





# **Tax Laws Amendment (2007 Measures No. 1) Act 2007**

**No. 56, 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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**No. 56, 2007**

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## **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 (2007  
Measures No. 1) Act 2007*.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

### ***Administrative Decisions (Judicial Review) Act 1977***

#### **1 Paragraph (f) of Schedule 1**

After “subsection 3E(1)”, insert “, 3G(1) or 3H(1)”.

### ***Freedom of Information Act 1982***

#### **2 Schedule 3**

Omit “*Taxation Administration Act 1953*, subsection 3C(2), paragraph 8WB(1)(c) and subsection 8XB(1)”, substitute “*Taxation Administration Act 1953*, subsections 3C(2), 3G(6) and (9) and 3H(5) and (8), paragraph 8WB(1)(c) and subsection 8XB(1)”.

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

#### **3 At the end of subsection 3B(1AA)**

Add:

; and (e) set out:

- (i) the number of occasions (if any) during the year on which the Commissioner was requested to disclose documents under subsection 3G(1) in relation to the Project Wickenby taskforce; and
  - (ii) the number of occasions (if any) during the year on which the Commissioner disclosed documents under that subsection; and
- (f) set out, in relation to a taskforce that has been prescribed under section 3H:
- (i) the number of occasions (if any) during the year on which the Commissioner was requested to disclose documents under subsection 3H(1) in relation to the taskforce; and
  - (ii) the number of occasions (if any) during the year on which the Commissioner disclosed documents under that subsection.

#### 4 At the end of Part IA

Add:

#### 3G Providing taxation information to the Project Wickenby taskforce

*Disclosure of taxation information by the Commissioner*

- (1) The Commissioner may disclose information acquired under a taxation law to a person to whom subsection (2) applies (a ***Project Wickenby officer***) if:
  - (a) the Commissioner is satisfied that the information is relevant to a purpose of the Project Wickenby taskforce; and
  - (b) the disclosure occurs before 1 July 2012, or a later prescribed date.

*Project Wickenby officer*

- (2) This subsection applies to a person:
  - (a) who holds an office in, is employed in, or is performing services for:
    - (i) an agency in the Project Wickenby taskforce; or
    - (ii) an agency that is supporting the Project Wickenby taskforce; and
  - (b) whose duties relate to a purpose of the Project Wickenby taskforce.

*Project Wickenby taskforce agencies*

- (3) The following agencies are agencies in the Project Wickenby taskforce:
  - (a) the Australian Taxation Office;
  - (b) the Australian Crime Commission;
  - (c) the Australian Federal Police;
  - (d) the Australian Securities and Investments Commission;
  - (e) the Office of the Director of Public Prosecutions;
  - (f) a prescribed agency.

*Project Wickenby taskforce supporting agencies*

- (4) The following agencies are agencies supporting the Project Wickenby taskforce:
- (a) the Attorney-General's Department;
  - (b) the Australian Transaction Reports and Analysis Centre;
  - (c) the Australian Government Solicitor;
  - (d) a prescribed agency.

*Purposes of Project Wickenby taskforce*

- (5) The purposes of the Project Wickenby taskforce are to:
- (a) detect; and
  - (b) deter; and
  - (c) investigate; and
  - (d) enforce the law relating to;  
the promotion of or participation in arrangements (within the meaning of the *Income Tax Assessment Act 1997*) of an international character, or purported international character, that relate to one or more of these:
    - (e) tax avoidance or evasion;
    - (f) breaches of laws regulating financial markets and corporations;
    - (g) criminal activity in the nature of fraud or obtaining benefits by deception (including deceiving investors or creditors);
    - (h) money laundering;
    - (i) concealing income or assets.

*Offence—disclosure of taxation information by Project Wickenby officer*

- (6) A person commits an offence if:
- (a) the person is or has been a Project Wickenby officer; and
  - (b) the person:
    - (i) makes a record of information about the affairs of a second person; or
    - (ii) discloses to a third person information about the affairs of a second person; and
  - (c) the information was disclosed to the person under this section.

Penalty: Imprisonment for 2 years.

