Tax Laws Amendment (2007 Measures No. 4) Act 2007

No. 143, 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 (2007 Measures No. 4) Act 2007

No. 143, 2007

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

[*Assented to 24 September 2007*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2007 Measures No. 4) Act 2007*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	24 September 2007
2. Schedule 1, Parts 1 to 6	The day on which this Act receives the Royal Assent.	24 September 2007
3. Schedule 1, Part 7	30 June 2014.	30 June 2014
4. Schedules 2 to 4	The day on which this Act receives the Royal Assent.	24 September 2007
5. Schedule 5, Part 1	The day on which this Act receives the Royal Assent.	24 September 2007
6. Schedule 5, Part 2	Immediately after the commencement of Schedule 1 to the *Superannuation Legislation Amendment (Simplification) Act 2007*.	15 March 2007
7. Schedule 5, Part 3	The day on which this Act receives the Royal Assent.	24 September 2007
8. Schedule 6	The day on which this Act receives the Royal Assent.	24 September 2007
9. Schedule 7, item 1	The day on which this Act receives the Royal Assent.	24 September 2007
10. Schedule 7, items 2 to 6	1 July 2006.	1 July 2006
11. Schedule 7, items 7 to 104	The day on which this Act receives the Royal Assent.	24 September 2007
12. Schedule 8	The day on which this Act receives the Royal Assent.	24 September 2007

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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—New foreign income tax offset rules

Part 1—Main amendments

Income Tax Assessment Act 1997

1 After Division 768

Insert:

Division 770—Foreign income tax offsets

Table of Subdivisions

	Guide to Division 770
770-A	Entitlement rules for foreign income tax offsets
770-B	Amount of foreign income tax offset
770-C	Rules about payment of foreign income tax
770-D	Administration

Guide to Division 770

770-1 What this Division is about

You may get a non-refundable tax offset for foreign income tax paid on your assessable income.

There is a limit on the amount of the tax offset.

A resident of a foreign country does not get the offset for some foreign income taxes.

You may also get the offset for foreign income tax paid on some amounts that are not taxed in Australia.

770-5 Object

(1) The object of this Division is to relieve double taxation where:
  (a) you have paid foreign income tax on amounts included in your assessable income; and
  (b) you would, apart from this Division, pay Australian income tax on the same amounts.

(2) To achieve this object, this Division gives you a tax offset to reduce or eliminate Australian income tax otherwise payable on those amounts.

Subdivision 770-A—Entitlement rules for foreign income tax offsets

Table of sections

Basic entitlement rule for foreign income tax offset

770-10 Entitlement to foreign income tax offset
770-15 Meaning of ***foreign income tax***, ***credit absorption tax*** and ***unitary tax***

Basic entitlement rule for foreign income tax offset

770-10 Entitlement to foreign income tax offset

(1) You are entitled to a *tax offset for an income year for *foreign income tax. An amount of foreign income tax counts towards the tax offset for the year if you paid it in respect of an amount that is all or part of an amount included in your assessable income for the year.

Note 1: The offset is for the income year in which your assessable income included an amount in respect of which you paid foreign income tax—even if you paid the foreign income tax in another income year.

Note 2: If the foreign income tax has been paid on an amount that is part non-assessable non-exempt income and part assessable income for you for the income year, only a proportionate share of the foreign income tax (the share that corresponds to the part that is assessable income) will count towards the tax offset (excluding the operation of subsection (2)).

Note 3: For offshore banking units, the amount of foreign income tax paid in respect of offshore banking income is reduced: see subsection 121EG(3A) of the *Income Tax Assessment Act 1936.*

Taxes paid on section 23AI or 23AK amounts

(2) An amount of *foreign income tax counts towards the *tax offset for you for the year if you paid it in respect of an amount that is your *non-assessable non-exempt income under either section 23AI or 23AK of the *Income Tax Assessment Act 1936* for the year.

Note 1: Sections 23AI and 23AK of the *Income Tax Assessment Act 1936* provide that amounts paid out of income previously attributed from a controlled foreign company or a foreign investment fund are non-assessable non-exempt income.

Note 2: Foreign income taxes covered by this subsection are direct taxes (for example, a withholding tax on a dividend payment) and not underlying taxes, only some of which are covered by section 770-135.

Exception for certain residence-based foreign income taxes

(3) An amount of *foreign income tax you paid does not count towards the *tax offset for the year if you paid it:

(a) to a foreign country because you are a resident of that country for the purposes of a law relating to the foreign income tax; and

(b) in respect of an amount derived from a source outside that country.

Exception for previously complying funds and previously foreign funds

(4) An amount of *foreign income tax paid by a *superannuation provider in relation to a *superannuation fund does not count towards the *tax offset for the year if:

(a) the tax was paid in respect of an amount included in the fund's assessable income under table item 2 or 3 in section 295-320; and

(b) the provider paid the tax before the start of the income year.

Note: Table items 2 and 3 in section 295-320 include additional amounts in the assessable income of superannuation funds that change their status from complying to non-complying or from foreign to Australian.

Exception for credit absorption tax and unitary tax

(5) An amount of *credit absorption tax or *unitary tax you paid does not count towards the *tax offset for the year.

770-15 Meaning of *foreign income tax*, *credit absorption tax* and *unitary tax*

(1) ***Foreign income tax*** means tax that:

(a) is imposed by a law other than an *Australian law; and

(b) is:

(i) tax on income; or

(ii) tax on profits or gains, whether of an income or capital nature; or

(iii) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*.

(2) ***Credit absorption tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country to the extent that the tax would not have been payable if the entity concerned or another entity had not been entitled to an offset in respect of the tax under this Division.

(3) ***Unitary tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country, being a law which, for the purposes of taxing income, profits or gains of a company derived from sources within that country, takes into account, or is entitled to take into account, income, losses, outgoings or assets of the company (or of a company that for the purposes of that law is treated as being associated with the company) derived, incurred or situated outside that country, but does not include tax imposed by that law if that law only takes those matters into account:

(a) if such an associated company is a resident of the foreign country for the purposes of the law of the foreign country; or

(b) for the purposes of granting any form of relief in relation to tax imposed on dividends received by one company from another company.

Subdivision 770-B—Amount of foreign income tax offset

Guide to Subdivision 770-B

770-65 What this Subdivision is about

The amount of your tax offset is based on the amount of foreign income tax you have paid.

However, there is a limit on the maximum amount of your offset. The limit is the greater of $1,000 and an amount worked out under this Subdivision. This amount is based on a comparison between your tax liability and the tax liability you would have if certain foreign-taxed and foreign-sourced income and related deductions were disregarded.

You may choose to use the limit of $1,000 and not work out this amount.

There is an increase in the limit to ensure foreign income tax paid on some amounts that are not taxed always forms part of the offset.

Table of sections

Operative provisions

770-70 Amount of foreign income tax offset
770-75 Foreign income tax offset limit
770-80 Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the *Income Tax Assessment Act 1936* apply

Operative provisions

770-70 Amount of foreign income tax offset

The amount of your *tax offset for the year is the sum of the *foreign income tax you paid that counts towards the offset for the year.

Note 1: The amount of foreign income tax you paid may be affected by Subdivision 770-C.

Note 2: The amount of the offset might be increased under section 770-230 of the *Income Tax (Transitional Provisions) Act 1997*, if you have pre-commencement excess foreign income tax.

770-75 Foreign income tax offset limit

(1) There is a limit (the ***offset limit***) on the amount of your *tax offset for a year. If your tax offset exceeds the offset limit, reduce the offset by the amount of the excess.

(2) Your offset limit is the greater of:
  (a) $1,000; and
  (b) this amount:
    (i) the amount of income tax payable by you for the income year; *less*
    (ii) the amount of income tax that would be payable by you for the income year if the assumptions in subsection (4) were made.

Note 1: If you do not intend to claim a foreign income tax offset of more than $1,000 for the year, you do not need to work out the amount under paragraph (b).

Note 2: The amount of the offset limit might be increased under section 770-80.

(3) For the purposes of paragraph (2)(b), work out the amount of income tax payable by you, or that would be payable by you, disregarding any *tax offsets.

(4) Assume that:
  (a) your assessable income did not include:
    (i) so much of any amount included in your assessable income as represents an amount in respect of which you paid *foreign income tax that counts towards the *tax offset for the year; and
    (ii) any other amounts of *ordinary income or *statutory income from a source other than an *Australian source; and
  (b) you were not entitled to any deductions that:
    (i) are *debt deductions that are attributable to an *overseas permanent establishment of yours; or
    (ii) are other deductions that are reasonably related to income covered by paragraph (a) for that year.

Note: You must also assume you were not entitled to any deductions for certain converted foreign losses: see section 770-35 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: If an entity has paid foreign income tax on a capital gain that comprises part of its net capital gain, only that capital gain on which foreign income tax has been paid is disregarded.

770-80 Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the *Income Tax Assessment Act 1936* apply

Your offset limit under subsection 770-75(2) is increased by any amounts of *foreign income tax that count towards the *tax offset for you for the year because of subsection 770-10(2).

Subdivision 770-C—Rules about payment of foreign income tax

Table of sections

Rules about when foreign tax is paid

770-130 When foreign income tax is considered paid—taxes paid by someone else
770-135 Foreign income tax paid by CFCs and FIFs on attributed amounts

Rules about when foreign tax is considered not paid

770-140 When foreign income tax is considered not paid—anti-avoidance rule

Rules about when foreign tax is paid

770-130 When foreign income tax is considered paid—taxes paid by someone else

(1) This Act applies to you as if you had paid an amount of *foreign income tax in respect of an amount (a ***taxed amount***) that is all or part of an amount included in your *ordinary income or *statutory income if you are covered by subsection (2) or (3) for an amount of foreign income tax paid in respect of the taxed amount.

(2) You are covered by this subsection for an amount of *foreign income tax paid in respect of a taxed amount if that foreign income tax has been paid in respect of the taxed amount by another entity under an *arrangement with you or under the law relating to the foreign income tax.

Example: You are a partner in a partnership and the partnership pays foreign income tax on the partnership income.

(3) You are covered by this subsection for an amount of *foreign income tax paid in respect of the taxed amount to the extent that:

(a) the taxed amount is taken, because of section 6B of the *Income Tax Assessment Act 1936* (the ***1936 Act***), to be attributable to another amount of income of a particular kind or source; and

(b) foreign income tax has been paid in respect of the other amount of income; and

(c) the taxed amount is less than it would have been if that tax had not been paid.

Example: Aust Co (an Australian resident) is the sole beneficiary of an Australian resident trust H and is presently entitled to all the income of trust H. Trust H owns shares in For Co (a foreign company). For Co pays a dividend to trust H and the dividend is subject to withholding tax in For Co's country of residence.

Trust H allocates to Aust Co, the dividend, as well as other Australian source income trust H earned in the year (none of which was subject to foreign income tax). Aust Co is treated as having paid the foreign income tax paid by For Co under subsection 770-130(3). The foreign income tax is treated as paid in respect of the amount included in Aust Co's assessable income that is attributable to the dividend.

770-135 Foreign income tax paid by CFCs and FIFs on attributed amounts

(1) This Division applies to an entity as if it had paid an amount of *foreign income tax worked out under subsection (7) in respect of an amount included in its assessable income if:

(a) the amount is included in its assessable income as described in subsection (2); and

(b) the conditions in subsections (3), (5) and (6) are satisfied.

(2) An amount is included in an entity's assessable income as described in this subsection if:

(a) the entity is a company and the amount is included under:

(i) section 456 (a ***section 456 case***) of the 1936 Act in relation to a *CFC and a statutory accounting period; or

(ii) section 457 (a ***section 457 case***) of that Act in relation to a CFC; or

(iii) section 529 of that Act in relation to a foreign company (within the meaning of Part XI of that Act) (a ***foreign company case***) in respect of a notional accounting period (within the meaning of that Part) (a ***notional accounting period***); or

(b) the amount is included under section 529 of that Act in relation to a foreign trust (within the meaning of Part XI of that Act) (a ***foreign trust case***) in respect of a notional accounting period.

Note: Section 456 of the 1936 Act includes, in the assessable income of certain Australian shareholders, amounts that are attributable to the profits of an Australian-controlled foreign company.

Section 457 does likewise when a controlled foreign company changes residence from an unlisted to a listed country or to Australia.

Section 529 includes, in the assessable income of resident taxpayers, amounts that are attributable to FIF interests held in foreign companies and in foreign trusts.

Tax paid condition

(3) An amount of *foreign income tax, income tax or *withholding tax (the ***tax amount***) must have been paid:

(a) for a section 456 case—by the *CFC in respect of an amount included in the notional assessable income of the CFC for the statutory accounting period; or

(b) for a section 457 case—by the CFC; or

(c) for a foreign company case or a foreign trust case—by the foreign company or foreign trust in respect of an amount included in its notional income (within the meaning of Part XI of the 1936 Act) of the notional accounting period.

Note: Section 770-130 deems foreign income tax to have been paid in certain circumstances.

(4) For the purposes of paragraphs (3)(a) and (b), the tax amount includes an amount that is taken to have been paid by the *CFC under subsection 393(4) of the 1936 Act (about tax paid on reinsurance premiums).

Association condition

(5) If the entity is a company, it must have an *attribution percentage of 10% or more:

(a) for a section 456 case—in relation to the *CFC at the end of the statutory accounting period; or

(b) for a section 457 case—in relation to the CFC at the residence-change time (within the meaning of section 457 of the 1936 Act); or

(c) for a foreign company case—at the end of the notional accounting period.

Note: There is no association condition for a foreign trust case.

Calculation method condition for FIFs

(6) For a foreign company case and a foreign trust case, the amount included under section 529 of the 1936 Act must have been determined by the application of the calculation method set out in Subdivision D of Division 18 of Part XI of that Act (the ***calculation method***).

Amount of foreign income tax

(7) The amount worked out under this subsection is:

(a) for a section 456 case—the sum of all the tax amounts for the statutory accounting period multiplied by the company's *attribution percentage in relation to the *CFC at the time mentioned in paragraph (5)(a); or

(b) for a section 457 case—the sum of all the tax amounts to the extent they are attributable to the amount included in the company's assessable income under section 457 of the 1936 Act; or

(c) for a foreign company case or a foreign trust case—an amount worked out using the following formula:

$$\text{Sum of all of the tax amounts for the notional accounting period} \times \frac{\text{Entity's share of calculated profit}}{\text{FIF's calculated profit}}$$

where:

entity's share of calculated profit means the share of the calculated profit of the foreign company or foreign trust in respect of the notional accounting period to which the entity is entitled as determined under the calculation method.

FIF's calculated profit means the calculated profit of the foreign company or foreign trust in respect of the notional accounting period as determined under the calculation method.

Grossing-up of attributed amount

(8) For the purposes of this Act except this section and:
  (a) section 371 of the 1936 Act (for a section 456 case or a section 457 case); or
  (b) section 605 of that Act (for a foreign company case or a foreign trust case);

the amount included in the entity's assessable income as described in subsection (2) is taken to be increased by the amount of tax worked out under subsection (7).

