extent that it is less than or equal to the limit mentioned in subsection (2), as if:

(a) it were not a *dividend; and

(b) it were not a *frankable distribution.

(4) The Commissioner may extend the time limit under paragraph (1)(b).

46 Section 152-220 (note)

Omit "eligible termination".

47 Paragraph 152-305(1)(b)

Omit "if you were under 55 just before you received an amount of *capital proceeds from the *CGT event—an amount equal to the *eligible termination payment mentioned in subsection 152-310(2)", substitute "if you are under 55 just before you make the choice—an amount equal to the *eligible termination payment mentioned in paragraph 152-310(2)(a)".

48 Paragraph 152-305(2)(b)

Omit "controlling individual", substitute "significant individual".

49 Subsections 152-310(2) and (3)

Repeal the subsections, substitute:

Additional consequence for an individual

(2) This Act applies to you as if:

(a) an *eligible termination payment of the following amount (up to the asset's *CGT exempt amount) were made to you:

(i) if the relevant *CGT event is CGT event J2, J5 or J6—the amount of the *capital gain you made from that event;

(ii) otherwise—the amount of *capital proceeds from the CGT event; and

(b) either:

(i) if the relevant CGT event is CGT event J2, J5 or J6—the payment were made to you when you made the choice; and

(ii) otherwise—the payment were made to you at the later of when you made the choice and when you received the proceeds.

Note: For the rules about eligible termination payments, see Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

(3) If you receive the *capital proceeds from the CGT event in instalments, subsection (2) applies to each instalment in succession (up to the asset's *CGT exempt amount).

50 Subsection 152-310(4)

After "payment", insert "mentioned in paragraph (2)(a)".

51 Subsection 152-310(5)

Omit "*eligible termination".

52 Subsection 152-315(5)

Repeal the subsection (not including the example or the note), substitute:

(5) If a company or trust is making the choice and it has more than one *CGT concession stakeholder, it must specify in writing the percentage of each *CGT asset's *CGT exempt amount that is attributable to each of those stakeholders. One or more of the percentages may be nil, but all of the percentages must add up to 100%.

53 Subsection 152-315(5) (example)

Omit "controlling individual of", substitute "significant individual in".

54 Subsection 152-320(2)

Omit "one of 2", substitute "one of at least 2".

55 Section 152-325

Repeal the section, substitute:

152-325 Company or trust conditions

Company or trust to make payments

(1) A company or trust must make a payment to at least one of its *CGT concession stakeholders if:

(a) the company or trust makes a choice under this Subdivision to disregard a *capital gain from *CGT event J2, J5 or J6; or

(b) the company or trust receives an amount of *capital proceeds from a *CGT event for which it makes a choice under this Subdivision.

(2) If the company or trust receives the *capital proceeds from the CGT event in instalments, subsection (1) applies to each instalment in succession (up to the relevant *CGT exempt amount).

Amount and timing of payments

(3) If a payment is made to more than one *CGT concession stakeholder, the amount of each such payment is to be worked out by reference to each individual's percentage (see subsection 152-315(5)) of the relevant *CGT exempt amount.

(4) The payment must be made by:

(a) if paragraph (1)(a) applies—7 days after the company or trust makes the choice; and

(b) otherwise—the later of:

(i) 7 days after the company or trust makes the choice; and

(ii) 7 days after the company or trust receives an amount of *capital proceeds from the *CGT event.

(5) The amount of the payment, or the sum of the amounts of the payments, required to be made under this section must be equal to the lesser of:

(a) either:

(i) if paragraph (1)(a) applies—the amount of the *capital gain from the *CGT event that the company or trust disregarded; or

(ii) otherwise—the amount of *capital proceeds received; and

(b) the relevant *CGT exempt amount.

Payments may be joint or separate

(6) If this section requires the company or trust to make 2 or more payments to a single *CGT concession stakeholder (whether or not by the same time), the company or trust may meet that requirement by making one payment or by making separate payments.

Payment taken to be for termination of employment or ETP

(7) This Act applies to a payment as if the payment:

(a) for a *CGT concession stakeholder who is an employee of the company or trust—were made in consequence of the termination of employment of the stakeholder; or

(b) for another CGT concession stakeholder—were an *eligible termination payment.