- (7) Subsection (6) does not apply if the person:
- (a) makes a record of the information for a purpose of the Project Wickenby taskforce; or
  - (b) discloses the information:
    - (i) to a Project Wickenby officer; and
    - (ii) for a purpose of the Project Wickenby taskforce.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- (8) Subsection (6) does not apply if:
- (a) a record of the information is made, or the information is disclosed to a person, for the purposes of, or in connection with:
    - (i) an actual, proposed or possible criminal, civil or administrative proceeding; or
    - (ii) the exercise of an administrative power or the performance of an administrative function; relating to a purpose of the Project Wickenby taskforce; or
  - (b) the information is voluntarily communicated to a court or tribunal in the course of a proceeding of a kind referred to in subparagraph (a)(i).

Note: A defendant bears an evidential burden in relation to the matters in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

*Offence—disclosure of taxation information by other people*

- (9) A person commits an offence if:
- (a) information is disclosed to the person in accordance with paragraph (8)(a); and
  - (b) the person makes a record of the information, or discloses the information to another person.

Penalty: Imprisonment for 2 years.

- (10) Subsection (9) does not apply to the person if a record of the information is made, or the information is disclosed to another person, for the purposes of, or in connection with, the proceeding or the exercise of the power or the performance of the function referred to in paragraph (8)(a).

Note: A defendant bears an evidential burden in relation to the matters in subsection (10): see subsection 13.3(3) of the *Criminal Code*.

*No requirement to disclose taxation information to a court etc.*

- (11) A person who is or has been a Project Wickenby officer is not to be required to disclose to a court or tribunal information that was disclosed to the person under this section unless it is necessary that the information be disclosed for the purposes of a taxation law.

*Other matters*

- (12) This section:
- (a) has effect despite any provision of a taxation law that prohibits the communication or divulging of information; and
  - (b) is in addition to, and does not detract from, any other provision of this Act or of any other law relating to the communication of information.

### **3H Providing taxation information to prescribed taskforces**

*Disclosure of taxation information by the Commissioner*

- (1) The Commissioner may disclose information acquired under a taxation law to a taskforce officer of a prescribed taskforce if the Commissioner is satisfied that the information is relevant to a purpose of the prescribed taskforce.

*Taskforce officer*

- (2) A person is a taskforce officer of a prescribed taskforce if:
- (a) the person holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce; and
  - (b) the person's duties relate to a purpose of the prescribed taskforce.

*Taskforce may be prescribed*

- (3) The regulations may prescribe a taskforce for the purposes of this section. A major purpose of the taskforce must be protecting the public finances of Australia.

- (4) Without limiting subsection (3), regulations made for the purposes of this section may deal with the following matters:
- (a) the purposes of the taskforce;
  - (b) the agencies in the taskforce;
  - (c) the period during which information can be disclosed to a taskforce officer of the prescribed taskforce.

*Offence—disclosure of taxation information by taskforce officer*

- (5) A person commits an offence if:
- (a) the person is or has been a taskforce officer of a prescribed taskforce; and
  - (b) the person:
    - (i) makes a record of information about the affairs of a second person; or
    - (ii) discloses to a third person information about the affairs of a second person; and
  - (c) the information was disclosed to the person under this section.

Penalty: Imprisonment for 2 years.

- (6) Subsection (5) does not apply if the person:
- (a) makes a record of the information for a purpose of the prescribed taskforce; or
  - (b) discloses the information:
    - (i) to a taskforce officer of the prescribed taskforce; and
    - (ii) for a purpose of the prescribed taskforce.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- (7) Subsection (5) does not apply if:
- (a) a record of the information is made, or the information is disclosed to a person, for the purposes of, or in connection with:
    - (i) an actual, proposed or possible criminal, civil or administrative proceeding; or
    - (ii) the exercise of an administrative power or the performance of an administrative function; relating to a purpose of a prescribed taskforce; or

- (b) the information is voluntarily communicated to a court or tribunal in the course of a proceeding of a kind referred to in subparagraph (a)(i).

Note: A defendant bears an evidential burden in relation to the matters in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

*Offence—disclosure of taxation information by other people*

- (8) A person commits an offence if:
  - (a) information is disclosed to the person in accordance with paragraph (7)(a); and
  - (b) the person makes a record of the information, or discloses the information to another person.

Penalty: Imprisonment for 2 years.

- (9) Subsection (8) does not apply to the person if the record of the information is made, or the information is disclosed to another person, for the purposes of, or in connection with, the proceeding or the exercise of the power or the performance of the function referred to in paragraph (7)(a).