Note: Section 371 of the 1936 Act records an amount in an attribution account when the amount is included in the assessable income of an attributable taxpayer in relation to a CFC. Section 605 does the same thing for taxpayers with interests in FIFs.

Rules about when foreign tax is considered not paid

770-140 When foreign income tax is considered not paid—anti-avoidance rule

Despite anything else in this Division, this Act applies to you as if you had *not* paid an amount of *foreign income tax to the extent that you or any other entity become entitled to:
  (a) a refund of the foreign income tax; or
  (b) any other benefit worked out by reference to the amount of the foreign income tax (other than a reduction in the amount of the foreign income tax).

Subdivision 770-D—Administration

Table of sections

770-190 Amendment of assessments

770-190 Amendment of assessments

(1) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this Division for an income year if:

(a) an event described in subsection (2) (an ***amendment event***) happens after the time you lodged your *income tax return for that year; and

(b) the amendment is made at any time during the period of 4 years starting immediately after the amendment event.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

(2) The following are amendment events:

(a) you pay an amount of *foreign income tax that counts towards your *tax offset for the year;

(b) there is an increase in an amount of foreign income tax you paid that counts towards your offset for the year;

(c) there is a reduction in an amount of foreign income tax you paid that counts towards your offset for the year.

Part 2—FIF income

Income Tax Assessment Act 1936

2 After subsection 535(4)

Insert:

(4A) Subsection (4) does not prevent the taxpayer from making an election under subsection (3) in relation to a FIF in relation to a notional accounting period if the taxpayer also makes a choice under subsection 559A(1) in relation to the FIF in relation to the notional accounting period.

3 After section 559

Insert:

559A Choice to work out notional income and notional deductions under Part X

(1) The taxpayer may choose to work out the notional income and notional deductions of the FIF in accordance with subsection (3) if:
  (a) the FIF is a foreign company; and
  (b) the taxpayer's attribution percentage in relation to the FIF is 10% or more at the end of the relevant period; and
  (c) if the taxpayer has previously made a choice under this subsection in relation to the FIF in relation to a notional accounting period of the FIF—the taxpayer has made such a choice in relation to the FIF in relation to every notional accounting period of the FIF (if any) occurring between:
    (i) the end of the notional accounting period of the FIF for which the taxpayer first made such a choice in relation to the FIF; and
    (ii) the start of the relevant period.

(2) For the purposes of this section:
  (a) treat the FIF as a FIF that is a CFC; and
  (b) treat the taxpayer as an attributable taxpayer in relation to the FIF throughout the relevant period; and

(c) treat the relevant period as the statutory accounting period of the FIF.

Main rule—work out notional income and notional deductions under Part X, etc.

(3) For the purposes of working out the notional income and notional deductions of the FIF of the relevant period:

(a) treat that notional income as the FIF's notional assessable income worked out under Part X for the relevant period; and

(b) treat those notional deductions as the FIF's notional allowable deductions worked out under Part X for the relevant period; and

(c) if the taxpayer is an AFI entity at a particular time in the relevant period—treat the FIF as an AFI subsidiary at that time.

(4) In working out the FIF's notional allowable deductions for the purposes of paragraph (3)(b):

(a) disregard sections 429 and 431 (which deal with losses); and

(b) instead, include notional deductions (if any) from the notional income of the FIF of the relevant period worked out under section 572 (which deals with notional deductions for calculated losses for prior periods).

(5) For the purposes of subsection (3), treat the FIF's commencing day mentioned in Subdivision C of Division 7 of Part X as the first day of the period over which, apart from this section, the profits or gains of a capital nature derived by the FIF during the relevant period would be determined.

Application of sections 575 to 579

(6) For the purposes of subsection (3), apply sections 575 to 579 in relation to a taxpayer (the ***actual taxpayer***), subject to the rules in subsections (7) and (8).

(7) If the actual taxpayer has made a choice under subsection (1) in relation to a FIF (the ***first-tier FIF***), in working out the first-tier FIF's notional assessable income for the purposes of paragraph (3)(a):

(a) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which deal with amounts included in notional assessable income under Part XI); and

(b) instead, include in that notional assessable income the first-tier FIF's notional income worked out under section 576.

(8) If the taxpayer mentioned in paragraphs (1)(b) and (3)(c) is the first-tier FIF mentioned in section 576 (because of the effect of section 576 on this section):

(a) treat the references in those paragraphs to the taxpayer as references to the actual taxpayer (and not to the first-tier FIF); and

(b) if, as a result of paragraph (a), the actual taxpayer has made a choice under subsection (1) in relation to a FIF (the ***second-tier FIF***)—in working out the second-tier FIF's notional assessable income for the purposes of paragraph (3)(a):

(i) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which deal with amounts included in notional assessable income under Part XI); and

(ii) instead, include in that notional assessable income the second-tier FIF's notional income worked out under section 579.

Note: The actual taxpayer cannot make a choice under subsection (1) in relation to a third-tier FIF, because the calculation method is not available in respect of a third-tier FIF (see subparagraph 579(b)(ii)).

Definitions

(9) In this section:

AFI entity has the same meaning as in section 326.

AFI subsidiary has the same meaning as in Part X (see section 326).

attributable taxpayer has the same meaning as in Part X (see section 361).

attribution percentage has the same meaning as in Part X (see section 362).

notional allowable deductions has the same meaning as in Part X (see section 382).

notional assessable income has the same meaning as in Part X (see section 382).

Income Tax Assessment Act 1997

4 After section 768-530

Insert:

768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision

(1) This section applies if:

(a) the foreign company is a *FIF; and

(b) the holding company has made a choice under subsection 559A(1) of the *Income Tax Assessment Act 1936* in relation to the foreign company in respect of a *notional accounting period of the foreign company; and

(c) because of the choice, the foreign company is treated under paragraph 559A(3)(c) of that Act as an AFI subsidiary (within the meaning of that Act) in relation to that holding company at a particular time.

Note: If the holding company makes a choice under subsection 559A(1) of the *Income Tax Assessment Act 1936*, the notional income and notional deductions of the foreign company (in its capacity as a FIF) is worked out under the FIF calculation method by reference to its notional assessable income and notional allowable deductions under Part X of that Act.

(2) For the purposes of this Subdivision, treat the foreign company as an AFI subsidiary in relation to that holding company at that time.

Part 3—Transitional

Income Tax (Transitional Provisions) Act 1997

5 Before Division 820

Insert:

Division 770—Foreign income tax offsets and foreign losses

Table of Subdivisions

770-A Transitional foreign losses (common rules)
770-B Transitional foreign losses (special rules for consolidated groups)
770-C Transitional foreign losses (special rules for CFCs)
770-D Transitional foreign income tax offsets (common rules)
770-E Transitional foreign income tax offsets (special rules for consolidated groups)

Subdivision 770-A—Transitional foreign losses (common rules)

Table of sections

Converting an overall foreign loss into a type of tax loss

770-1 Converting a past foreign loss into a tax loss
770-5 Convertible foreign loss
770-10 Reducing the amount of an overall foreign loss of a class of assessable foreign income

Utilising transitional foreign losses

770-15 No special rules if convertible foreign losses total less than or equal to $10,000 or choice made
770-20 Starting total for loss parcel
770-25 Tax loss has foreign loss component
770-30 Deduction limit for foreign loss component
770-35 Offset limit to take account of deducted foreign loss component

Converting an overall foreign loss into a type of tax loss

770-1 Converting a past foreign loss into a tax loss

(1) The *Income Tax Assessment Act 1936* (the ***1936 Act***), the *Income Tax Assessment Act 1997* (the ***1997 Act***) and this Act operate for the purposes of the income years mentioned in subsection (3) as if an entity that has a convertible foreign loss for an earlier income year under section 770-5 had a tax loss for the earlier year equal to:

(a) the amount (if any) that would have been the entity's tax loss for the earlier year under section 36-10, 165-70, 175-35 or 701-30 of the 1997 Act (about deducting past tax losses); *plus*

(b) the amount of the entity's convertible foreign loss for the earlier year.

Note 1: This is instead of an amount of tax loss worked out under section 36-10, 165-70, 175-35 or 701-30 of the 1997 Act.

Note 2: This section does not affect the amount (if any) of an entity's taxable income for the year. An entity may be taken to have a tax loss for a year under this section, but also have a taxable income for the year.

Note 3: This section has an expanded operation for consolidated groups: see section 770-90.

(2) The earlier year is taken for those purposes to be a loss year for the entity if the entity would not otherwise have a tax loss for that year.

(3) The income years are:

(a) the first income year starting on or after the first 1 July that occurs after the day on which the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* receives the Royal Assent (the ***commencement year***); and

(b) later income years.

770-5 Convertible foreign loss

(1) An entity has a loss to which this section applies (a ***convertible foreign loss***) for an earlier income year covered by subsection (2) if:

(a) the entity has incurred an overall foreign loss in respect of a class of assessable foreign income (within the meaning of former section 160AFD of the 1936 Act) for the earlier year, reduced to the extent that it has been taken into account under

that former section in reducing the entity's assessable foreign income of the relevant class for an income year before the commencement year; and

(b) a positive amount remains after reducing the overall foreign loss under section 770-10.

Note 1: For the classes of income, see former subsection 160AFD(8) of the 1936 Act.

Note 2: There is a modification to this rule for losses transferred to a head company of a consolidated group: see subsection 770-80(2).

Note 3: Former section 160AFD of the 1936 Act allowed a past foreign loss to reduce assessable foreign income of the same class.

(2) The income year must be one of the most recent 10 income years ending before the commencement year.

(3) The amount of the convertible foreign loss for the earlier year is the sum of the positive amounts remaining after each overall foreign loss in respect of a class of assessable foreign income for the earlier year is reduced under section 770-10.

770-10 Reducing the amount of an overall foreign loss of a class of assessable foreign income

Apply the following method statement to each overall foreign loss in relation to a class of assessable foreign income of an earlier income year.

Method statement

Step 1. If the entity is a company and the relevant class of assessable foreign income is the "all other assessable income" class—reduce the amount applicable under paragraph 770-5(1)(a) to the extent (if any) that the loss is attributable to losses or outgoings incurred in gaining or producing income of a kind that would be the company's non-assessable non-exempt income if it were gained or produced in the commencement year.

Note: For other entities, there is no reduction under step 1.

Step 2. For income years other than the most recent 7 income years ending before the commencement year—reduce the result of step 1 by half.

Note:	Step 2 is modified for losses transferred to a head company of a consolidated group: see subsection 770-80(3).

Utilising transitional foreign losses

770-15 No special rules if convertible foreign losses total less than or equal to $10,000 or choice made

Section 770-30 does not apply in relation to a tax loss an entity is taken by section 770-1 to have if:

(a) the amount worked out under section 770-20 (the ***starting total***) is less than or equal to $10,000; or

(b) the entity chooses to reduce one or more tax losses the entity is taken by section 770-1 to have had so that the starting total equals $10,000.

770-20 Starting total for loss parcel

The sum of the convertible foreign losses for each earlier year for which an entity is taken by section 770-1 to have a tax loss is the starting total for all of those tax losses taken together (the ***loss parcel***).

Example: On 1 July 2008, Loss Co determines that it has incurred the following overall foreign losses:

- Year ended 30 June 2002: $5,000 (with no amount of convertible foreign loss due to the operation of 770-10);
- Year ended 30 June 2004: $4,000 (with an amount of $2,000 being a convertible foreign loss);
- Year ended 30 June 2005: $7,000 (with an amount of $3,000 being a convertible foreign loss);
- Year ended 30 June 2007: $8,000 (with the entire amount being a convertible foreign loss).

Loss Co does not have any other domestic tax losses for those income years (that is, the 2002, 2004, 2005 and 2007 income years are not loss years).

Initially, Loss Co's starting total for the loss parcel is $13,000, which consists of the tax losses incurred in the year ended 30 June 2004, the year ended 30 June 2005 and the year ended 30 June 2007 (there is no convertible foreign loss incurred in the year ended 30 June 2002 because of section 770-1 and therefore there is no tax loss included in the loss parcel for that year). The 2004, 2005 and 2007 income years

will then be a new loss year for Loss Co (under subsection 770-1(2)), because Loss Co did not otherwise incur a tax loss in those years.

To avoid the operation of the deduction limit (under section 770-30), Loss Co chooses under paragraph 770-15(b) to reduce the starting total for the loss parcel to $10,000 by not converting $3,000 of its convertible foreign losses (which consists of $2,000 of the 2004 tax loss and $1,000 of the 2005 tax loss). Consequently, only the 2005 and 2007 income years are the new loss years for Loss Co.

770-25 Tax loss has foreign loss component

A tax loss an entity is taken to have under section 770-1 has a separate component (the ***foreign loss component***). The amount of the component is the amount of the convertible foreign loss.

770-30 Deduction limit for foreign loss component

(1) The amount of the foreign loss component of one or more tax losses in a loss parcel that any entity can deduct in an income year *cannot exceed* the amount worked out for the year using the table.

Limit on deducting foreign loss component of a tax loss

Item	For this income year:	The amount of the component that you can deduct cannot exceed:
1	The commencement year	1/5 of the starting total for the loss parcel
2	The first income year ending after the commencement year	The difference between: (a) 2/5 of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income year mentioned in item 1
3	The second income year ending after the commencement year	The difference between: (a) 3/5 of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income years mentioned in items 1 and 2
4	The third income year ending after the commencement year	The difference between: (a) 4/5 of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income years mentioned in items 1, 2

Limit on deducting foreign loss component of a tax loss		
Item	**For this income year:**	**The amount of the component that you can deduct cannot exceed:**
		and 3

Note: There may be a reduction of the limit for the head company of a consolidated group under section 770-100.

(2) This section does not limit the amount of the foreign loss component of a tax loss that an entity can deduct in a year later than the third income year ending after the commencement year.

Note: For later years, any remaining undeducted tax loss may be deducted to the extent permitted by the general rules for tax losses.

770-35 Offset limit to take account of deducted foreign loss component

(1) This section affects the calculation of your offset limit for an income year under section 770-75 of the 1997 Act.

(2) This section applies for an income year if you have deducted an amount of the foreign loss component of one or more tax losses (see section 770-25) in the income year.

(3) In working out the amount referred to in subparagraph 770-75(2)(b)(ii) of the 1997 Act for the year, you must assume (in addition to the assumptions set out in subsection 770-75(4) of that Act), that you were not entitled to any deductions covered by subsection (2).

Subdivision 770-B—Transitional foreign losses (special rules for consolidated groups)

Table of sections

770-80 Transferred losses taken not to be refreshed for purposes of converting overall foreign loss
770-85 Deduction limit not to restrict transfer of losses
770-90 Transfer of losses not restricted where part of trial year occurs before commencement year
770-95 Foreign loss component and starting total retained after transfer to head company
770-100 Limit where foreign loss component utilised by joining entity

770-105 Modified operation of Subdivision 707-C of the 1997 Act for foreign loss component
770-110 Application of Subdivision to MEC groups

770-80 Transferred losses taken not to be refreshed for purposes of converting overall foreign loss

(1) This section applies if:

(a) a loss is transferred under section 707-120 of the *Income Tax Assessment Act 1997* (the ***1997 Act***) from a joining entity to a head company; and

(b) the loss is an overall foreign loss in respect of a class of assessable foreign income (within the meaning of former section 160AFD of the *Income Tax Assessment Act 1936* (the ***1936 Act***)).