Note: For the rules about eligible termination payments, see Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

(8) If a *CGT concession stakeholder is under 55 just before receiving a payment under this section, an amount equal to that payment must be rolled over (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) except by being paid as mentioned in paragraph 27A(12)(c) of that Act.

Note: Paragraph 27A(12)(c) of the *Income Tax Assessment Act 1936* deals with payments to life companies to purchase certain annuities.

56 Section 152-400

Omit "if you acquire replacement assets", substitute "if the basic conditions in Subdivision 152-A are satisfied for the gain".

57 Sections 152-405, 152-410, 152-415, 152-420 and 152-425

Repeal the sections, substitute:

Operative provisions

152-410 When you can obtain the roll-over

You can choose to obtain a roll-over under this Subdivision for a *capital gain if the basic conditions in Subdivision 152-A are satisfied for the gain.

Note 1: You can choose the roll-over even if you have not yet acquired a replacement asset or incurred fourth element expenditure, but:

(a) CGT event J5 happens if, by the end of the replacement asset period, you do not acquire the asset or incur the expenditure (see section 104-197); and

(b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth

element expenditure incurred (or both) is less than the amount of the capital gain that you disregarded (see section 104-198).

Note 2: If you have acquired a replacement asset or incurred fourth element expenditure but there is a change in relation to the replacement asset or improved asset after the end of the replacement asset period, CGT event J2 may happen: see section 104-185.

152-415 What the roll-over consists of

If you choose the roll-over, you can choose to disregard all or part of each *capital gain to which this Subdivision applies.

Note: If you choose to disregard only some of the capital gain, you make a capital gain equal to the remaining amount.

Example: The original capital gain was $100,000. You have reduced it to $25,000 under other concessions (apart from the roll-over). If you choose to disregard $20,000, you are left with a final capital gain of $5,000.

152-420 Rules where an individual who has obtained a roll-over dies

(1) This section applies if:

(a) a replacement asset, or an asset in relation to which *fourth element expenditure has been incurred, formed part of the estate of an individual who has died; and

(b) either or both of the following apply:

(i) the asset has devolved to the deceased's *legal personal representative;

(ii) the asset has *passed to a beneficiary of the deceased; and

(c) a change covered by subsection 104-185(2) or (3) did not happen while the deceased owned it or, if the asset has passed to a beneficiary, while the asset was in the hands of the deceased's legal personal representative.

(2) For the purposes of this Subdivision, anything done or not done by the deceased in relation to the asset is treated as though it had been done or not done by the *legal personal representative.

(3) For the purposes of this Subdivision, if the asset has *passed to a beneficiary, anything done or not done by the deceased or by the deceased's *legal personal representative (including because of the operation of subsection (2)) in relation to the asset is treated as though it had been done or not done by the beneficiary.

58 Paragraph 202-45(j)

Before “220-105”, insert “152-125 or”.

59 Subsection 995-1(1) (definition of *controlling individual*)

Repeal the definition.

60 Subsection 995-1(1)

Insert:

> ***direct small business participation percentage*** has the meaning given by section 152-70.

61 Subsection 995-1(1)

Insert:

> ***fourth element expenditure*** has the meaning given by section 104-185.

62 Subsection 995-1(1)

Insert:

> ***indirect small business participation percentage*** has the meaning given by section 152-75.

63 Subsection 995-1(1)

Insert:

> ***significant individual*** has the meaning given by section 152-55.

64 Subsection 995-1(1)

Insert:

> ***small business participation percentage*** has the meaning given by section 152-65.

Income Tax (Transitional Provisions) Act 1997

65 Section 104-185

Omit “a CGT asset you chose as” (wherever occurring).

66 Section 104-190

Repeal the section.

67 At the end of Part 3-3

Add:

Division 152—Small business relief

Table of sections

152-5	Small business roll-over chosen but no capital gain returned
152-10	Small business roll-over not chosen and time remains to acquire a replacement asset
152-15	Amendment of assessments

152-5 Small business roll-over chosen but no capital gain returned

(1) This section applies if:

(a) you chose a roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997* (or under former Division 123 of that Act) for a capital gain you made for an income year from a CGT event that happened in relation to a CGT asset before the commencement of this section; and

(b) you did not include the capital gain in working out your net capital gain for that year; and

(c) assuming that you had acquired a replacement asset before the CGT event, you would have been entitled to choose that roll-over.