Note: A defendant bears an evidential burden in relation to the matters in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

*No requirement to disclose taxation information to a court etc.*

- (10) A person who is or has been a taskforce officer of a prescribed taskforce is not to be required to disclose to a court or tribunal information that was disclosed to the person under this section unless it is necessary that the information be disclosed for the purposes of a taxation law.

*Other matters*

- (11) This section:
  - (a) has effect despite any provision of a taxation law that prohibits the communication or divulging of information; and
  - (b) is in addition to, and does not detract from, any other provision of this Act or of any other law relating to the communication of information.

## **5 Application**

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**Schedule 1** Project Wickenby taskforce

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The amendments made by this Schedule apply to disclosures of information made on or after the day on which this Act receives the Royal Assent (whenever the information was obtained).

## **Schedule 2—Disclosure of information relating to superannuation guarantee complaints**

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

#### **1 At the end of Part 5**

Add:

#### **45A Disclosure of information to give advice to employee about progress of complaint against employer**

- (1) An employee or former employee (the *employee*) of an employer may make a complaint to the Commissioner that the employer has not complied with one or more specified obligations under this Act in relation to the employee.
- (2) To avoid doubt, a person may make a complaint under subsection (1) even if at the time the complaint is made it is in dispute or uncertain whether he or she is an employee or former employee of the employer.
- (3) If a complaint has been made under subsection (1), the Commissioner may divulge or communicate information covered under subsection (4) to the employee (and make a record necessary for the divulging or communication of the information).
- (4) Information is covered under this subsection if it relates to the Commissioner's response to the complaint, including information about any of the following matters:
  - (a) the steps (if any) that the Commissioner has taken to investigate the complaint;
  - (b) the actions (if any) that have been taken in relation to the complaint under this Act or the *Taxation Administration Act 1953* by the Commissioner or the employer;
  - (c) the steps (if any) that the Commissioner has taken to recover superannuation guarantee charge from the employer in relation to the employee.

- (5) However, information is not covered under subsection (4) if it relates to the general financial affairs of the employer.
- (6) Making a record, or divulging or communicating information, under subsection (3) is not a breach of a provision of a taxation law (within the meaning of the *Income Tax Assessment Act 1997*) that prohibits the Commissioner or an officer from making a record of, or disclosing, information.

Example: Examples of such provisions are section 45 of this Act and section 3C of the *Taxation Administration Act 1953*.

## **2 Application**

- (1) The amendment made by this Schedule applies to records made, or information divulged or communicated, on or after 1 July 2007.
- (2) Subitem (1) applies regardless of when the information recorded, divulged or communicated was obtained.

## **Schedule 3—Employee share schemes and stapled securities**

### **Part 1—Main amendments**

#### *Income Tax Assessment Act 1936*

##### **1 Section 139A (after table item dealing with Subdivision DA)**

Insert:

DB                      Stapled securities

##### **2 After Subdivision DA of Division 13A of Part III**

Insert:

#### **Subdivision DB—Stapled securities**

##### **139DSA Object of this Subdivision**

The object of this Subdivision is to allow this Division to apply to stapled securities that include an ordinary share and are listed for quotation on the Australian Stock Exchange, and to rights to acquire such stapled securities.

##### **139DSB Application of Division to stapled securities**

- (1) This Division (except this Subdivision) applies, with the modifications set out in this Subdivision, in relation to a stapled security in the same way as it applies in relation to a share (including an ordinary share) in a company.

Note 1: For the definition of *stapled security*, see subsection 139GCD(1).

Note 2: This means the Division also applies to rights to acquire a stapled security in the same way it applies to rights to acquire a share.

Example: Subsection 139CD(4) will be satisfied if all the securities available for acquisition under the scheme are stapled securities, and all the rights available for acquisition are rights to acquire stapled securities.

- (2) For the purposes of the application of this Division (except this Subdivision) in relation to a stapled security or right to acquire a stapled security, a company, the shares in which are the subject of

this Division, is taken to include (as part of the company) each stapled entity for the stapled security.

Note 1: For the definition of *stapled entity*, see subsection 139GCD(2).

Note 2: There are some modifications to this rule in this Subdivision.

Note 3: This rule has the effect that the company is treated as having all the interests in another entity that stapled entities for the stapled security have.

Example: The condition in subsection 139CD(3) will be satisfied if the company would be a holding company of the employer if all those stapled entities' interests in the employer were counted together.