Note: Former section 160AFD of the 1936 Act allowed a past foreign loss to reduce assessable foreign income of the same class.

(2) In applying section 770-5, only have regard to the overall foreign loss if the income year in which it was actually incurred (disregarding subsection 707-140(1) of the 1997 Act) was one of the most recent 10 income years ending before the commencement year.

Note: Section 770-5 is about the amount of an entity's convertible foreign losses. Section 707-140 deems the head company of a group to have made a transferred loss in the year in which it is transferred.

(3) A reduction must be made under step 2 of the method statement in section 770-10 if the overall foreign loss was actually incurred (disregarding subsection 707-140(1) of that Act) in an income year other than the most recent 7 income years ending before the commencement year.

Note: Section 770-10 is about reducing an entity's past foreign losses to arrive at the entity's convertible foreign loss for past years.

770-85 Deduction limit not to restrict transfer of losses

Section 770-30 (deduction limit for foreign loss component) does not limit the transfer, under Subdivision 707-A of the 1997 Act, of a tax loss that has a foreign loss component.

770-90 Transfer of losses not restricted where part of trial year occurs before commencement year

Section 770-1 operates in relation to a trial year in the same way it operates in relation to the income years mentioned in subsection 770-1(3) if:

(a) a tax loss has a foreign loss component; and

(b) it is necessary to determine whether an entity could utilise the tax loss for an income year consisting of the trial year; and

(c) part of the trial year occurs before the start of the commencement year mentioned in subsection 770-1(3).

770-95 Foreign loss component and starting total retained after transfer to head company

Where a tax loss having a foreign loss component is transferred under Subdivision 707-A of the 1997 Act to a head company:

(a) the tax loss has the same amount of foreign loss component after the transfer as it had immediately before the transfer; and

(b) the starting total for the loss parcel to which the tax loss belongs (see section 770-20) is the same after the transfer as it was immediately before the transfer; and

(c) for the purposes of section 770-30, the amount of the foreign loss component of one or more of the tax losses in the parcel that any entity has deducted for an income year is the same after the transfer as immediately before the transfer.

Note 1: This section ensures a tax loss retains its foreign loss component, starting total and deduction history even though the head company is taken after the transfer to have made the loss for the income year in which the transfer occurs.

Note 2: Section 770-30 sets a limit on how much of an entity's past foreign losses may be deducted in each of the first 4 years after the commencement of this section.

770-100 Limit where foreign loss component utilised by joining entity

(1) This section applies where one or more tax losses having a foreign loss component are transferred under Subdivision 707-A of the 1997 Act to the head company of a consolidated group.

(2) The limit under subsection 770-30(1) of the amount of the foreign loss component of the tax losses that the transferee can deduct for an income year (the ***deduction year***) mentioned in an item in the table in that subsection is reduced by the amount (if any) worked out under subsection (3).

(3) The amount of the reduction is the sum of each amount of the foreign loss component that has been deducted by other entities in respect of a non-membership period mentioned in section 701-30 of the 1997 Act, or income year, ending before the end of the deduction year.

Note: Section 701-30 of the 1997 Act sets out how an entity that is not a subsidiary member of a consolidated group for all of an income year calculates its tax liability or tax loss for the periods (called non-membership periods) when it is not a member of a group.

770-105 Modified operation of Subdivision 707-C of the 1997 Act for foreign loss component

(1) This section affects the way in which one or more tax losses in a bundle of losses transferred under Subdivision 707-A of the 1997 Act can be utilised by the transferee in an income year if:

(a) one or more of the tax losses has a foreign loss component (regardless whether at the time of transfer the bundle included a tax loss having a foreign loss component or an overall foreign loss in respect of a class of income (within the meaning of former section 160AFD of the 1936 Act)); and

(b) section 770-30 limits the amount of the foreign loss component that the transferee can deduct in the income year.

(2) Subdivision 707-C of the 1997 Act does not limit the utilisation of the foreign loss component for the income year.

Note: This means that the available fraction does not apply to the foreign loss component of a tax loss in the first 4 years after commencement. Instead, the deduction limit in section 770-30 applies.

(3) For the purposes of working out under Subdivision 707-C of the 1997 Act how much of the tax losses in the bundle the transferee can utilise in the income year, section 707-310 of the 1997 Act has effect as if the first reference in paragraph (3)(b) of that section to the transferee's losses included a reference to the sum of the amounts of the foreign loss components for all loss parcels in the income year.

Note: This affects the limit that Subdivision 707-C of that Act sets on utilising other tax losses in the bundle (because that limit depends on the transferee's income and gains remaining after utilisation of losses that have not been transferred under Subdivision 707-A of that Act): see subsection 707-310(3) of that Act.

770-110 Application of Subdivision to MEC groups

This Subdivision has effect in relation to a MEC group in the same way in which it has effect in relation to a consolidated group.

Subdivision 770-C—Transitional foreign losses (special rules for CFCs)

Table of sections

770-160 Converting a past CFC loss
770-165 Convertible CFC loss
770-170 Reducing the amount of a CFC loss of a class of notional assessable income

770-160 Converting a past CFC loss

(1) The *Income Tax Assessment Act 1936* (the ***1936 Act***) operates for the purposes of the statutory accounting periods mentioned in subsection (2) as if an eligible CFC (within the meaning of Division 7 of Part X of that Act) (an ***eligible CFC***) that has a convertible CFC loss for an earlier statutory accounting period under section 770-165 has a loss for the earlier period equal to the amount of the convertible CFC loss.

Note: Part X of the 1936 Act deals with the attribution of the income of a CFC to attributable taxpayers.

(2) The statutory accounting periods are:

(a) the first statutory accounting period starting on or after the first 1 July that occurs after the day on which the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* receives the Royal Assent (the ***commencement period***); and

(b) later statutory accounting periods.

770-165 Convertible CFC loss

(1) An eligible CFC has a loss to which this section applies (a ***convertible CFC loss***) for an earlier statutory accounting period covered by subsection (2) if:

(a) the eligible CFC has a loss under section 426 of the 1936 Act for the earlier period in relation to notional assessable income of a class, reduced to the extent that it has been previously taken into account under section 431 of the 1936 Act in respect of a statutory accounting period before the commencement period; and

(b) a positive amount remains after reducing the loss under section 770-170.

Note: For the classes of notional assessable income, see former subsection 424(1) of the 1936 Act.

(2) The statutory accounting period must be one of the most recent 10 statutory accounting periods ending before the commencement period.

(3) The amount of the convertible CFC loss for the earlier period is the sum of the positive amounts remaining after each loss in relation to notional assessable income of a class for the earlier period is reduced under section 770-170.

770-170 Reducing the amount of a CFC loss of a class of notional assessable income

Apply the following method statement to each loss in relation to notional assessable income of a class for the earlier statutory accounting period.

Method statement

Step 1. Reduce the amount applicable under paragraph 770-165(1)(a) to the extent (if any) that the loss relates to the “all other amounts” class of notional assessable income, except to the extent (if any) that the loss is attributable to losses or outgoings incurred in gaining or producing income of a kind that would be the company’s notional assessable income or sometimes-exempt income.

Step 2.	For statutory accounting periods other than the most recent 7 statutory accounting periods ending before the commencement period—reduce the result of step 1 by half.

Subdivision 770-D—Transitional foreign income tax offsets (common rules)

Table of sections

770-220 Converting excess foreign tax credits into pre-commencement excess foreign income tax
770-225 Pre-commencement excess foreign income tax generated for a company by excess foreign tax credits relating to other income
770-230 Increase in the foreign income tax offset

770-220 Converting excess foreign tax credits into pre-commencement excess foreign income tax

(1) You have pre-commencement excess foreign income tax from an income year if:

(a) you have excess foreign tax credits in relation to a class of foreign income from an earlier income year under former section 160AFE of the *Income Tax Assessment Act 1936* (the ***1936 Act***); and

(b) the earlier income year is one of the most recent 5 income years ending before the first income year starting on or after the first 1 July that occurs after the day on which the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* receives the Royal Assent; and

(c) the credits have not already been applied under former section 160AFE of the 1936 Act.

Note: For the classes of income, see former subsections 160AF(7) and 160AFE(5) of the 1936 Act.

Former section 160AFE of the 1936 Act determined whether an entity had excess foreign tax credits for an income year and whether it could use them to increase the foreign tax credit amount in a later income year. Under the former foreign tax credit system, the excess credits were worked out and, where applicable, applied to increase the foreign tax credit amount in relation to each of the classes of income listed in former subsection 160AF(7).

(2) The amount of your pre-commencement excess foreign income tax from an income year is the sum of the amounts set out in the table in subsection (3) for that year.

(3) Column 2 of the following table specifies the class of income to which the excess foreign tax credits covered by subsection (1) relate. Column 3 sets the amount of pre-commencement excess foreign income tax from that income year generated by those excess foreign tax credits.

Conversion of excess foreign tax credits into pre-commencement excess foreign income tax for an income year

Item	Excess foreign tax credits covered by subsection (1) relating to this class of income referred to in former subsection 160AF(7) of the 1936 Act	Pre-commencement excess foreign income tax generated
1	Passive income	The amount of those excess foreign tax credits
2	Offshore banking income	The amount of those excess foreign tax credits multiplied by the eligible fraction (within the meaning of section 121EG of the 1936 Act)
3	An amount included in assessable income under section 305-70 of the 1997 Act (which is about the assessability of lump sums received from foreign superannuation funds)	The amount of those excess foreign tax credits
4	Other income	(a) For a company—the amount of those excess foreign tax credits, as reduced under section 770-225; or (b) For an entity other than a company—the amount of those excess foreign tax credits

Note: Section 121EG of the 1936 Act applies the eligible fraction to assessable OB income, allowable OB deductions and foreign income tax paid on assessable OB income.

770-225 Pre-commencement excess foreign income tax generated for a company by excess foreign tax credits relating to other income

Reduce the amount of the excess foreign tax credits to the extent (if any) that they are attributable to foreign tax paid in respect of amounts that would be your non-assessable non-exempt income if they were derived in the commencement year.

770-230 Increase in the foreign income tax offset

(1) This section affects the amount of your tax offset under section 770-70 of the *Income Tax Assessment Act 1997* (the ***1997 Act***).

Note: That section determines how much tax offset you can claim for foreign income tax you have paid.

(2) Your tax offset for an income year (the ***current year***) is increased in accordance with this section if:

(a) the amount of your tax offset worked out under section 770-70 of the 1997 Act falls short of your offset limit under section 770-75 of that Act; and

(b) you have pre-commencement excess foreign income tax (see section 770-220) from an earlier year of income that is one of the most recent 5 income years ending before the current year.

(3) Increase your tax offset for the current year by adding your pre-commencement excess foreign income tax covered by paragraph (2)(b) to the amount of your tax offset worked out under section 770-70 of the 1997 Act.

(4) Only increase the offset to the extent of the shortfall worked out under paragraph (2)(a).

(5) You no longer have the pre-commencement excess foreign income tax to the extent that it has been used to increase your offset limit.

Subdivision 770-E—Transitional foreign income tax offsets (special rules for consolidated groups)

Table of sections

770-285 Objects of this Subdivision
770-290 Transferring subsidiary member's pre-commencement excess foreign income tax to head company
770-295 Where entity not subsidiary member for whole of income year
770-300 Pre-commencement excess foreign income tax lost on joining consolidated group
770-305 Exit history rule does not treat leaving entity as having pre-commencement excess foreign income tax
770-310 Application of Subdivision to MEC groups

770-285 Objects of this Subdivision

The main objects of this Subdivision are:

(a) to allow the head company of a consolidated group to apply, in relation to an income year, pre-commencement excess foreign income tax of an entity (the ***joining entity***) that becomes a subsidiary member of the group at a time (the ***joining time***) if:

(i) the income year starts at or after the joining time; and

(ii) that pre-commencement excess foreign income tax is from an income year ending before the joining time; and

(b) to prevent the joining entity from applying pre-commencement excess foreign income tax mentioned in subparagraph (a)(ii) to increase its own tax offset under Division 770 of the *Income Tax Assessment Act 1997* (the ***1997 Act***).

770-290 Transferring subsidiary member's pre-commencement excess foreign income tax to head company

(1) This section operates for the purposes of section 770-220 in relation to an income year if:

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

(b) the joining time is before or at the start of that income year; and

(c) the joining entity has pre-commencement excess foreign income tax (the ***transferred foreign income tax***) from an earlier income year.

(2) For those purposes:

(a) the head company of the group is taken to have the transferred foreign income tax; and

(b) if, apart from paragraph (a), the head company has pre-commencement excess foreign income tax from the earlier year—the transferred foreign income tax is taken to be included in that pre-commencement excess foreign income tax.

(3) Subsection (2) also has effect for the purposes of a subsequent operation of this section.

770-295 Where entity not subsidiary member for whole of income year

(1) This section operates if:

(a) an entity (the ***joining entity***) is a subsidiary member of a consolidated group for some but not all of an income year (the ***joining year***); and

(b) there are one or more periods in the joining year (each of which is a ***non-membership period***) during which the entity is not a subsidiary member of any consolidated group.

Note: Section 701-30 of the 1997 Act treats each non-membership period as a separate income year for some purposes.

(2) Subsection (3) has effect for the purposes of section 701-30 of the 1997 Act in relation to the joining entity.

(3) In working out amounts for the joining entity under subsection 701-30(3) of the 1997 Act in relation to each non-membership period, assume that, if the joining year starts at the same time as the earliest of those non-membership periods, section 770-230 operates in relation to the joining entity for that non-membership period.

770-300 Pre-commencement excess foreign income tax lost on joining consolidated group

(1) For the purposes of section 770-220 in relation to an income year ending after the time an entity becomes a subsidiary member of a consolidated group, the entity is taken not to have any pre-commencement excess foreign income tax from an income

year, or non-membership period described in section 701-30 of the 1997 Act, that ended before or at that time.

(2) Subsection (1) does not affect the operation of section 770-220 in accordance with section 770-290.

770-305 Exit history rule does not treat leaving entity as having pre-commencement excess foreign income tax

(1) This section operates in relation to an income year if:
  (a) an entity (the ***leaving entity***) ceases to be a subsidiary member of a consolidated group before the end of that income year; and
  (b) the head company of the group has pre-commencement excess foreign income tax from an earlier income year.

(2) To avoid doubt, the leaving entity is *not* taken because of section 701-40 of the 1997 Act (the exit history rule) to have that pre-commencement excess foreign income tax.