(2) The capital gain is disregarded for the purposes of the *Income Tax Assessment Act 1997*.

(3) If you acquired a replacement asset within the period (the ***replacement asset period***) ending 2 years after the last CGT event in the income year for which you obtained the roll-over but the total of the first and second elements of the cost base of that asset is less than the amount of the capital gain that would, apart from this subsection, be disregarded, the amount to be disregarded is that total.

(4) However, if you do not acquire a replacement asset within the replacement asset period, that Act applies to you as if you had never chosen the roll-over, and the capital gain is not disregarded.

(5) The Commissioner may extend the replacement asset period.

152-10 Small business roll-over not chosen and time remains to acquire a replacement asset

(1) This section applies if:

(a) you made a capital gain for an income year from a CGT event that happened before the commencement of this section; and

(b) you included the capital gain in working out your net capital gain for that year; and

(c) at the commencement of this section, you have not acquired a replacement asset but the replacement asset period had not expired; and

(d) assuming that you had acquired a replacement asset before the CGT event, you would have been entitled to choose a roll-over under Subdivision 152-E of that Act.

(2) The capital gain is disregarded for the purposes of the *Income Tax Assessment Act 1997*.

(3) If you acquired a replacement asset within the replacement asset period but the total of the first and second elements of the cost base of that asset is less than the amount of the capital gain that would, apart from this subsection, be disregarded, the amount to be disregarded is that total.

(4) However, if you do not acquire a replacement asset within the replacement asset period, that Act applies to you as if you had never chosen the roll-over, and the capital gain is not disregarded.

(5) The Commissioner may extend the replacement asset period.

152-15 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 at any time in the period of 4 years starting at that commencement for the purpose of giving effect to this Division.

68 Application

(1) The amendments made by this Schedule (other than the amendment made by item 67) apply to CGT events happening in the 2006-07 income year or later income years.

(2) The amendment made by item 67 applies to CGT events that happened in the 2005-06 income year or an earlier income year.

Schedule 3—Streamline gift fund and integrity arrangements for deductible gift recipients

Income Tax Assessment Act 1997

1 Paragraph 30-125(1)(c)

Repeal the paragraph, substitute:

(c) meets the requirements of subsection (6), unless:

(i) the entity is established by an Act; and

(ii) the Act (or another Act) does not provide for the winding up or termination of the entity.

2 Paragraph 30-125(2)(d)

Repeal the paragraph, substitute:

(d) the entity meets the requirements of subsection (6), unless:

(i) the entity is established by an Act; and

(ii) the Act (or another Act) does not provide for the winding up or termination of the entity; and

(e) the entity meets the requirements of section 30-130, unless the entity is endorsed as a deductible gift recipient under paragraph 30-120(a).

3 Subsection 30-125(6) (heading)

Repeal the heading, substitute:

Transfer of assets from fund, authority or institution

4 Subsection 30-125(6)

Repeal the subsection, substitute:

(6) A law (outside this Subdivision), a document constituting the entity or rules governing the entity's activities must require the entity, at the first occurrence of an event described in subsection (7), to transfer to a fund, authority or institution gifts to which can be deducted under this Division:

(a) any surplus assets of the gift fund (see section 30-130); or

(b) if the entity is not required by this section to meet the requirements of section 30-130—any surplus:

(i) gifts of money or property for the principal purpose of the fund, authority or institution; and

(ii) contributions described in item 7 or 8 of the table in section 30-15 in relation to a *fund-raising event held for that purpose; and

(iii) money received by the entity because of such gifts or contributions.

5 Paragraph 30-125(7)(a)

Omit "of the gift fund", substitute "of the fund, authority or institution".

6 At the end of section 30-125

Add:

Note 3: The entity is also required to keep appropriate records: see section 382-15 of the *Taxation Administration Act 1953*.