### **139DSC Discount not to be included in assessable income unless stapled security or right is qualifying**

Section 139B includes a discount given in relation to a stapled security or right to acquire a stapled security in the assessable income of the taxpayer only if the stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of this Subdivision.

### **139DSD Division does not also apply to share part of stapled security**

- (1) If a stapled security or right to acquire a stapled security is treated as a qualifying share or qualifying right because of this Subdivision, this Division does not also apply separately in relation to a share that is a part of the stapled security.
- (2) However, if a stapled security is not treated as a qualifying share because of this Subdivision, the rest of this Division applies separately in relation to each share that is a part of the stapled security. To avoid doubt, section 139DSC does not prevent a discount given in relation to such a share from being included in the assessable income of a taxpayer.

### **139DSE Modifications relating to employment**

*Proportion of permanent employees of employer*

- (1) Subsection 139DSB(2) does not affect a provision setting out a condition relating to a specified proportion of the permanent employees of a stapled entity that is the employer.

Example: In applying subsection 139CD(5), the employer of the taxpayer is not taken to include any other stapled entities. The condition in that subsection will be satisfied if it is satisfied for the employing entity alone.

- (2) The reference in paragraph 139CD(5)(b) to a holding company of an employer includes a reference to the stapled entities for the stapled security if:
- (a) the employer is not a stapled entity for the stapled security; and
  - (b) a company that included the stapled entities as parts of the company would be a holding company of the employer.

*Cessation of employment*

- (3) For the purposes of working out the time when a taxpayer ceases to be employed by the employer of the taxpayer, that employer is taken to include (as part of it) each other stapled entity for the stapled security.

Note: This rule affects the operation of subsections 139CA(2), 139CB(1) and 139CE(3).

**139DSF Modification relating to legal or beneficial interest**

A taxpayer is taken to satisfy a condition that the taxpayer not hold a legal or beneficial interest in more than 5% of the shares in a company at a time only if the taxpayer does not hold a legal or beneficial interest in more than 5% of any of the following at that time:

- (a) the shares in any company that is a stapled entity for the stapled security;
- (b) the units in any unit trust that is a stapled entity for the stapled security.

Note: This rule affects the operation of subsections 139CD(6) and 139DR(5).

**139DSG Modification relating to voting rights**

A taxpayer is taken to satisfy a condition that the taxpayer not be in a position to cast, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of a company only if the taxpayer is not in a position to control the

casting of more than 5% of the maximum number of votes that might be cast at a general meeting of:

- (a) a company that is a stapled entity for the stapled security because an ordinary share in the company is part of the stapled security; or
- (b) if more than one company is a stapled entity for the stapled security because an ordinary share in the company is part of the stapled security—each of those companies.

Note: This rule affects the operation of subsections 139CD(7) and 139DR(6).

### **139DSH Cessation time when stapling arrangement ceases**

The cessation time for a stapled security or right to acquire a stapled security is the earlier of:

- (a) the time when any of the interests forming the stapled security cease to be stapled together; and
- (b) the time when the stapled security ceases to be listed for quotation in the official list of the ASX Limited;

if that time is earlier than:

- (c) in the case of a stapled security where subsection 139CA(1) does not apply—the earliest time when an event described in any of paragraphs 139CA(2)(a) to (d) happens; and
- (d) in the case of a right to acquire a stapled security—the earliest time when an event described in any of paragraphs 139CB(1)(a) to (e) happens.

Note: The times mentioned in paragraphs (a) and (b) are additional to the times mentioned in subsections 139CA(2) and 139CB(1). The actual cessation time is the time that is the earliest, unless subsection 139CA(1) applies (when the cessation time is the time of acquisition).

### **139DSI Deduction to be apportioned**

- (1) If a stapled security is jointly provided by 2 or more taxpayers to another person in a year of income, each of those taxpayers is entitled to an allowable deduction in respect of income of the year of income under section 139DC if, because of this Subdivision:
  - (a) the stapled security is treated as a qualifying share; and
  - (b) the conditions in subsection 139DC(1) are satisfied for the stapled security.

- (2) The amount of the deduction worked out under subsection 139DC(2) in respect of the stapled security must be apportioned between each of the taxpayers on a reasonable basis.

**3 Subsection 139GB(1)**

Omit “a company”, substitute “an employer”.