(3) It does not matter whether the head company has that pre-commencement excess foreign income tax because of section 717-10 of the 1997 Act or 770-290 (whether in relation to the leaving entity or another entity) or because of another provision.

770-310 Application of Subdivision to MEC groups

This Subdivision has effect in relation to a MEC group in the same way in which it has effect in relation to a consolidated group.

Part 4—Consequential and other amendments

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

6 Section 110-10

Repeal the section.

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

Omit “110-10,”.

Bank Integration Act 1991

8 Paragraph 22(4)(c)

Omit “and foreign tax credits”.

Fringe Benefits Tax Assessment Act 1986

9 Paragraph 19(1)(b)

Omit “, other than a foreign income deduction,”.

10 Subparagraph 19(1)(ba)(ii)

Omit “other than a foreign income deduction”.

11 Paragraph 24(1)(b)

Omit “, other than a foreign income deduction,”.

12 Subparagraph 24(1)(ba)(ii)

Omit “other than a foreign income deduction”.

13 Paragraph 44(1)(b)

Omit “, other than a foreign income deduction,”.

14 Subparagraph 44(1)(ba)(ii)

Omit “other than a foreign income deduction”.

15 Paragraph 52(1)(b)

Omit “, other than a foreign income deduction,”.

16 Subparagraph 52(1)(ba)(ii)

Omit “other than a foreign income deduction”.

17 Subsection 136(1) (definition of *foreign income deduction*)

Repeal the definition.

Income Tax Assessment Act 1936

18 Subsection 6(1)

Insert:

> ***interest income***, in relation to a taxpayer, means income consisting of interest, or a payment in the nature of interest, in respect of:
>
> (a) money lent, advanced or deposited; or
>
> (b) credit given; or
>
> (c) any other form of debt or liability;
>
> whether security is given or not, other than:
>
> (d) an amount to the extent to which it is a return on an equity interest in a company; or
>
> (e) interest derived by the taxpayer from a transaction directly related to the active conduct of a trade or business; or
>
> (f) interest derived by the taxpayer from carrying on a banking business or any other business whose income is principally derived from the lending of money; or
>
> (g) interest received by the taxpayer during a year of income from a foreign company, where:
>
> (i) at any time during the year of income, the taxpayer had (or would have had, if the taxpayer were a company and a resident), a voting interest, within the meaning of section 334A, amounting to at least 10% of the voting power, within the meaning of that section, in that company; and
>
> (ii) during the year of income or the preceding year of income, the company has not derived an amount of interest income exceeding 10% of the total profits derived by the company during the same year.

19 Subsection 6(1)

Insert:

passive commodity gain, in relation to a taxpayer, in relation to a year of income, means a gain realised by the taxpayer in a year of income from disposing of a forward contract or a futures contract, or a right or option in respect of a forward contract or a futures contract, in respect of any thing (a ***commodity***):

(a) that is capable of delivery under an agreement for its delivery; and

(b) that is not an instrument creating or evidencing a chose in action;

unless the contract, right or option relates to the carrying on by the taxpayer of a business:

(c) of producing or processing the commodity; or

(d) that involves the use of the commodity as a raw material in a production process.

20 Subsection 6(1)

Insert:

passive income, in relation to a taxpayer, in relation to a year of income means:

(a) dividends (within the meaning of this section) and non-share dividends paid to the taxpayer in the year of income; or

(b) unit trust dividends (within the meaning of Division 6B or 6C) paid to the taxpayer in the year of income; or

(c) a distribution made to the taxpayer in the year of income that is taken to be a dividend because of section 47; or

(d) an amount that is taken to be a dividend paid to the taxpayer in the year of income because of section 47A or 108 or Division 7A of Part III; or

(e) interest income derived by the taxpayer in the year of income; or

(f) annuities derived by the taxpayer in the year of income; or

(g) income derived by the taxpayer by way of rent (within the meaning of Part X) in the year of income; or

(h) royalties derived by the taxpayer in the year of income; or

(i) an amount derived by the taxpayer in the year of income as consideration for the assignment, in whole or in part, of any

copyright, patent, design, trade mark or other like property or right; or

(j) profits of a capital nature that accrued to the taxpayer in the year of income; or

(k) passive commodity gains that accrued to the taxpayer in the year of income; or

(l) an amount included in the assessable income of the taxpayer of the year of income under section 102AAZD, 456, 457, 459A or 529;

but does not include:

(m) an amount that arose from an asset necessarily held by the taxpayer in connection with an insurance business actively carried on by the taxpayer; or

(n) an amount included in the taxpayer's assessable income under Division 13A.

21 Subsection 6AB(1)

Omit "26D,".

22 Subsections 6AB(1A) and (1B)

Repeal the subsections.

23 Subsection 6AB(2)

Repeal the subsection, substitute:

(2) A reference in this Act to foreign tax is a reference to tax imposed by a law of a foreign country, being:

(a) tax upon income; or

(b) tax upon profits or gains, whether of an income or capital nature; or

(c) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*;

but does not include a unitary tax or a credit absorption tax.

24 Subsections 6AB(3), (3A), (4), (5) and (5A)

Repeal the subsections.

25 Subsection 6AB(6) (definition of *credit absorption tax*)

Omit "a credit in respect of the tax under Division 18 of Part III", substitute "an offset in respect of the tax under Division 770 of the *Income Tax Assessment Act 1997*".

26 Section 6AC

Repeal the section.

27 Subsections 6B(2AA) and (2B)

Repeal the subsections.

28 After section 6CA

Insert:

6D Some tax offsets under the 1997 Assessment Act are treated as credits

A tax offset under a provision of the *Income Tax Assessment Act 1997* that corresponds to a provision of this Act that provides for a credit is taken to be a credit for the purposes of this Act.

Note: All other tax offsets under the *Income Tax Assessment Act 1997* are treated as rebates: see section 160ADA.

29 Subsection 23AI(2)

Repeal the subsection, substitute:

(2) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.

30 Subsection 23AK(2)

Repeal the subsection, substitute:

(2) This section is to be disregarded for the purposes of applying any other provision of this Act to determine allowable deductions.

31 Section 26A

Repeal the section.

32 Section 26D

Repeal the section.

33 Subsection 46FA(11) (definition of *group company*)

Before “section 160AFE”, insert “former”.

34 Subsection 46FB(6) (definition of *group company*)

Before “section 160AFE”, insert “former”.

35 Subsection 47A(2)

Omit “Division 18 and section 365”, substitute “section 365 of this Act and Division 770 of the *Income Tax Assessment Act 1997*”.

36 Section 79D

Repeal the section.

37 Section 79DA

Repeal the section.

38 Section 102AAB

Insert:

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

39 Subsection 102AAM(2) (formula)

Omit “FTC”, substitute “FITO”.

40 Subsection 102AAM(2)

Insert:

> ***FITO*** (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the distributed amount of the non-resident trust’s year of income.

41 Subsection 102AAM(2) (definition of *FTC*)

Repeal the definition.

42 Subsection 102AAM(3) (formula)

Omit “FTC”, substitute “FITO”.

43 Subsection 102AAM(3)

Insert:

> ***FITO*** (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

44 Subsection 102AAM(3) (definition of *FTC*)

Repeal the definition.

45 Subsection 102AAM(4) (formula)

Omit "FTC", substitute "FITO".

46 Subsection 102AAM(4)

Insert:

> ***FITO*** (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

47 Subsection 102AAM(4) (definition of *FTC*)

Repeal the definition.

48 Subsection 102AAM(4A) (formula)

Omit "FTC", substitute "FITO".

49 Subsection 102AAM(4A)

Insert:

> ***FITO*** (Foreign income tax offset) means so much of any tax offset under Division 770 of the *Income Tax Assessment Act 1997* to which the trustee of the first trust would be entitled, in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, if the taxpayer's portion of the distributed amount of the non-resident trust's income were an amount in respect of which the trustee were liable to be assessed and to pay tax under section 99A.

50 Subsection 102AAM(4A) (definition of *FTC*)

Repeal the definition.

51 Subsection 102AAZC(1)

Omit "(1)".

52 Subsection 102AAZC(2)

Repeal the subsection.

53 Subsection 102L(6)

Omit "or in section 160AF".

54 Subsection 102T(7)

Omit "or in section 160AF".

55 Paragraph 121B(3)(c)

Repeal the paragraph.

56 Paragraph 121B(3)(d)

Omit "unless it is taken to have a foreign source because it has been subject to foreign tax".

57 After subsection 121EG(3)

Insert:

Only eligible fraction of foreign income tax is taken to be paid

(3A) Subject to section 121EH, this Act applies to an OBU as if only the eligible fraction of each amount of foreign income tax (within the meaning of the *Income Tax Assessment Act 1997*) the OBU paid in respect of an amount of assessable OB income had been paid in respect of that income.

Note: The heading to section 121EG is replaced by the heading "**Reduction of assessable OB income, allowable OB deductions and foreign income tax paid**".

58 At the end of section 121EH

Add:

; and (e) subsection 121EG(3A) (which limits the OBU's foreign income tax) does not apply to the OBU in relation to an

amount of foreign income tax (within the meaning of the *Income Tax Assessment Act 1997*) the OBU paid in respect of an amount of the OBU's assessable OB income of the year of income.

59 Section 121EI

Repeal the section.

60 Subsection 121EJ(1)

Omit "(1)".

61 Subsection 121EJ(2)

Repeal the subsection.

62 Section 121K

Omit "subsection 3(6) and".

63 Section 160ADA (note)

Omit "160AHA", substitute "6D".

64 Division 18 of Part III

Repeal the Division.

65 Division 18A of Part III

Repeal the Division.

Note: The heading to Division 18B of Part III is omitted.

66 Division 19 of Part III

Repeal the Division.

67 Section 160ZZY

Repeal the section.

68 After subsection 170(10A)

Insert:

(11) Nothing in this section prevents the amendment, at any time, of an assessment to decrease the liability of a taxpayer for the purpose of

giving effect to section 24 of the *International Tax Agreements Act 1953*.

69 Subsection 177A(1) (definition of *foreign tax credit*)

Repeal the definition.

70 Subsection 177A(1)

Insert:

foreign income tax offset means a tax offset allowed under Division 770 of the *Income Tax Assessment Act 1997*.

71 Paragraphs 177C(1)(bb) and (f)

Omit "foreign tax credit" (wherever occurring), substitute "foreign income tax offset".

72 Paragraph 177C(2)(d)

Omit "foreign tax credit" (wherever occurring), substitute "foreign income tax offset".

73 Paragraphs 177C(3)(ca) and (g)

Omit "foreign tax credit", substitute "foreign income tax offset".

74 Paragraph 177F(1)(d)

Omit "foreign tax credit" (wherever occurring), substitute "foreign income tax offset".

75 Paragraph 177F(3)(d)

Omit "foreign tax credit" (wherever occurring), substitute "foreign income tax offset".

76 Section 177H

Repeal the section.

77 Paragraph 316(2)(e)

Repeal the paragraph.

78 Section 317

Before "In this Part", insert "(1)".

79 Section 317 (definition of *attributed tax account credit*)

Repeal the definition.

80 Section 317 (definition of *attributed tax account debit*)

Repeal the definition.

81 Section 317 (definition of *attributed tax account surplus*)

Repeal the definition.

82 Section 317 (definition of *member of a non-portfolio company group*)

Repeal the definition.

83 Section 317 (definition of *non-portfolio dividend*)

Omit "section 160AFB", substitute "section 334A".

84 Section 317 (definition of *tainted interest income*)

Omit all the words after "factoring income;", substitute:

but does not include:

(d) income (being interest, fees, commission or other amounts) derived by a person in respect of offshore banking transfers of the person; or

(e) income consisting of dividends or non-share dividends paid to a person by a company out of profits derived from the making of offshore banking transfers.

85 At the end of section 317

Add:

(2) Where, if all offshore borrowings made by persons when they were offshore banking units were taken to be tax exempt loan money of the persons for the purposes of Division 11A of Part III, an offshore loan, or other transfer, of an amount by a person would, for the purposes of that Division, be an offshore loan, or other transfer, of tax exempt loan money of the person, the offshore loan, or other transfer, of the amount is an offshore banking transfer of the person for the purposes of the definition of ***tainted interest income***.

86 Subsection 324(1)

Repeal the subsection, substitute:

(1) Subject to this section, for the purposes of this Part, a particular item of income or profits derived by an entity is taken to be subject to tax in a listed country in a particular tax accounting period if, and only if, foreign tax (other than a withholding-type tax) is payable under a tax law of the listed country in respect of the item because the item is included in the tax base of that law for the tax accounting period.

87 Section 334

Repeal the section.

88 After section 334

Insert:

334A Voting interests in companies

(1) For the purposes of this section, a company is taken to have a voting interest in another company if:
   (a) the first-mentioned company is the beneficial owner of shares (other than eligible finance shares or widely distributed finance shares) in the other company that carry the right to exercise any of the voting power in the other company; and
   (b) there is no arrangement in force at the relevant time by virtue of which any person is in a position, or may become in a position, to affect that right;

   and the extent of the voting interest is taken to be the total number of votes that, by virtue of that right, can be cast on a poll at, or arising out of, a general meeting of the other company as regards all questions that could be submitted to such a poll.

(2) For the purposes of paragraph (1)(b), a person is taken to be in a position to affect a right of a company if that person has a right, power or option (whether by virtue of any provision in the constituent document of any company or by virtue of any agreement or instrument or otherwise) to acquire that right or do an act or thing that would prevent the first-mentioned company from exercising that right or receiving any benefits accruing by reason of that right.

(3) Despite paragraph (1)(b) and subsection (2), in determining for the purposes of this section:
  (a) whether a company has a voting interest in another company; and
  (b) the extent of that interest;

any appointment of a liquidator in respect of the other company is to be disregarded.

(4) For the purposes of this section, the voting power in a company is the maximum number of votes that can be cast on a poll at, or arising out of, a general meeting of a company as regards all questions that can be submitted to such a poll.

(5) In this section, ***arrangement*** includes:
  (a) any agreement, arrangement, understanding, promise or undertaking, whether expressed or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
  (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

89 Division 5 of Part X

Repeal the Division.

90 Paragraph 389(a)

Omit “6AC,”.

91 Paragraph 401(1)(d)

Omit “subsection (5); and”, substitute “subsection (5).”.

92 Paragraph 401(1)(e)

Repeal the paragraph.

93 Subsection 401(6)

Repeal the subsection.

94 Section 424

Repeal the section.

95 Subsection 425(1)

Omit “of a particular class”.

96 Subsection 425(1)

Omit “of that class”.

97 Subsection 425(2)

Omit “sections 430 and”, substitute “section”.

98 Subsection 425(2)

Omit “, in relation to notional assessable income of a particular class,”.

99 Subsection 425(2)

Omit “of that class” (wherever occurring).

100 Subsection 425(3)

Omit “, in relation to notional assessable income of a particular class,”.

101 Subsection 425(3)

Omit “, in relation to notional assessable income of that class,”.

102 Subsection 425(4)

Omit “, in relation to notional assessable income of a particular class,”.