7 At the end of section 30-130

Add:

Exception—only one gift fund required per entity

(3) An entity that operates 2 or more funds, authorities or institutions also meets the requirements of this section for 2 or more of those funds, authorities or institutions by maintaining a single gift fund if:

(a) the gift fund meets the requirements in paragraphs (1)(a), (b) and (c) in respect of each of the funds, authorities or institutions for which the gift fund is maintained; and

(b) the gift fund does not receive any other money or property.

(4) The entity must use a gift or contribution made to the fund and any money credited to the fund only for the principal purpose of the fund, authority or institution to which the gift, contribution or money relates.

Note: The entity is also required to keep appropriate records for each of the funds, authorities or institutions: see section 382-15 of the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

8 At the end of Division 353 in Schedule 1

Add:

353-20 Checking status of specifically listed deductible gift recipients

(1) The Commissioner may require a *deductible gift recipient covered by this section to give the Commissioner information or a document that is relevant to the deductible gift recipient's status as a deductible gift recipient. The deductible gift recipient must comply with the requirement.

Note: Failure to comply with this subsection is an offence against section 8C.

(2) If the Commissioner is satisfied of any of the matters set out in subsection (4) in relation to a *deductible gift recipient covered by this section, the Commissioner must, within 28 days, give written notice to the Minister about that fact.

(3) The Minister may only disclose information provided under subsection (2) for a purpose relating to the removal of the name of the *deductible gift recipient from:

(a) Division 30 of the *Income Tax Assessment Act 1997*; or

(b) regulations made for the purposes of the definition of *prescribed private fund.

(4) The matters are as follows:

(a) the *deductible gift recipient fails or ceases to use gifts, contributions or money received solely for the principal purpose of the relevant fund, authority or institution;

(b) there is a change in the principal purpose of the relevant fund, authority or institution;

(c) the deductible gift recipient fails or ceases to comply with any rules or conditions made by the Prime Minister or any other Minister relating to the recipient being or becoming a deductible gift recipient.

(5) The requirement in subsection (1):

(a) is to be made by notice in writing to the *deductible gift recipient; and

(b) may ask the deductible gift recipient to give the information in writing; and

(c) must specify:

(i) the information or document the deductible gift recipient is to give; and

(ii) the period within which the deductible gift recipient is to give the information or document.

The period specified under subparagraph (c)(ii) must end at least 28 days after the notice is given.

(6) This section covers *deductible gift recipients, other than:

(a) an entity or *government entity that is endorsed under Subdivision 30-BA of the *Income Tax Assessment Act 1997* as a deductible gift recipient; and

(b) an entity or government entity that is endorsed under that Subdivision as a deductible gift recipient for the operation of a fund, authority or institution.

(7) In a prosecution of a person for an offence against section 8C of this Act because of this section as it applies because of Division 444, it is a defence if the person proves that the person:

(a) did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and

(b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

9 At the end of section 382-1 in Schedule 1

Add:

> Deductible gift recipients are required to keep records in accordance with this Division.

10 At the end of Division 382 in Schedule 1

Add:

Subdivision 382-B—Record keeping obligations of deductible gift recipients

Table of sections

382-15 Deductible gift recipients to keep records

(1) A *deductible gift recipient must:

(a) keep records that record and explain all transactions and other acts the deductible gift recipient engages in that are relevant to the deductible gift recipient's status as a deductible gift recipient; and

(b) retain those records for at least 5 years after the completion of the transactions or acts to which they relate.

Note 1: Section 288-25 imposes an administrative penalty if an entity does not keep or retain records as required by this section.

Note 2: The Commissioner may request information from certain deductible gift recipients: see sections 353-20 and 426-40.

Requirements of records

(2) The records must be:

(a) in English, or readily accessible and easily convertible into English; and

(b) such as to show that the *deductible gift recipient uses each of the following only for the principal purpose of the fund, authority or institution:

(i) gifts of money or property for that purpose;

(ii) contributions described in item 7 or 8 of the table in section 30-15 of the *Income Tax Assessment Act 1997* in relation to a *fund-raising event held for that purpose;

(iii) money received by the deductible gift recipient because of such gifts or contributions.