**4 Paragraphs 139GB(1)(a) and (b)**

Omit “the company”, substitute “the employer”.

**5 Subsection 139GB(2)**

Omit “the company” (first occurring), substitute “an employer that is a company”.

**6 After section 139GCC**

Insert:

**139GCD Meaning of *stapled security* and *stapled entity***

- (1) A security consisting of 2 or more interests is a *stapled security* if:
- (a) each interest is either a share in a company or a unit in a unit trust; and
  - (b) at least one of the interests is an ordinary share; and
  - (c) all the interests are stapled together; and
  - (d) the security is listed for quotation in the official list of the ASX Limited.
- (2) A *stapled entity* for a stapled security is a company or a unit trust covered by subsection (1) for the stapled security.

**7 Section 139GH (after table item dealing with Restructure)**

Insert:

Stapled entity	139GCD
Stapled security	139GCD

## Part 2—Consequential amendments

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

#### **8 Paragraph 84-14(a)**

Omit “share or right”, substitute “share, right or stapled security (within the meaning of Division 13A of Part III of the \*ITAA 1936)”.

#### **9 Paragraph 84-14(b)**

Omit “shares or rights”, substitute “shares, rights or stapled securities (within the meaning of that Division)”.

#### **10 Section 195-1 (definition of *employee share scheme*)**

After “section 139C”, insert “(including as affected by Subdivision DB of Division 13A of Part III)”.

### *Fringe Benefits Tax Assessment Act 1986*

#### **11 Subsection 136(1) (paragraph (ha) of the definition of *fringe benefit*)**

After “share or right”, insert “to acquire a share”.

#### **12 Subsection 136(1) (after paragraph (ha) of the definition of *fringe benefit*)**

Insert:

(haa) a benefit constituted by the acquisition by a person under an employee share scheme (within the meaning of that Division) of a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right for the purposes of that Division because of Subdivision DB of that Division; or

#### **13 Subsection 136(1) (after paragraph (hb) of the definition of *fringe benefit*)**

Insert:

(hc) a benefit constituted by the acquisition by a trust of money or other property where the sole activities of the trust are

obtaining stapled securities or rights to acquire stapled securities that are treated as qualifying shares or qualifying rights for the purposes of Division 13A of Part III of the *Income Tax Assessment Act 1936* because of Subdivision DB of that Division, and providing those stapled securities or rights:

- (i) to employees of a stapled entity (within the meaning of that Division) for the stapled securities, or to associates of those employees; or
- (ii) to persons who are engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*) for a stapled entity for the stapled securities, or associates of those persons; or
- (iii) for a case where, if all the stapled entities for any of the stapled securities were part of one company, that company would be a holding company (within the meaning of the *Corporations Act 2001*) of another company—to employees, or associates of employees of that other company; or
- (iv) for a case where, if all the stapled entities for any of the stapled securities were part of one company, that company would be a holding company (within the meaning of the *Corporations Act 2001*) of another company—to persons who are engaged in foreign service (within the meaning of section 139GBA of the *Income Tax Assessment Act 1936*) for that other company, or associates of those persons; or

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

### **14 Section 109H**

Omit “certain shares or rights under an employee share scheme”, substitute “certain shares, rights or stapled securities under an employee share scheme”.

### **15 Subsection 109NB(1)**

Repeal the subsection, substitute:

- (1) A private company is not taken under section 109D to pay a dividend because of a loan made solely for the purpose of enabling the shareholder or an associate of the shareholder to acquire:

- (a) qualifying shares or qualifying rights under an employee share scheme; or
- (b) a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right because of Subdivision DB of Division 13A.

**16 At the end of section 530A**

Add:

- (3) This section applies in relation to a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right because of Subdivision DB of Division 13A of Part III in the same way as it applies in relation to a share or right.
- (4) The cessation time for the stapled security or right is the cessation time provided for in that Division.

***Income Tax Assessment Act 1997***

**17 Subsection 115-30(1A)**

Omit “another share or right for the purposes of Division 13A of Part III of that Act”, substitute “another share, right or stapled security (as defined in Division 13A of Part III of that Act) for the purposes of that Division”.

**18 After subsection 115-30(1A)**

Insert:

- (1B) A \*CGT asset that forms part of a stapled security (as defined in Division 13A of Part III of the *Income Tax Assessment Act 1936*) that is treated under section 139DQ of that Act as if it were a continuation of another \*share or stapled security for the purposes of that Division, is treated for the purposes of item 8 of the table in subsection (1) of this section as if it were a continuation of each CGT asset that was, or was a part of, the other share or stapled security.