103 Subsection 425(4)

Omit “, in relation to notional assessable income of that class,”.

104 Paragraph 426(a)

Omit “disregarding section 430,”.

105 Paragraph 426(a)

Omit “in relation to notional assessable income of a particular class”.

Note: The heading to section 426 is altered by omitting “**in relation to a class of notional assessable income**”.

106 Subparagraph 426(a)(i)

Omit “of that class”.

107 Subparagraph 426(a)(ii)

Omit “of that class”.

108 Section 426

Omit “ in relation to notional assessable income of that class”.

109 Paragraph 427(b)

Omit “sections 79D and 79DA of this Act and”.

110 Paragraph 427(b)

Omit “Subdivision 165-A,”.

111 Paragraph 427(b)

Omit “175-A,”.

112 Paragraph 427(ba)

Omit “;”, substitute “.”.

113 Paragraph 427(c)

Repeal the paragraph.

114 Section 429

Omit “in relation to notional assessable income of a particular class”.

Note: The heading to section 429 is altered by omitting “**of a particular class**”.

115 Section 429

Omit “of that class”.

116 Section 430

Repeal the section.

117 Subsection 431(1)

Omit “, in relation to notional assessable income of a particular class,”.

Note: The heading to section 431 is altered by omitting “**in relation to a class of notional assessable income**”.

118 Paragraph 431(2)(a)

Omit “of the class”.

119 Paragraph 431(2)(b)

Repeal the paragraph, substitute:

(b) any excess is then a notional allowable deduction for the eligible period, but only to the extent that the deduction does not exceed the amount of the notional assessable income for the period as reduced by notional allowable deductions other than under this section;

120 Subsections 431(4), (4A), (4B) and (4C)

Repeal the subsections, substitute:

(4) A loss for a statutory accounting period is to be taken into account under subsection (2) only if:

(a) where the eligible CFC is a resident of a listed country at the end of the eligible period:

(i) the eligible CFC is a resident of a listed country at the end of that statutory accounting period; and

(ii) if there are any statutory accounting periods (the ***intervening periods***) occurring between that statutory accounting period and the eligible period—the eligible CFC was a resident of a listed country at the end of each of the intervening periods; or

(b) where the eligible CFC is a resident of an unlisted country at the end of the eligible period:

(i) the eligible CFC is a resident of an unlisted country at the end of that statutory accounting period; and

(ii) if there are any statutory accounting periods (also the ***intervening periods***) occurring between that statutory accounting period and the eligible period—the eligible CFC was a resident of an unlisted country at the end of each of the intervening periods.

(4A) If:

(a) at the end of both the eligible period and of a prior statutory accounting period, the eligible CFC was a resident of the same country; and

(b) the country was either:

(i) a listed country at the end of the eligible period and an unlisted country at the end of that statutory accounting period; or

(ii) an unlisted country at the end of the eligible period and a listed country at the end of that statutory accounting period;

subsection (4) does not prevent a loss for that statutory accounting period, or an earlier statutory accounting period, from being taken into account under subsection (2).

(4B) If:

(a) the eligible CFC is a resident of an unlisted country at the end of the eligible period; and

(b) that country emerged from the dissolution of another country; and

(c) the other country was in existence at the end of a prior statutory accounting period; and

(d) at the end of that statutory accounting period, the CFC was a resident of the other country; and

(e) the other country was a listed country at the end of that statutory accounting period;

subsection (4) does not prevent a loss for that statutory accounting period, or an earlier statutory accounting period, from being taken into account under subsection (2).

121 Subsections 431(4D)

Omit “, (4B) or (4C)”, substitute “or (4B)”.

122 Subsection 431(5)

Repeal the subsection, substitute:

(5) A loss for a statutory accounting period is not to be taken into account under subsection (2) if, assuming that it were a tax loss (within the meaning of the *Income Tax Assessment Act 1997*) of the eligible CFC, it would not be taken into account or allowed as a deduction in relation to the eligible period.

123 Paragraph 461(1)(f)

Omit “section 373; and”, substitute “section 373.”.

124 Paragraph 461(1)(g)

Repeal the paragraph.

125 Subsection 469(8)

Repeal the subsection.

126 Division 20 of Part XI

Repeal the Division.

127 Section 245-110 in Schedule 2C (table items 2 and 3 of the table in the definition of *table of deductible revenue losses*)

Repeal the items.

Income Tax Assessment Act 1997

128 Subsection 4-15(2) (at the end of the table)

Add:

6.	The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases	section 24 of the *International Tax Agreements Act 1953*

129 Section 10-5 (table item headed "dividends")

Omit:

foreign taxes on, grossing up of **6AC**

130 Section 10-5 (table item headed "dividends")

Omit:

repayments of foreign income tax deducted from **26A**

131 Section 10-5 (table item headed "foreign investment funds (FIFs)")

Omit:

foreign tax paid in respect of a foreign investment fund attribution account payment **26D**

132 Section 12-5 (table item headed "foreign income")

Repeal the item.

133 Section 12-5 (table item headed "foreign tax credits")

Repeal the item.

134 Section 12-5 (table item headed "offshore banking units")

Omit:

foreign tax deduction **121EI**

135 Section 13-1 (table item headed "films")

Repeal the item.

136 Section 13-1 (table item headed "foreign tax")

Repeal the item, substitute:

foreign income tax

foreign income tax paid, tax offset for..... Division 770

137 Section 13-1 (table item headed "overseas tax")

Repeal the item.

138 Section 13-1 (table item headed "shipping income")

Repeal the item.

139 Section 13-1 (table item headed "tax credit")

Repeal the item.

140 Section 36-10 (note 1)

Repeal the note, substitute:

Note 1: Some deductions are limited so that they cannot contribute to a tax loss. See section 26-55 (Limit on certain deductions).

141 Section 36-25 (table items 1 and 2 in the table headed "*Tax losses of entities generally*")

Repeal the items.

142 Paragraph 61-570(2)(c)

Omit "subsection 160AEA(1)", substitute "section 6".

143 Subsection 63-10(1) (after table item 20)

Insert:

22	*Tax offset for *foreign income tax under Division 770	You cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year

144 Subsection 63-10(1) (table item 35)

Repeal the item.

145 Subsection 63-10(1) (note 3)

Repeal the note.

146 Subsection 205-20(4)

Repeal the subsection, substitute:

(4) Subparagraphs (1)(b)(ii) and (3)(b)(ii) do not apply to the application of a credit allowable under or by virtue of section 45-30 or 45-215 in Schedule 1 to the *Taxation Administration Act 1953* (these sections deal with credits for *PAYG instalments payable and credit on using a varied rate in certain cases).

147 Subsection 205-70(2) (example)

Omit “overseas tax paid”, substitute “foreign income tax paid”.

148 Subsection 205-70(2) (example)

Omit “(the ***foreign tax credit***)”, substitute “(the ***foreign income tax offset***)”.

149 Subsection 205-70(2) (example)

Omit “the foreign tax credit”, substitute “the foreign income tax offset”.

150 Subsection 205-70(2) (example)

Omit “that credit”, substitute “that offset”.

151 Paragraph 220-400(1)(c)

Omit “under section 160AF (Credits in respect of foreign tax) of the *Income Tax Assessment Act 1936* to a credit”, substitute “to a tax offset under Division 770”.

152 Paragraph 220-405(1)(d)

Omit "under section 160AF (Credits in respect of foreign tax) of the *Income Tax Assessment Act 1936* to a credit", substitute "to a tax offset under Division 770".

153 Paragraph 305-75(2)(b)

Omit "*foreign tax", substitute "*foreign income tax".

154 Paragraph 305-75(3)(b)

Omit "*foreign tax", substitute "*foreign income tax".

155 Paragraph 305-75(5)(a)

Omit "*foreign tax", substitute "*foreign income tax".

156 Paragraph 701-1(4)(c)

Omit ";", substitute ".".

157 Paragraphs 701-1(4)(d) to (g)

Repeal the paragraphs.

158 Paragraph 707-110(2)(b)

Omit "; and", substitute ".".

159 Paragraph 707-110(2)(c)

Repeal the paragraph.

160 Subsection 707-130(1) (note 2)

Omit "(and, through section 160AFD of that Act, an overall foreign loss)".

161 Subsection 707-310(3) (table items 2 and 6)

Repeal the items.

162 Subsection 713-225(6A)

Repeal the subsection.

163 Subdivision 717-A

Repeal the Subdivision, substitute:

Subdivision 717-A—Foreign income tax offsets

717-1 What this Subdivision is about

> If an entity becomes a subsidiary member of a consolidated group, the head company receives any tax offsets under section 770-10 that arise because the entity pays foreign income tax while it is a subsidiary member of the group.

Table of sections

Object

717-5 Object of this Subdivision

Foreign income tax on amounts in head company's assessable income

717-10 Head company taken to be liable for subsidiary member's foreign income tax

Object

717-5 Object of this Subdivision

The object of this Subdivision is to allow the *head company of a *consolidated group to get the benefit of *foreign income tax paid in respect of amounts included in the head company's assessable income because another entity is or was a *subsidiary member of the group.

Foreign income tax on amounts in head company's assessable income

717-10 Head company taken to be liable for subsidiary member's foreign income tax

(1) This section operates if:

(a) an entity was a *subsidiary member of a *consolidated group for all or part of an income year; and

(b) an amount was included in the *ordinary income or *statutory income of the *head company of the group for that income year; and

(c) the entity paid *foreign income tax (except *credit absorption tax or *unitary tax) in respect of the amount.

(2) Division 770 operates as if:

(a) the *head company had paid the *foreign income tax; and

(b) the entity had not paid the foreign income tax.

Note: Division 770 provides a tax offset for foreign income tax paid.

(3) This section does not limit the operation of Division 770.

164 Section 717-200

Omit “, attributed tax account surplus, FIF attribution surplus and FIF attributed tax account surplus”, substitute “and FIF attribution surplus”.

165 Paragraph 717-205(b)

Repeal the paragraph.

166 Paragraph 717-205(c)

Omit “joining time;”, substitute “joining time.”.

167 Paragraph 717-205(d)

Repeal the paragraph.

168 Section 717-215

Repeal the section.

169 Section 717-225

Repeal the section (including the note).

170 Section 717-235

Omit “, attributed tax account surplus, FIF attribution surplus and FIF attributed tax account surplus”, substitute “and FIF attribution surplus”.

171 Paragraph 717-240(b)

Repeal the paragraph.

172 Paragraph 717-240(c)

Omit “leaving time;”, substitute “leaving time.”.

173 Paragraph 717-240(d)

Repeal the paragraph.

174 Section 717-250

Repeal the section.

175 Section 717-260

Repeal the section (including the note).

176 Paragraph 768-550(1)(a)

Omit “section 160AFB”, substitute “section 334A”.

177 Paragraph 768-550(1)(a)

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

178 Subsection 768-550(2)

Omit “section 160AFB”, substitute “section 334A”.

179 Section 802-40 (heading)

Repeal the heading, substitute:

802-40 Effect of foreign income tax offset on conduit foreign income

180 Section 802-40

Omit “credit arose for the entity under section 160AF of the *Income Tax Assessment Act 1936*”, substitute “tax offset arose for the entity under Division 770”.

181 Section 802-40 (formula)

Omit “Credit”, substitute “Offset”.

182 Paragraph 830-1(a)

Omit “foreign tax”, substitute “foreign income tax”.

183 Paragraph 830-10(1)(b)

Omit "*foreign tax", substitute "*foreign income tax (except *credit absorption tax or *unitary tax)".

184 Paragraph 830-10(1)(c)

Omit "foreign tax", substitute "foreign income tax (except credit absorption tax or unitary tax)".

185 Paragraph 830-15(1)(b)

Omit "*foreign tax", substitute "*foreign income tax (except *credit absorption tax or *unitary tax)".

186 Paragraph 830-15(2)(b)

Omit "*foreign tax", substitute "*foreign income tax (except *credit absorption tax or *unitary tax)".

187 Paragraph 830-15(3)(b)

Omit "*foreign tax", substitute "*foreign income tax (except *credit absorption tax or *unitary tax)".

188 Subsection 995-1(1) (definition of *attribution percentage*)

Repeal the definition, substitute:

attribution percentage:

(a) in relation to a *CFC or a *CFT—has the meaning given by Part X of the *Income Tax Assessment Act 1936*; and

(b) in relation to a *FIF that is a company—has the meaning given by section 581 of that Act.

189 Subsection 995-1(1)

Insert:

credit absorption tax has the meaning given by section 770-15.

190 Subsection 995-1(1) (definition of *excess foreign tax credits*)

Repeal the definition.

191 Subsection 995-1(1)

Insert:

foreign income tax has the meaning given by section 770-15.

192 Subsection 995-1(1) (definition of *foreign tax*)

Repeal the definition.

193 Subsection 995-1(1) (at the end of the definition of *tax loss*)

Add:

; or (d) a tax loss determined under section 24 of the *International Tax Agreements Act 1953* (about relief from double taxation where profits are adjusted).

194 Subsection 995-1(1)

Insert:

unitary tax has the meaning given by section 770-15.

Income Tax (Transitional Provisions) Act 1997

195 Subsection 701D-1(1)

After “overall foreign loss”, insert “(as defined in former section 160AFD of the *Income Tax Assessment Act 1936*)”.

196 Paragraphs 701D-10(3)(a) and (b)

Before “section 160AFD”, insert “former”.

197 Paragraph 707-325(1)(d)

Before “section 160AFD”, insert “former”.

198 Subsection 707-325(9)

Before “section 160AFD”, insert “former”.

199 Paragraph 707-326(1)(b)

Before “section 160AFD”, insert “former”.

200 Subsection 707-328A(6)

Before “section 160AFD”, insert “former”.

201 Division 717

Repeal the Division.

202 Subsection 830-20(3)

After “paid foreign tax” (wherever occurring), insert “(within the meaning of that Act)”.

203 Paragraph 830-20(4)(c)

After “paid foreign tax”, insert “(within the meaning of that Act)”.

204 Subsection 830-20(4)

After “paid foreign tax,” (last occurring), insert “(within the meaning of that Act)”.

205 Subsection 830-20(5)

After “paid foreign tax” (wherever occurring), insert “(within the meaning of that Act)”.

International Tax Agreements Act 1953

206 Subsection 3(5)

Repeal the subsection.

207 Subsection 3(6)

Repeal the subsection.

208 Subsection 4(2)

Omit “section 160AO or”.

209 Subsection 11FA(3)

Before “Division 19”, insert “former”.

210 Subsection 11FB(3)

Before “Division 19”, insert “former”.

211 After section 23

Insert:

24 Relief from double taxation where profits adjusted

Application

(1) This section applies if:

(a) Australia has an agreement with one of the following (a ***treaty partner***):

(i) a foreign country or a constituent part of a foreign country;

(ii) an overseas territory; and

(b) the treaty partner taxes profits, or purports to tax profits, in accordance with, or consistent with the principles of:

(i) if the treaty partner is the United Kingdom—Article 9 of the 2003 United Kingdom convention; or

(ii) otherwise—a corresponding provision of another agreement.