Exception

(3) For the purposes of section 288-25, this section does not require a *deductible gift recipient to retain a record if:

(a) the Commissioner notifies the deductible gift recipient that the deductible gift recipient does not need to retain the record; or

(b) the deductible gift recipient is a company that has been finally dissolved.

Schedule 4—Deductible gift recipient extensions

Income Tax Assessment Act 1997

1 Subsection 30-80(2) (table item 9.2.13)

Omit “8 November 2006”, substitute “1 January 2010”.

2 Section 30-105 (table item 13.2.6)

Omit “1 January 2007”, substitute “1 January 2008”.

3 Section 30-105 (table item 13.2.8)

Omit “28 September 2006”, substitute “1 January 2008”.

4 Section 30-105 (table item 13.2.11)

Omit “24 February 2007”, substitute “24 February 2008”.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006

5 Item 13 of Schedule 3

Omit “, 9.2.13”.

Schedule 5—Effective life of tractors and harvesters

Income Tax Assessment Act 1997

1 Subsection 40-102(5) (at the end of the table)

Add:

7	Harvester	Primary production sector	6 2/3 years
8	Tractor	Primary production sector	6 2/3 years

2 Application

The amendment made by this Schedule applies to a depreciating asset if the start time for the asset occurs on or after 1 July 2007.

Schedule 6—Farm management deposits

Income Tax Assessment Act 1936

1 Paragraph 393-10(1)(b) in Schedule 2G

Omit “$50,000”, substitute “$65,000”.

2 Subsection 393-35(6) in Schedule 2G (heading)

Repeal the heading, substitute:

Deposit limit of $400,000

3 Subsection 393-35(6) in Schedule 2G

Omit “$300,000” (wherever occurring), substitute “$400,000”.

4 Application

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

Schedule 7—Capital protected borrowings

Part 1—Main amendments

Income Tax Assessment Act 1997

1 After Division 243

Insert:

Division 247—Capital protected borrowings

Guide to Division 247

247-1 What this Division is about

> Capital protection provided under a relevant capital protected borrowing to the extent that it is not provided by an explicit put option is treated (for the borrower) as if it were a put option.
>
> An amount attributable to capital protection under any relevant capital protected borrowing is treated (for the borrower) as a payment for a put option.

Table of sections

Operative provisions

247-5 Object of Division
247-10 What *capital protected borrowing* and *capital protection* are
247-15 Application of this Division
247-20 Treating capital protection as a put option
247-25 Number of put options
247-30 Exercise or expiry of option

Operative provisions

247-5 Object of Division

The object of this Division is to ensure that amounts for *capital protection under all relevant *capital protected borrowings are treated (for the borrower) under this Act as a payment for a put option.

247-10 What *capital protected borrowing* and *capital protection* are

(1) An *arrangement under which a *borrowing is made, or credit is provided, is a ***capital protected borrowing*** if the borrower is wholly or partly protected against a fall in the *market value of a thing (the ***protected thing***) to the extent that:

(a) the borrower uses the amount borrowed or credit provided to acquire the protected thing; or

(b) the borrower uses the protected thing as security for the borrowing or provision of credit.

(2) That protection is called ***capital protection***.

247-15 Application of this Division

(1) This Division applies to a *capital protected borrowing only if the protected thing is a beneficial interest in:

(a) a *share, a unit in a unit trust or a stapled security; or

(b) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities.

(2) This Division applies only to borrowers under *capital protected borrowings.

(3) This Division does not apply to a *capital protected borrowing under which a *share or stapled security is acquired under an *employee share scheme.

(4) This Division does not apply to a *capital protected borrowing entered into before 1 July 2007 (except to the extent that it is extended on or after that day) unless the *share, unit in a unit trust

or stapled security is listed for quotation in the official list of an *approved stock exchange.

(5) This Division does not apply to a *capital protected borrowing entered into on or after 1 July 2007 if:

(a) the protected thing is a beneficial interest in:

(i) a *share, unit or stapled security that is not listed for quotation in the official list of an *approved stock exchange; or

(ii) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities, that is not so listed; and

(b) one of these conditions is satisfied:

(i) for a non-listed share—the company is not a *widely held company;

(ii) for a non-listed unit—the trust is not a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*;

(iii) for a non-listed stapled security—any company involved is not a widely held company and any trust involved is not such a widely held unit trust.