Note: This Part applies in relation to a CGT asset that forms part of a stapled security acquired under an employee share scheme in the same way as it applies in relation to a share acquired under an employee share scheme: see section 130-97.

**19 Paragraph 125-75(3)(a)**

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Repeal the paragraph, substitute:

- (a) either:
- (i) would be a \*qualifying share or a \*qualifying right \*acquired under an \*employee share scheme if Division 13A of Part III of the *Income Tax Assessment Act 1936* applied to ownership interests in a trust; or
  - (ii) forms part of a stapled security (within the meaning of that Division) that is treated as a qualifying share because of Subdivision DB of that Division; and

## **20 At the end of section 130-90**

Add:

### *Stapled securities*

- (6) This section applies, in the same way as it applies in relation to a \*share or right in a company, in relation to a \*CGT asset that:
- (a) forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); or
  - (b) is a right to \*acquire a stapled security (within the meaning of that Division).
- (7) For the purposes of that application, a \*withholding payment from a stapled entity (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) for the stapled security is taken to be a withholding payment from the company.

## **21 At the end of Subdivision 130-D**

Add:

### **130-97 Stapled securities**

- (1) This section sets out what happens if you \*acquire a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) that:
- (a) is treated as a \*qualifying share because of Subdivision DB of that Division; or
  - (b) because of section 139DQ of that Act is treated, for the purposes of that Division, as if it were a continuation of:

- (i) a qualifying share acquired under an \*employee share scheme; or
  - (ii) another stapled security (within the meaning of that Division) that is treated as a qualifying share because of Subdivision DB of that Division.
- (2) The provisions (the *applied provisions*) of Part 3-1, this Part (except this section), Subdivision 768-R and Division 855 apply, with the modifications set out in subsections (3), (4) and (5), in relation to each \*CGT asset that forms part of the stapled security in the same way as the applied provisions apply in relation to:
- (a) a CGT asset that is a \*share \*acquired under an \*employee share scheme; and
  - (b) a CGT asset that is a \*qualifying share.

Note 1: The assets that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.

Note 2: There are modifications to this application in subsections 115-30(1A) and (1B).

- (3) The applied provisions apply as if an election under section 139E of the *Income Tax Assessment Act 1936* in relation to the stapled security were an election in relation to each of the assets.
- (4) The applied provisions apply as if the \*cessation time for the stapled security were the cessation time for each of the assets.

*Modification relating to cost base and reduced cost base*

- (5) Subsection (6) applies for the purposes of the application, in relation to a \*CGT asset that forms part of a stapled security, of a provision of this Subdivision providing that the first element of the \*cost base and \*reduced cost base of a \*share is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) at a time.
- (6) The first element of the \*cost base and \*reduced cost base of a \*CGT asset that forms part of the stapled security is so much of the market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) of the stapled security at that time as is reasonably attributable to the asset.

## **22 Section 208-215**

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Before “A \*share”, insert “(1)”.

### **23 At the end of section 208-215**

Add:

- (2) A \*share in a company is acquired by a person under an \*employee share scheme in circumstances that are relevant for the purposes of paragraph 208-205(b) and 208-235(b) if the share is part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*) that is treated as a \*qualifying share because of Subdivision DB of that Division.

### **24 Subsections 703-35(1), (2), (3) and (4)**

Repeal the subsections, substitute:

- (1) The object of this section is to ensure that an entity (the *first entity*) is not prevented from being a \*subsidiary member of a \*consolidated group or \*consolidatable group just because there are minor holdings of \*membership interests in an entity (the *employee share scheme entity*) issued under \*arrangements for employee shareholdings. (It does not matter whether the employee share scheme entity is the first entity or is interposed between the first entity and a \*member of the group.)

Note: A company that is prevented from being a subsidiary member of a consolidated group may be a head company (so there could be 2 consolidated or consolidatable groups, instead of the one that this section ensures exists).