Note: Article 9 of the 2003 United Kingdom Convention deals with associated enterprises.

Object

(2) The object of this section is to prevent double taxation of the profits, to the extent that the Commissioner considers the taxation of the profits by the treaty partner to be in accordance with the agreement.

Adjustment of taxable income or tax loss

(3) The Commissioner may determine the amount of a taxpayer's taxable income or tax loss of a year of income to be an amount that is appropriate having regard to the object of this section.

Note: The Commissioner may amend an assessment at any time to give effect to this section: see subsection 170(11) of the *Income Tax Assessment Act 1936*.

Taxation Administration Act 1953

212 Paragraph 14ZW(1)(aaa)

Before "section 160AL", insert "former".

Taxation (Interest on Overpayments and Early Payments) Act 1983

213 Subsection 3(1) (paragraph (a) of the definition of *income tax crediting amount*)

Repeal the paragraph.

214 Subsection 3A(1)

Omit “, or the applying of an income tax crediting amount takes place,”.

215 Subsection 3A(1)

After “***provide correlative relief***”, insert “for juridical double taxation”.

216 After subsection 3A(1)

Insert:

(1A) For the purposes of this Act, a decision to which this Act applies is made to ***provide correlative relief*** for economic double taxation if:

(a) Australia has an agreement with one of the following (a ***treaty partner***):

(i) a foreign country or a constituent part of a foreign country;

(ii) an overseas territory; and

(b) the treaty partner taxes profits, or purports to tax profits, in accordance with, or consistent with the principles of:

(i) if the treaty partner is the United Kingdom—Article 9 of the 2003 United Kingdom convention; or

(ii) otherwise—a corresponding provision of another agreement; and

Note: Article 9 of the 2003 United Kingdom Convention deals with associated enterprises.

(c) the decision is made in giving effect to subsection 24(3) of the *International Tax Agreements Act 1953*.

217 Subsection 3A(2)

Omit “, or the applying of an income tax crediting amount takes place,”.

218 Paragraph 3A(2)(c)

Omit “, or the applying of the income tax crediting amount takes place,”.

219 Section 8J

Repeal the section.

220 Paragraph 9(1A)(b)

After “provide correlative relief”, insert “, for juridical double taxation or economic double taxation,”.

221 Paragraph 11(b)

After “provide correlative relief”, insert “, for juridical double taxation or economic double taxation,”.

Note: The heading to section 11 is altered by inserting “**income**” after “**foreign**”.

Part 5—Application

222 Application

Subject to items 223 and 224, the amendments made by this Schedule apply in relation to income years, statutory accounting periods and notional accounting periods starting on or after the first 1 July that occurs after the day on which this Act receives the Royal Assent.

223 Application and transitional rules for section 802-40 of the 1997 Act

(1) The amendments made by items 179 to 181 apply in relation to income years starting one year later than the first income year (the ***transitional year***) covered by item 222.

(2) Section 802-40 of the *Income Tax Assessment Act 1997* has effect in relation to the transitional year as if section 160AF of the *Income Tax Assessment Act 1936* had not been repealed.

224 Application rule for credits arising under the *International Tax Agreements Act 1953*

(1) Despite the repeal of Division 19 of Part III of the *Income Tax Assessment Act 1936*, that Division continues to apply, after the commencement of this item, in relation to:

(a) a determination made by a person under the Division before the commencement of this item; or

(b) a credit to which the Division applied before the commencement of this item;

as if the repeal had not happened.

(2) The Commissioner may make determinations under that Division as it so continues to apply.

(3) Section 24 of the *International Tax Agreements Act 1953*, as inserted by item 211 of this Schedule, applies from the commencement of this item in relation to any income year.

Part 6—Savings provisions

225 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

(a) any act done or omitted to be done; or

(b) any state of affairs existing; or

(c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

226 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

(a) making or amending an assessment (including under a provision that is itself repealed or amended);

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example: For the 2006-07 income year, Smart Investor Pty Ltd, an Australian resident private investment company, has assessable foreign income in the passive income class on which it has paid foreign tax for which it wishes to claim a foreign tax credit. The company also has a tax loss for the year from its Australian investments. When it lodges its tax return for the year it does not elect to claim a deduction for any of the tax loss under section 79DA of the ITAA 1936, because the Australian tax payable on its passive foreign income equals the foreign tax it has paid.

In 2009 the amount of foreign tax payable in respect of some foreign rental income it had included in its return for the 2006-07 year is reduced and Smart Investor receives a refund of the difference in foreign tax. Smart Investor Pty Ltd then applies to be able to make an

election under section 79DA, that is, after the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* (which repeals section 79DA) receives Royal Assent. The Commissioner allows Smart Investor to submit an election to claim a deduction for so much of its 2006-07 tax loss as to reduce the amount of Australian tax payable on its 2006-07 assessable foreign income to the revised foreign tax paid, by the end of 2009.

Despite the repeal of section 79DA, item 226 allows the Commissioner to permit an election to be lodged after the return for 2006-07 has been lodged, and to amend Smart Investor's assessment for that year, because these actions relate to a thing done, and periods ending, before the repeal of section 79DA applies.

Part 7—Sunsetting

Income Tax (Transitional Provisions) Act 1997

227 Division 770

Repeal the Division.

Schedule 2—Exchange of membership interests in MDOs

Part 1—Amendments

Income Tax Assessment Act 1997

1 After section 112-53

Insert:

112-53A MDO roll-over

MDO roll-over			
Item	**In this situation:**	**Element affected:**	**See section:**
1	Exchange of an interest in an MDO for an interest in another MDO	First element of cost base and reduced cost base	124-985

2 Section 112-115 (after table item 14BA)

Insert:

14BB	Exchange of an interest in an MDO for an interest in another MDO	Subdivision 124-P

3 Subsection 124-5(1)

Omit “124-O”, substitute “124-P”.

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

Add “The consequences of an exchange of a membership interest in an MDO are set out in Subdivision 124-P.”.

5 At the end of Division 124

Add:

Subdivision 124-P—Exchange of a membership interest in an MDO for a membership interest in another MDO

Guide to Subdivision 124-P

124-975 What this Subdivision is about

> You can choose a roll-over if you exchange your interest as a member of an MDO for an interest as a member of another MDO.
>
> You can only choose the roll-over if you would have made a capital gain from the exchange.

Table of sections

Operative provisions

124-980 Exchange of membership interests in an MDO
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Operative provisions

124-980 Exchange of membership interests in an MDO

(1) There is a roll-over if:

(a) an entity exchanges:

(i) an interest (the ***original interest***) in an *MDO (the ***original MDO***) as a member of the original MDO; for

(ii) a similar interest (the ***replacement interest***) in another MDO (the ***new MDO***) as a member of the new MDO; and

(b) both the original MDO and the new MDO are companies limited by guarantee; and

(c) the exchange is in consequence of a single *arrangement that satisfies subsection (3); and

(d) apart from the roll-over, the entity would make a *capital gain from a *CGT event happening in relation to its original interest; and

(e) the entity chooses to obtain the roll-over; and

(f) the entity acquired the original interest on or after 20 September 1985.

Note: The entity can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-990.

(2) In working out whether an original interest is exchanged for a similar interest, disregard a difference that consists only of a right to receive distributions of income or capital.

Conditions for arrangement

(3) The *arrangement must:

(a) result in the new *MDO becoming the sole *member of the original MDO; and

(b) be one in which participation was available on substantially the same terms for all of the holders of interests as members of the original MDO of a particular type.

124-985 What the roll-over is for post-CGT interests

(1) A *capital gain the entity makes from an original interest *acquired on or after 20 September 1985 is disregarded.

(2) The entity works out the first element of the *cost base of each replacement interest the entity received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of the entity's original interest for which it was exchanged and for which the entity obtained the roll-over.

(3) In applying subsection (2), the entity reduces (but not below zero) the *cost base of the original interest (just before stopping owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-990).

(4) The first element of the *reduced cost base of a replacement interest is worked out similarly.

124-990 Partial roll-over

(1) The entity can obtain only a partial roll-over if its *capital proceeds for its original interest include something (the ***ineligible proceeds***)

other than its replacement interest. There is no roll-over for that part (the ***ineligible part***) of its original interest for which it received ineligible proceeds.

(2) The *cost base of the ineligible part is that part of the cost base of the original interest as is reasonably attributable to it.

124-995 Pre-CGT interests

If the entity exchanges an original interest that the entity *acquired before 20 September 1985 for its replacement interest, the first element of the *cost base and *reduced cost base of the replacement interest is zero.

Part 2—Application of amendments

6 Application of amendments

The amendments made by this Schedule apply to CGT events happening on or after 14 February 2007.

Schedule 3—Investment by superannuation funds in instalment warrants

Superannuation Industry (Supervision) Act 1993

1 Before subsection 67(5)

Insert:

Exception—instalment warrants

(4A) Subsection (1) does not prohibit a trustee (the ***RSF trustee***) of a regulated superannuation fund from borrowing money, or maintaining a borrowing of money, under an arrangement under which:

(a) the money is or has been applied for the acquisition of an asset (the ***original asset***) other than one the RSF trustee is prohibited by this Act or any other law from acquiring; and

(b) the original asset, or another asset (the ***replacement***) that:

(i) is an asset replacing the original asset or any other asset that met the conditions in this subparagraph and subparagraph (ii); and

(ii) is not an asset the RSF trustee is prohibited by this Act or any other law from acquiring;

is held on trust so that the RSF trustee acquires a beneficial interest in the original asset or the replacement; and

(c) the RSF trustee has a right to acquire legal ownership of the original asset or the replacement by making one or more payments after acquiring the beneficial interest; and

(d) the rights of the lender against the RSF trustee for default on the borrowing, or on the sum of the borrowing and charges related to the borrowing, are limited to rights relating to the original asset or the replacement; and

(e) if, under the arrangement, the RSF trustee has a right relating to the original asset or the replacement (other than a right described in paragraph (c))—the rights of the lender against the RSF trustee for the RSF trustee's exercise of the RSF trustee's right are limited to rights relating to the original asset or replacement.

2 At the end of section 71

Add:

Limit on when investments in related trusts are in-house assets

(8) If, at a time:

(a) an asset (the ***investment asset***) of a superannuation fund is an investment in a related trust of the fund; and

(b) the related trust is one described in paragraph 67(4A)(b) in connection with a borrowing, by the trustee of the fund, that is covered by subsection 67(4A); and

(c) the only property of the related trust is the original asset or replacement described in that subsection;

the investment asset is an in-house asset of the fund at the time only if the original asset or replacement described in subsection 67(4A) would be an in-house asset of the fund if it were an asset of the fund at the time.

(9) Subsections (1), (2) and (4) have effect subject to subsection (8).

Schedule 4—Trustee beneficiary reporting rules

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Subsection 102UA(1)

Repeal the subsection, substitute:

(1) The main purpose of this Division is to ensure that the trustee of a closely held trust with one or more trustee beneficiaries that are presently entitled to a share of the income or of a tax-preferred amount of the trust advises the Commissioner soon after the end of the year of income of certain details about those trustee beneficiaries. This will allow the Commissioner to check whether the assessable income of the trustee beneficiaries includes the correct share of net income, and whether the net assets of the trustee beneficiaries reflect the receipt of the tax-preferred amounts.

2 Paragraph 102UA(2)(a)

Omit “ultimate”, substitute “trustee”.

3 Subsection 102UA(3)

Omit “there are in fact no ultimate beneficiaries of net income of the closely held trust”, substitute “the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the share of the net income of the closely held trust”.

4 Section 102UB

Insert:

correct TB statement has the meaning given by section 102UG.

5 Section 102UB (definition of *correct UB statement*)

Repeal the definition.

6 Section 102UB (definition of *listed person*)

Repeal the definition.

7 Section 102UB

Insert:

TB statement period has the meaning given by section 102UH.

8 Section 102UB

Insert:

trustee beneficiary non-disclosure tax means tax payable under paragraph 102UK(2)(a) or 102UM(2)(a).

9 Section 102UB (definition of *UB statement period*)

Repeal the definition.

10 Section 102UB (definition of *ultimate beneficiary*)

Repeal the definition.

11 Section 102UB (definition of *ultimate beneficiary non-disclosure tax*)

Repeal the definition.

12 Section 102UB

Insert:

untaxed part, of a share of the net income of a closely held trust, has the meaning given by section 102UE.

13 Subsection 102UC(4) (at the end of the definition of *excluded trust*)

Add:

; or (c) a family trust; or

(d) a trust in relation to which an interposed entity election has been made and is in force in accordance with section 272-85 of Schedule 2F; or

(e) a trust that is covered by subsection 272-90(5) of Schedule 2F.

14 Sections 102UE and 102UF

Repeal the sections, substitute:

102UE Meaning of *untaxed part*

(1) The ***untaxed part*** of a share of the net income of a closely held trust is so much of that share as is not covered by subsection (2).

(2) The share of the net income of the closely held trust is covered by this subsection to the extent that:

(a) the trustee of the closely held trust is assessed and liable to pay tax under subsection 98(4) in respect of the share; or

(b) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and liable to pay tax under subsection 98(4); or

(c) the share is represented by or reasonably attributable to an amount from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or

(d) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate was liable to pay trustee beneficiary non-disclosure tax.

15 Section 102UG

Repeal the section, substitute:

102UG Correct TB statement

Share of net income case

(1) This section applies if a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97 and the share comprises or includes an untaxed part.

Tax-preferred amount case

(2) This section also applies if a trustee beneficiary of a closely held trust is presently entitled at the end of a year of income to a share of a tax-preferred amount of the trust.

Correct TB statement

(3) If this section applies, the trustee of the closely held trust makes a ***correct TB statement*** about the share if the trustee correctly states, in the approved form:

(a) if the trustee beneficiary is a resident at the end of the year of income:

(i) the name and tax file number of the trustee beneficiary; and

(ii) the amount of the untaxed part of the share or the amount of the share of the tax-preferred amount; and

(b) if the trustee beneficiary is a non-resident at the end of the year of income:

(i) the name and address of the trustee beneficiary; and

(ii) the amount of the untaxed part of the share or the amount of the share of the tax-preferred amount.

Note: If a closely held trust has multiple trustee beneficiaries, the requirements in subsection (3) will have to be met for each of them for the trustee of the closely held trust to avoid paying any trustee beneficiary non-disclosure tax.

16 Section 102UH

Repeal the section, substitute:

102UH TB statement period

The ***TB statement period***, for the trustee of a trust in relation to a year of income, is the period from the end of the year of income until the end of:

(a) the period within which the trustee is required to give to the Commissioner the trust's return of income for the year of income; or

(b) such further period as the Commissioner allows.

17 Section 102UJ

Repeal the section, substitute:

102UJ Extended concept of present entitlement to capital of a trust

For the purposes of this Division, section 95A applies in relation to capital of a trust in the same way as it applies to income of the trust.