247-20 Treating capital protection as a put option

(1) This section applies to a borrower if:

(a) the borrower has an excess using the method statement in subsection (3) for a *capital protected borrowing entered into on or after 1 July 2007; or

(b) the borrower has an amount that is reasonably attributable to the *capital protection as mentioned in subsection (2) for a capital protected borrowing, or an extension of a capital protected borrowing, entered into at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

(2) For paragraph (1)(b), the amount that is reasonably attributable to the *capital protection is worked out under Division 247 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) This is the method statement.

Method statement

Step 1. Work out the total amount incurred by the borrower under or in respect of the *capital protected borrowing for the income year, ignoring amounts that are not in substance for *capital protection or interest.

Step 2. Work out the total interest that would have been incurred for the income year on a *borrowing or provision of credit of the same amount as under the *capital protected borrowing at the rate applicable under subsection (4) or (5).

Step 3. If the step 1 amount exceeds the step 2 amount, the excess is reasonably attributable to the *capital protection for the income year.

Example: Amounts that would be ignored under step 1 include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

(4) If the *capital protected borrowing is at a fixed rate for all or part of the term of the *borrowing, use the Reserve Bank of Australia's Indicator Rate for Personal Unsecured Loans—Variable Rate (the ***benchmark rate***) at the time the first of the amounts referred to in step 1 of the method statement in subsection (3) was incurred during the term of the borrowing or the relevant part of the term.

(5) If the *capital protected borrowing is at a variable rate for all or part of the term of the *borrowing, use the average of the benchmark rates published by the Reserve Bank of Australia during the term of the borrowing or the relevant part of the term.

(6) If this section applies to a borrower, this Act applies as if:

(a) the borrower's excess from the method statement in subsection (3); or

(b) the amount that is reasonably attributable to *capital protection as mentioned in paragraph (1)(b);

(reduced by any amount the borrower incurred under or in respect of the *capital protected borrowing for an explicit put option) were incurred only for a put option granted by the lender or by another entity under the *arrangement.

247-25 Number of put options

(1) If a *capital protected borrowing specifies more than one occasion on which the *capital protection can be invoked, this Act applies as if there were a separate put option for each of those occasions. So much of the amount to which subsection 247-20(6) applies as is reasonably attributable to each option is taken to have been incurred for that option.

(2) However, if a borrower may invoke the *capital protection under a *capital protected borrowing at any time up to the end of a period, or only at the end of a period, for which there is capital protection, this Act applies as if there were a single put option for that period.

247-30 Exercise or expiry of option

(1) If the *capital protection under a *capital protected borrowing is invoked:

(a) the borrower is taken to have exercised the put option; and

(b) any interest in a *share, unit in a unit trust or stapled security that is acquired by the lender or another entity under the *arrangement as a result of that capital protection being invoked is taken to have been disposed of by the borrower as a result of the exercise of the option.

(2) If the *capital protection under a *capital protected borrowing is not invoked on or before the last occasion on which it could have been, the put option is taken to have expired.

Note: If a borrower under a capital protected borrowing holds the protected things on capital account, the exercise or expiry of the put option may give rise to a capital gain or capital loss: see sections 104-25 (CGT event C2) and 134-1 (exercise of options).

Income Tax (Transitional Provisions) Act 1997

2 Before Part 3-35

Insert:

Part 3-10—Financial transactions

Division 247—Interim apportionment methodology for capital protected borrowings

Table of sections

247-5 Interim apportionment methodology
247-10 Products listed on the Australian Stock Exchange that have explicit put options
247-15 Other capital protected products
247-20 The indicator method
247-25 The percentage method

247-5 Interim apportionment methodology

The methodology set out in this Division must be used to work out how much of an amount that a borrower incurs under or in respect of a capital protected borrowing is reasonably attributable to the capital protection provided under the capital protected borrowing if the capital protected borrowing, or an extension of it, is entered into at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

Note: To work out how much of such an amount is reasonably attributable to the capital protection provided under a capital protected borrowing entered into on or after 1 July 2007, see Division 247 of the *Income Tax Assessment Act 1997*.