- (2) This Part (except Division 719) operates as if an entity that meets the requirement of subsection (3) at a particular time were a \*wholly-owned subsidiary of an entity (the *holding entity*) at the time.
- (3) The entity must be one that would be a \*wholly-owned subsidiary of the holding entity at the time if the \*membership interests in the entity that are to be disregarded under subsection (4) did not exist.
- (4) Disregard:
  - (a) each of the \*shares described in subsection (5) if the total number of those shares is not more than 1% of the number of ordinary shares in the company; and
  - (b) each of the \*membership interests in an entity described in subsection (7) if the total number of those membership

interests is not more than 1% of the number of membership interests of that kind in the entity.

**25 Subsection 703-35(5)**

Omit “the company” (first occurring), substitute “a company”.

**26 At the end of section 703-35**

Add:

- (7) A \*membership interest of a particular kind in an entity that is beneficially owned by another entity may be disregarded under subsection (4) if:
- (a) the membership interest forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); and
  - (b) the stapled security is treated as a \*qualifying share because of Subdivision DB of that Division.

Note: The kinds of membership interest that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.

**27 Subsection 719-30(1)**

Omit “\*shares in a company”, substitute “\*membership interests in an entity”.

**28 Subsection 719-30(2)**

Repeal the subsection, substitute:

- (2) For the purposes of this Division, in determining whether an entity is a \*wholly-owned subsidiary of another entity, disregard:
- (a) particular \*shares in a company if the shares are covered by subsection (3) and the total number of those shares is not more than 1% of the number of ordinary shares in the company; and
  - (b) particular \*membership interests in an entity if the membership interests are covered by subsection (5) and the total number of those membership interests is not more than 1% of the number of membership interests of that kind in the entity.

**29 At the end of section 719-30**

Add:

(5) A \*membership interest of a particular kind in an entity that is beneficially owned by another entity is covered by this subsection if:

- (a) the membership interest forms part of a stapled security (within the meaning of Division 13A of Part III of the *Income Tax Assessment Act 1936*); and
- (b) the stapled security is treated as a \*qualifying share because of Subdivision DB of that Division.

Note: The kinds of membership interest that form part of a stapled security are an ordinary share and one or more other interests that are either shares or units in a unit trust: see section 139GCD of the *Income Tax Assessment Act 1936*.

**30 Subsection 768-920(1) (note)**

After “Note”, insert “1”.

**31 At the end of subsection 768-920(1) (after the note)**

Add:

Note 2: For a stapled security acquired under an employee share scheme, the operation of this Subdivision is affected by section 130-97.

**32 Subsection 768-920(2) (note)**

After “Note”, insert “1”.

**33 At the end of subsection 768-920(2) (after the note)**

Add:

Note 2: For a stapled security acquired under an employee share scheme, the operation of this Subdivision is affected by section 130-97.

**34 Subsection 995-1(1) (definition of *cessation time*)**

Omit “and 139CB”, substitute “, 139CB and 139DSH”.

**35 Subsection 995-1(1) (definition of *employee share scheme*)**

Repeal the definition, substitute:

*employee share scheme*: a \*share or right, including a right to \*acquire a stapled security that is treated because of Subdivision DB of Division 13A of Part III of the *Income Tax Assessment Act 1936* as a qualifying right for the purposes of that Division, is acquired under an *employee share scheme* if it is acquired (within the meaning of section 139G of that Act) in the way described in section 139C of that Act.

**36 Subsection 995-1(1) (definition of *qualifying right*)**

Repeal the definition, substitute:

*qualifying right* has the meaning given by section 139CD of the *Income Tax Assessment Act 1936*, and includes a right to \*acquire a stapled security that is treated because of Subdivision DB of Division 13A of Part III of that Act as a qualifying right for the purposes of that Division.

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**37 Subsection 14-5(3) of Schedule 1**

After “share or right”, insert “to acquire a share”.

**38 At the end of subsection 14-5(3) of Schedule 1**

Add:

; or (e) a benefit constituted by the acquisition under an employee share scheme (within the meaning of that Division) of a stapled security or right to acquire a stapled security that is treated as a qualifying share or qualifying right for the purposes of that Division because of Subdivision DB of that Division.

**39 Application**

- (1) The amendments made by this Schedule apply to acquisitions of stapled securities, and of rights to acquire stapled securities, on or after 1 July 2006.
- (2) In this item:  
*acquisition* has the same meaning as in Division 13A of Part III of the *Income Tax Assessment Act 1936*.

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*[Minister's second reading speech made in—  
House of Representatives on 15 February 2007  
Senate on 1 March 2007]*

(26/07)