18 Subdivision C of Division 6D of Part III (heading)

Repeal the heading, substitute:

Subdivision C—Trustee beneficiary non-disclosure tax on share of net income

19 Subsections 102UK(1), (2) and (2A)

Repeal the subsections, substitute:

(1) Subject to subsection (2A), this section applies if:
  (a) a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97; and
  (b) the share comprises or includes an untaxed part; and
  (c) the trustee of the closely held trust is not covered by a determination under subsection (1A) for the year of income; and
  (d) during the TB statement period in relation to the year of income, the trustee of the closely held trust does not make and give to the Commissioner a correct TB statement about the share.

Determination that a class of trustees is not required to give a correct TB statement

(1A) The Commissioner may, by legislative instrument, determine that a specified class of trustees is not required to make a correct TB statement for a year of income.

(1B) A determination under subsection (1A):
  (a) may be expressed to be subject to conditions; and
  (b) may be for one or more years of income.

Consequences of section applying

(2) If this section applies:

(a) either:

(i) if the trustee of the closely held trust is the only person in the trustee group (see subsection (3))—the trustee is liable to pay tax; or

(ii) if the trustee of the closely held trust is not the only person in the trustee group—the persons in the trustee group are jointly and severally liable to pay tax;

as imposed by the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007*, on the untaxed part; and

(b) except for the purposes of sections 99, 99A and 99B and this Division, the untaxed part is not included in the assessable income of the trustee beneficiary under section 97.

Note: Provisions dealing with the payment etc. of the tax under paragraph (a) (known as trustee beneficiary non-disclosure tax) are set out in Subdivision D.

Amendment of incorrect statement

(2A) If:

(a) during the TB statement period in relation to a year of income, the trustee of a closely held trust makes and gives to the Commissioner a statement, that the trustee believes on reasonable grounds is a correct TB statement, about a share of the net income of the trust; and

(b) the statement is not a correct TB statement about the share, with the result that, apart from this subsection, this section applies; and

(c) either:

(i) the trustee could not reasonably have foreseen the event that caused the statement not to be a correct TB statement; or

(ii) the statement is not a correct TB statement because of an inadvertent error; and

(d) either:

(i) before any trustee beneficiary non-disclosure tax becomes due and payable on the untaxed part as a result of this section applying; or

(ii) before the end of 4 years after any such tax becomes due and payable;

the trustee advises the Commissioner in writing of any change that is necessary to make the statement a correct TB statement about the share;

this section does not apply, and is taken never to have applied, to the untaxed part.

Note: The heading to section 102UK is replaced by the heading "**Trustee beneficiary non-disclosure tax where no correct TB statement**".

20 Subsection 102UL(2)

Omit "UB", substitute "TB".

21 Paragraphs 102UL(3)(a), (4)(a), (4)(c) and (5)(a)

Omit "UB", substitute "TB".

22 Subparagraphs 102UL(5)(b)(i) and (ii)

Omit "UB", substitute "TB".

23 Subsections 102UM(1) and (2)

Repeal the subsections, substitute:

(1) This section applies if:

(a) a share of the net income of a closely held trust for a year of income is included in the assessable income of a trustee beneficiary of the trust under section 97; and

(b) the trustee of the closely held trust becomes presently entitled to an amount that is reasonably attributable to the whole or a part of the untaxed part of the share; and

(c) trustee beneficiary non-disclosure tax is not payable by the trustee of the closely held trust on the untaxed part under paragraph 102UK(2)(a).

Consequences of section applying

(2) If this section applies:

(a) either:

(i) if the trustee of the closely held trust is the only person in the trustee group (see subsection (3))—the trustee is liable to pay tax; or

(ii) if the trustee of the closely held trust is not the only person in the trustee group—the persons in the trustee group are jointly and severally liable to pay tax;

as imposed by the *Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007*, on the whole or that part of the untaxed part; and

(b) except for the purposes of sections 99, 99A and 99B and this Division, the whole or that part of the untaxed part is not included in the assessable income of the trustee beneficiary under section 97.

Note: Provisions dealing with the payment etc. of the tax under paragraph (a) (known as trustee beneficiary non-disclosure tax) are set out in Subdivision D.

Note: The heading to section 102UM is replaced by the heading "**Trustee beneficiary non-disclosure tax where share is distributed to trustee of closely held trust**".

24 Subdivision D of Division 6D of Part III (heading)

Repeal the heading, substitute:

Subdivision D—Payment etc. of trustee beneficiary non-disclosure tax

25 Subsections 102UN(1) and (2)

Omit "ultimate", substitute "trustee".

Note: The heading to section 102UN is altered by omitting "**ultimate**" and substituting "**trustee**".

26 Subsection 102UO(1)

Omit "Ultimate", substitute "Trustee".

Note: The heading to section 102UO is altered by omitting "**ultimate**" and substituting "**trustee**".

27 Paragraph 102UO(1)(a)

Omit "UB", substitute "TB".

28 Subsection 102UO(2)

Omit "Ultimate", substitute "Trustee".

29 Subsection 102UO(3)

Omit "ultimate", substitute "trustee".

30 Subsection 102UO(4)

Omit “ultimate”, substitute “trustee”.

31 Subsection 102UO(4) (note)

Omit “ultimate”, substitute “trustee”.

32 Section 102UP

Omit “ultimate” (wherever occurring), substitute “trustee”.

Note: The heading to section 102UP is altered by omitting “**ultimate**” and substituting “**trustee**”.

33 Paragraph 102UR(1)(a)

Omit “ultimate”, substitute “trustee”.

34 Subsections 102UR(2) and 102URA(1)

Omit “ultimate”, substitute “trustee”.

35 Paragraph 102US(1)(d)

Omit “ultimate”, substitute “trustee”.

36 Section 102USA

Repeal the section, substitute:

102USA Recovery of trustee beneficiary non-disclosure tax from trustee beneficiaries providing incorrect information etc. to head trustee

(1) This section applies if the requirements in subsections (2) and (3) are satisfied.

Requirement for payment of trustee beneficiary non-disclosure tax

(2) A requirement for this section to apply is that:

(a) the trustee of a closely held trust does not make a correct TB statement about a share of the net income of the trust of a year of income during the TB statement period in relation to the year of income; and

(b) as a result, the trustee becomes liable, or the persons in the trustee group become jointly and severally liable, under

section 102UK to pay trustee beneficiary non-disclosure tax; and

(c) the trustee or any of the persons in the trustee group pays an amount (the ***recoverable amount***), being some or all of the tax or any general interest charge under section 102UP in relation to the tax.

Requirement for refusal etc. to provide information or for incorrect statement

(3) A requirement for this section to apply is that:

(a) either:

(i) the trustee of the closely held trust was unable to make a correct TB statement about the share of the net income during the TB statement period because the trustee beneficiary in whose assessable income the share is included under section 97, when requested to do so, refused or failed to give information to the trustee; or

(ii) the trustee of the closely held trust purported to make a correct TB statement about the share of the net income during the TB statement period but the statement was not a correct TB statement because it contained incorrect information given to the trustee of the closely held trust by the trustee beneficiary in whose assessable income the share is included under section 97, and the trustee honestly believed on reasonable grounds that the information was correct; and

(b) the trustee of the closely held trust distributed to the trustee beneficiary an amount representing some or all of the share of the net income without withholding an amount under section 254 in respect of the recoverable amount.

Consequences of section applying

(4) If this section applies, the trustee or the person in the trustee group mentioned in paragraph (2)(c) may, in a court of competent jurisdiction, sue for the recoverable amount and recover it from the trustee beneficiary.

37 Subdivision E of Division 6D of Part III (heading)

Repeal the heading, substitute:

Subdivision E—Making correct TB statement about trustee beneficiaries of tax-preferred amounts

38 Subsection 102UT(1)

Repeal the subsection, substitute:

(1) If, at the end of a year of income:

(a) a trustee beneficiary of a closely held trust is presently entitled to a share of a tax-preferred amount of the trust; and

(b) the trustee of the closely held trust is not covered by a determination under subsection 102UK(1A) for the year of income;

the trustee of the closely held trust must, during the TB statement period, make and send to the Commissioner a correct TB statement covering the share.

Note: The heading to section 102UT is replaced by the heading "**Requirement to make correct TB statement about trustee beneficiaries of tax-preferred amounts**".

39 Subsection 102UT(3)

Omit "or statements" (wherever occurring).

40 Paragraph 102UT(3)(c)

Omit "UB", substitute "TB".

41 Sections 102UU and 102UV

Repeal the sections, substitute:

102UU Trustee beneficiary may quote tax file number to trustee of closely held trust

A trustee beneficiary in respect of:

(a) a share of the net income of a closely held trust for a year of income that is included in the assessable income of the trustee beneficiary of the trust under section 97; or

(b) a share of a tax-preferred amount of a closely held trust to which the trustee beneficiary of the trust is presently entitled at the end of a year of income;

may quote his or her tax file number to the trustee of the closely held trust in connection with that trustee making a correct TB statement about that share.

Note: Section 8WA of the T*axation Administration Act 1953* makes it an offence for a person to require or request another person to quote the other person's tax file number unless provision is made by a taxation law for the other person to quote the number.

102UV Trustee of closely held trust may record etc. tax file number

(1) This section applies if a trustee beneficiary in respect of:

(a) a share of the net income of a closely held trust for a year of income that is included in the assessable income of the trustee beneficiary of the trust under section 97; or

(b) a share of a tax-preferred amount of a closely held trust to which the trustee beneficiary of the trust is presently entitled at the end of a year of income;

quotes his or her tax file number to the trustee of the closely held trust in connection with that trustee making a correct TB statement about that share.

(2) Section 8WB of the *Taxation Administration Act 1953* does not prohibit the trustee of the closely held trust from:

(a) recording the tax file number or maintaining such a record; or

(b) using the tax file number in a manner connecting it with the identity of the trustee beneficiary; or

(c) divulging or communicating the tax file number to a third person;

in connection with that trustee making a correct TB statement about that share.

Part 2—Consequential amendments

Income Tax Assessment Act 1936

42 Sub-subparagraph 47A(18)(d)(i)(G)

Omit “ultimate”, substitute “trustee”.

43 Subparagraph 102AAE(2)(c)(i)

Omit “ultimate”, substitute “trustee”.

44 Sub-subparagraph 102AAU(1)(c)(i)(C)

Omit “ultimate”, substitute “trustee”.

45 Subsection 170(10) (table item 18, column headed “Brief description”)

Omit “Ultimate”, substitute “Trustee”.

46 Paragraph 254(3)(a)

Omit “ultimate”, substitute “trustee”.

Taxation Administration Act 1953

47 Subsection 8AAB(4) (table item 1AA, column headed “Topic”)

Omit “ultimate”, substitute “trustee”.

48 Subsection 250-10(1) in Schedule 1 (table item 5, column headed “Topic”)

Omit “ultimate”, substitute “trustee”.

Part 3—Repeal of Acts

A New Tax System (Ultimate Beneficiary Non-disclosure Tax) Act (No. 1) 1999

49 The whole of the Act

Repeal the Act.

A New Tax System (Ultimate Beneficiary Non-disclosure Tax) Act (No. 2) 1999

50 The whole of the Act

Repeal the Act.

Part 4—Application and transitional

51 Application

The amendments made by this Schedule apply to the first income year starting on or after the day on which this Act receives the Royal Assent and later income years.

52 Transitional

(1) This item applies in relation to income years starting on or after 1 July 2006 and before the first income year to which the amendments made by this Schedule apply in accordance with item 51.

(2) The trustee of a closely held trust is not liable to pay tax under section 102UK or 102UM of the *Income Tax Assessment Act 1936* in respect of a share of the net income of the trust to the extent to which:

(a) the trustee of the closely held trust is assessed and liable to pay tax under subsection 98(4) of that Act in respect of the share; or

(b) the share is reasonably attributable to a part of the net income of another trust estate in respect of which the trustee of the other trust estate is assessed and liable to pay tax under that subsection; or

(c) the share is represented by or reasonably attributable to an amount from which an entity was required to withhold an amount under Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or

(d) the share is represented by or reasonably attributable to an amount which was liable to tax under section 255 of the *Income Tax Assessment Act 1936*.

Schedule 5—Superannuation amendments

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 290-70 (heading)

Repeal the heading, substitute:

290-70 Employment activity conditions

2 Before paragraph 290-70(a)

Insert:

(aa) your employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*); or

3 Subsection 290-90(4)

Omit "either".

4 Before paragraph 290-90(4)(a)

Insert:

(aa) an employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*) of the other person's employer; or

5 At the end of section 295-385

Add:

(6) However, assets of a *complying superannuation fund that are supporting a *superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not ***segregated current pension assets*** to the extent that the *market value of the assets exceeds the account balance supporting the benefit.

6 At the end of subsection 295-485(1)

Add:

Note: Paragraph (1)(b) has effect as if the reference to amounts included in assessable income under Subdivision 295-C included a reference to amounts included in assessable income under former section 274 of the *Income Tax Assessment Act 1936*: see section 295-485 of the *Income Tax (Transitional Provisions) Act 1997*.

7 Section 295-615

Before "An individual", insert "(1)".

8 At the end of section 295-615

Add:

(2) An individual is taken to have ***quoted (for superannuation purposes)*** a *tax file number to an entity at a time if the Commissioner gives notice of the individual's tax file number to the entity at that time.

9 Paragraph 307-5(3)(c)

Omit "the later of", substitute "the latest of the following".

10 Subparagraph 307-5(3)(c)(i)

Omit "or".

11 Subparagraph 307-5(3)(c)(ii)

Omit "estate.", substitute "estate;".

12 At the end of paragraph 307-5(3)(c)

Add:

(iii) if the payment of the benefit is delayed because of legal action about entitlement to the benefit—6 months after the legal action ceases;

(iv) if the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit—6 months after that process is completed; and

13 At the end of subsection 307-5(3)

Add:

(d) the Commissioner has *not* made a decision about the benefit under subsection (3A).

14 After subsection 307-5(3)

Insert:

(3A) For the purposes of paragraph (3)(d), the Commissioner may make a decision in writing that the superannuation benefit is *not* a ***superannuation member benefit*** under subsection (3), if:

(a) both of these conditions are satisfied:

(i) the payment of the benefit is delayed because of legal action about entitlement to the benefit;

(ii) the benefit is paid more than 6 months after the legal action ceases; or

(b) both of these conditions are satisfied:

(i) the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit;

(ii) the benefit is paid more than 6 months after that process is completed.

(3B) In making a decision under subsection (3A), the Commissioner must have regard to the following matters:

(a) whether there was any action taken to try to pay the benefit within the 6 months after the cessation of the legal action or the completion of the process, and if so, the nature of that action;

(b) whether there were any factors beyond the control of the entity that paid the benefit, or of the person to whom the benefit was paid, that prevented the payment of the benefit within those 6 months;

(c) the circumstances of the person to whom the benefit was paid, and the actions of that person in relation to the benefit.