247-10 Products listed on the Australian Stock Exchange that have explicit put options

(1) For a capital protected borrowing that:
  (a) is an instalment warrant listed on the Australian Stock Exchange; and
  (b) contains an explicit put option that permits the underlying investment to be sold for at least the amount borrowed or amount of credit provided and has a separate price that reasonably reflects the market value of that option;

subsection (2) applies.

(2) If an amount is incurred:

(a) to acquire the capital protected borrowing in the primary market; or

(b) at a reset date of the borrowing under the capital protected borrowing;

the amount that is reasonably attributable to the capital protection is the amount specified by the lender under the capital protected borrowing as the cost of the put option.

(3) For a capital protected borrowing acquired on the secondary market, the amount that is reasonably attributable to the capital protection for an income year is worked out in accordance with subsection (4) or (5).

(4) If the market value of the underlying security at the time of acquisition is greater than the amount of the borrowing, the amount that is reasonably attributable to the capital protection is:

(a) the sum of the market value of the instalment warrant and the amount of the borrowing or amount of credit provided; less

(b) the sum of the market value of the underlying security and so much of the amount incurred as is attributable to pre-paid interest.

(5) If the market value of the underlying security at the time of acquisition is equal to or less than the amount of the borrowing or amount of credit provided, the amount that is reasonably attributable to the capital protection is:

(a) the market value of the instalment warrant; less

(b) any pre-paid interest.

(6) If the amount worked out in accordance with subsection (4) or (5) is less than nil, the amount that is reasonably attributable to the capital protection is nil.

247-15 Other capital protected products

(1) If section 247-10 does not apply, the total amount that is reasonably attributable to the capital protection for an income year is the greater of the amount worked out using section 247-20 (the indicator method) and section 247-25 (the percentage method). If those amounts are the same, use either one.

(2) If an arrangement involves more than one amount incurred in an income year, the total amount that is reasonably attributable to the capital protection for the year is distributed pro-rata between those amounts incurred.

247-20 The indicator method

(1) Work out the total amount incurred by the borrower under or in respect of the capital protected borrowing for the income year, ignoring amounts that are not in substance for capital protection or interest.

Example: Amounts that would be ignored under subsection (1) include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

(2) Work out the amount that would have been incurred by applying the relevant indicator rate to a borrowing or provision of credit of the same amount for the income year.

(3) If the subsection (1) amount exceeds the subsection (2) amount, the excess is reasonably attributable to the capital protection for the income year.

(4) The relevant indicator rate is:

(a) for a capital protected borrowing based on a variable interest rate, the Reserve Bank of Australia's Indicator Rate for Personal Unsecured Loans—Variable Rate at the time the first payment for the income year was incurred; and

(b) for another capital protected borrowing, the Reserve Bank of Australia's Indicator Rate for Personal Unsecured Loans—Fixed Rate at the time the borrowing was entered into.

247-25 The percentage method

(1) Work out the total amount incurred by the borrower under or in respect of the capital protected borrowing for the income year, ignoring amounts that are not in substance for capital protection or interest.

Example: Amounts that would be ignored under subsection (1) include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

(2) The amount that is reasonably attributable to the capital protection for the income year is this percentage of the total amount incurred for the income year:

(a) 40% if the term is 1 year or shorter; or

(b) 27.5% if the term is longer than 1 year but not longer than 2 years; or

(c) 20% if the term is longer than 2 years but not longer than 3 years; or

(d) 17.5% if the term is longer than 3 years but not longer than 4 years; or

(e) 15% if the term is longer than 4 years.

Part 2—Consequential amendments

Income Tax Assessment Act 1997

3 Subsection 995-1(1)

Insert:

> ***capital protected borrowing*** has the meaning given by section 247-10.

4 Subsection 995-1(1)

Insert:

> ***capital protection*** has the meaning given by section 247-10.

Part 3—Application

5 Application

The amendments made by this Schedule apply to arrangements, or extensions of arrangements, entered into at or after 9.30 am by legal time in the Australian Capital Territory on 16 April 2003.

[*Minister's second reading speech made in—*
House of Representatives on 7 December 2006
Senate on 7 February 2007]

(199/06)