15 Subsection 307-290(1) (note)

Repeal the note, substitute:

Note 1: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

Note 2: Deductions made under former section 279 or 279B of the *Income Tax Assessment Act 1936* are treated for the purposes of this section as having been made under section 295-465 or 295-470 (see section 307-290 of the *Income Tax (Transitional Provisions) Act 1997*).

16 Subsection 995-1(1) (definition of *non-complying superannuation fund*)

Repeal the definition, substitute:

> ***non-complying superannuation fund*** means a *superannuation fund that:
>
> (a) is a fund; and
>
> (b) is not a *complying superannuation fund.

Income Tax (Former Non-resident Superannuation Funds) Act 1994

17 At the end of section 3

Add "of that Act".

Income Tax (Transitional Provisions) Act 1997

18 After section 295-465

Insert:

295-485 Deductions for increased amount of superannuation lump sum death benefit

Paragraph 295-485(1)(b) of the *Income Tax Assessment Act 1997* has effect as if the reference in that paragraph to amounts included in assessable income under Subdivision 295-C of that Act included a reference to amounts included in assessable income under former section 274 (taxable contributions) of the *Income Tax Assessment Act 1936*.

19 Paragraph 307-125(4)(b)

Omit "under subsection (6)", substitute "under subsections (6) and (6A)".

20 Paragraph 307-125(6)(b)

Omit "within the meaning of section 27A", substitute "within the meaning of paragraph (a) of the definition of that term in subsection 27A(1)".

21 Paragraph 307-125(6)(b)

After “of this section”, insert “, and disregarding paragraphs (b) and (c) of that definition”.

22 Paragraph 307-125(6)(b)

Omit “stream”, substitute “stream, reduced by the tax free components (worked out under subsection (2)) of any benefits paid from the superannuation income stream after 30 June 2007”.

23 Paragraph 307-125(6)(c)

Omit “However, treat this amount as nil for the purposes of this paragraph if at least one superannuation income stream benefit was paid from the superannuation income stream before 1 July 1994.”.

24 After subsection 307-125(6)

Insert:

(6A) Despite subsection (6), if:

(a) at least one superannuation income stream benefit was paid from the superannuation income stream before 1 July 1994; or

(b) section 27AAAA of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007) applied to the superannuation income stream just before 1 July 2007;

for the purposes of paragraph (4)(b), the tax free component is equal to the amount worked out under paragraph (6)(b).

25 After section 307-125

Insert:

307-290 Taxed and untaxed elements of death benefit superannuation lump sums

For the purposes of section 307-290 of the *Income Tax Assessment Act 1997*:

(a) treat a deduction made under former section 279 of the *Income Tax Assessment Act 1936* as having been made under section 295-465 of the *Income Tax Assessment Act 1997* instead; and

(b) treat a deduction made under former section 279B of the *Income Tax Assessment Act 1936* as having been made under section 295-470 of the *Income Tax Assessment Act 1997* instead.

Retirement Savings Accounts Act 1997

26 After section 140

Insert:

140A Holder taken to have quoted where Commissioner gives notice

(1) A holder, or a person applying to become a holder, of an RSA is taken to have quoted his or her tax file number to an RSA provider in connection with the operation or the possible future operation of this Act and the other Superannuation Acts if the Commissioner of Taxation gives to the provider notice of the person's tax file number.

(2) The holder or applicant is taken to have quoted that tax file number at the time when the Commissioner of Taxation gave the notice.

Superannuation Industry (Supervision) Act 1993

27 After section 299S

Insert:

299SA Beneficiary taken to have quoted where Commissioner gives notice

(1) A beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme is taken to have quoted his or her tax file number to a trustee of the entity or scheme in connection with the operation or the possible future operation of this Act and the other Superannuation Acts if the Commissioner of Taxation gives to the trustee notice of the person's tax file number.

(2) The beneficiary or applicant is taken to have quoted that tax file number at the time when the Commissioner of Taxation gave the notice.

Superannuation Legislation Amendment (Simplification) Act 2007

28 Item 12 of Schedule 2

Repeal the item, substitute:

12 Application

(1) The amendments made by items 1 to 9 of this Schedule apply to:

(a) individuals who:

(i) make the choice referred to in subsection 152-305(1) of the *Income Tax Assessment Act 1997*; or

(ii) receive capital proceeds from a CGT event; and

(b) companies or trusts that make a payment referred to in section 152-325 of the *Income Tax Assessment Act 1997*;

after 30 June 2007, regardless of when the relevant CGT event happened.

(2) The amendments made by items 10 and 11 of this Schedule apply to CGT events happening in the 2006-07 income year and later income years.

Taxation Administration Act 1953

29 After subsection 45-325(1)

Insert:

Notional tax if you have no-TFN contributions income

(1A) In working out the ***notional tax*** of a *complying superannuation fund, *non-complying superannuation fund or *RSA provider for the *base year, assume that the entity had no *no-TFN contributions income for the base year and that the entity was not entitled to a *tax offset for the base year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

30 After subsection 45-365(1)

Insert:

Benchmark tax if you have no-TFN contributions income

(1A) In working out the ***benchmark tax*** of a *complying superannuation fund, *non-complying superannuation fund or *RSA provider for the variation year, assume that the entity had no *no-TFN contributions income for the variation year and that the entity was not entitled to a *tax offset for the variation year under Subdivision 295-J of the *Income Tax Assessment Act 1997*.

Part 2—Technical corrections

Income Tax Assessment Act 1997

31 Section 9-1 (table item 9)

Omit "section 94J", substitute "**section 94J**".

32 Section 9-1 (table item 10, column headed "because of this provision:")

Omit "section 121", substitute "**section 121**".

33 Section 9-1 (table item 11)

Omit "sections 98, 99, 99A and 102", substitute "**sections 98, 99, 99A and 102**".

34 Subsection 9-5(1) (table item 5)

Omit "section 23AF or 23AG", substitute "**section 23AF or 23AG**".

35 Subsection 9-5(1) (table item 6)

Omit "sections 98, 99 and 99A", substitute "**sections 98, 99 and 99A**".

36 Subsection 9-5(1) (table item 7)

Omit "section 102K", substitute "**section 102K**".

37 Subsection 9-5(1) (table item 8)

Omit "section 102S", substitute "**section 102S**".

38 Subsection 9-5(1) (table item 9)

Omit "section 121H", substitute "**section 121H**".

39 Subsection 9-5(1) (table item 10)

Omit "section 148", substitute "**section 148**".

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

Omit "**26-85**", substitute "26-85".

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

Omit "**26-80**", substitute "26-80".

42 Section 20-5 (table item 8)

Omit "**290-100**", substitute "290-100".

43 Subsection 295-390(3) (definition of *average value of superannuation liabilities*)

Omit "*superannuation income stream benefits", substitute "*superannuation benefits".

44 Subsection 295-485(3)

Insert:

> ***low tax component rate*** is the rate of tax imposed on the *low tax component of the fund's taxable income for the income year.

45 Subsection 295-485(3) (definition of *low tax component tax rate*)

Repeal the definition.

46 Subsection 995-1(1) (definition of *index number*)

Repeal the definition, substitute:

> ***index number***:
>
> (a) for an amount mentioned in a provision listed at items 8 to 12 in section 960-265—***index number*** has the meaning given by section 960-285; or
>
> (b) for an amount mentioned in a provision listed at another item in section 960-265—***index number*** has the meaning given by section 960-280.

Taxation Administration Act 1953

47 Subsection 16-165(1)

Omit "***payee***", substitute "***payer***".

Part 3—Application

48 Application

(1) The amendments made by this Schedule apply to the 2007-2008 income year and later years.

(2) Despite subitem (1), the amendments made by items 9 to 16, and 19 to 25, of this Schedule apply on and after 1 July 2007.

(3) Despite subitem (1), the amendments made by items 7, 8, 26 and 27 of this Schedule apply to notices given by the Commissioner on or after 1 June 2007.

(4) Despite subitem (1), the amendment made by item 29 of this Schedule applies in relation to an entity's 2007-2008 base year and later base years.

(5) Despite subitem (1), the amendment made by item 30 of this Schedule applies in relation to an entity's 2007-2008 variation year and later variation years.

Schedule 6—Specific listings of deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-55(2) (table item 6.2.23)

Omit “AAP Mawson’s Huts Foundation Limited”, substitute “Mawson’s Huts Foundation Limited”.

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

Add:

13.2.15	Australian Peacekeeping Memorial Project Incorporated	the gift must be made after 29 April 2007 and before 1 January 2009
13.2.16	Social Ventures Australia Limited	the gift must be made after 3 May 2007

3 Subsection 30-315(2) (table item 1A)

Repeal the item.

4 Subsection 30-315(2) (after table item 24A)

Insert:

24B	Australian Peacekeeping Memorial Project Incorporated	item 13.2.15

5 Subsection 30-315(2) (after table item 70)

Insert:

70A	Mawson’s Huts Foundation Limited	item 6.2.23

6 Subsection 30-315(2) (after table item 111A)

Insert:

111AA	Social Ventures Australia Limited	item 13.2.16

Schedule 7—Minor amendments

Part 1—Main amendments

A New Tax System (Australian Business Number) Act 1999

1 Section 41 (subparagraph (e)(ii) of the definition of *government entity*)

Omit "enterprise", substitute "*enterprise".

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

2 Paragraph 38-90(2)(a)

Omit "a *Masters or Doctoral course,".

3 Section 195-1 (paragraph (e) of the definition of *education course*)

Repeal the paragraph.

4 Section 195-1 (definition of *Masters or Doctoral course*)

Repeal the definition.

5 Section 195-1 (after paragraph (a) of the definition of *tertiary course*)

Insert:

(aa) a course of study or instruction accredited at Masters or Doctoral level and supplied by a *higher education institution or a *non-government higher education institution; or

6 Section 195-1 (definition of *tertiary residential college course*)

Repeal the definition, substitute:

tertiary residential college course means a course supplied in connection with a *tertiary course at premises that are used to provide accommodation to students undertaking tertiary courses.

Crimes (Taxation Offences) Act 1980

Note: The headings to sections 5 and 7 are altered by omitting "**old sales tax**" and substituting "**income tax**".

Fringe Benefits Tax Assessment Act 1986

7 Subsection 11(1AA)

Repeal the subsection, substitute:

(1AA) The formula for working out the amount of ***B*** for the person and the car for subsection (1) is:

$$\frac{\text{DV percentage}}{\text{Effective life of the car}}$$

where:

DV percentage is the percentage applicable in using the diminishing value method (within the meaning of the *Income Tax Assessment Act 1997*) as at the start of the year of tax.

effective life of the car is the number of years in the period specified as the effective life of the car in a determination made by the Commissioner under section 40-100 of the *Income Tax Assessment Act 1997* and in effect at the most recent time (before the end of the year of tax) the person became the owner of the car.

8 Application

The amendment made by item 7 applies to the FBT year starting on 1 April 2008 and to all later FBT years.

Income Tax Assessment Act 1936

9 Section 23GA

Repeal the section.

10 Subsection 46A(8AA)

Omit "sections 23A and 23B", substitute "section 23A".

Note: The heading to section 97A is altered by omitting "**income equalization deposits or**".

11 Subsection 128B(3A)

Omit “or to a partnership”, substitute “or a partnership”.

12 Subsections 139E(2) and (4)

Omit “in a form approved by the Commissioner”, substitute “in the approved form”.

13 Paragraphs 139GA(3)(a) to (d)

Repeal the paragraphs, substitute:

(a) a person who pays, or is liable to pay, work and income support related withholding payments and benefits; or

(b) a person who engages another person in foreign service.

14 Application

The amendment made by item 13 applies to assessments for the 2006-07 income year and later income years.

15 Section 202DDA

Repeal the section.

16 Paragraph 202EE(1)(d)

Omit “paragraph 128B(3)(a), (b) or (ga)”, substitute “paragraph 128B(3)(a), (b), (ga) or (jb)”.

17 Application

The amendment made by item 16 applies to income derived in the 2006-07 income year and later income years.

Income Tax Assessment Act 1997

18 Section 11-10 (table item headed “interest”)

Omit “, **23GA**”.

19 Section 11-15 (table item headed “foreign aspects of income taxation”)

Omit:

Defence Force member, non-resident, pay and allowances of 842-105

substitute:

Defence Force member, foreign resident, pay and allowances of	842-105

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

Omit:

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

substitute:

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

21 Paragraphs 15-55(1)(b) and 15-60(4)(b)

Omit “320-15(k)”, substitute “320-15(1)(k)”.

22 Application

The amendments made by item 21 apply to assessments for the income year including 1 January 2003 and later income years.

23 Paragraph 30-60(c)

Omit “Secretary to the Department of the Environment, Sport and Territories”, substitute “*Environment Secretary”.

24 Section 30-255

Omit “Secretary to the Department of the Environment, Sport and Territories”, substitute “*Environment Secretary”.

25 Subsection 30-265(4)

Omit “Minister for Environment, Sport and Territories”, substitute “*Environment Minister”.

26 Subsection 30-270(4)

Omit “Secretary to the Department of the Environment, Sport and Territories”, substitute “*Environment Secretary”.

27 Paragraph 30-275(c)

Omit “Minister for Environment, Sport and Territories”, substitute “*Environment Minister”.

28 Subsection 30-280(1)

Omit “Secretary to the Department of the Environment, Sport and Territories”, substitute “*Environment Secretary”.

29 Subsection 30-280(1)

Omit “Minister for Environment, Sport and Territories”, substitute “*Environment Minister”.

30 Subsection 30-280(4)

Omit “Minister for Environment, Sport and Territories”, substitute “*Environment Minister”.

31 Subsection 30-285(1)

Omit “Minister for Environment, Sport and Territories”, substitute “*Environment Minister”.

32 Subsection 30-285(1)

Omit “Secretary to the Department of the Environment, Sport and Territories”, substitute “*Environment Secretary”.

33 Paragraph 31-5(5)(c)

Omit “Minister for the Environment and Heritage”, substitute “*Environment Minister”.

34 Section 50-70 (heading)

Repeal the heading, substitute:

50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2

35 Subsection 51-57(1)

Omit “a law of the Commonwealth, a State or Territory”, substitute “an *Australian law”.

36 Section 61-560 (note)

Omit “have you”, substitute “you have”.

37 After subparagraph 118-12(2)(a)(i)

Insert:

(ia) section 59-35 (amounts that would be mutual receipts but for prohibition on distributions to members);

38 Application

The amendment made by item 37 applies to assessments for income years commencing on or after 1 July 2000.

39 Paragraph 165-12(7)(b)

Omit "direct or indirect equity interests", substitute "*direct equity interests or *indirect equity interests".

40 Subsection 165-12(8)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

41 Subsection 165-12(9)

Repeal the subsection.

42 Paragraph 165-37(4)(b)

Omit "direct or indirect equity interests", substitute "*direct equity interests or *indirect equity interests".

43 Subsection 165-37(5)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

44 Subsection 165-37(6)

Repeal the subsection.

45 Paragraph 165-115C(4)(b)

Omit "direct or indirect equity interests", substitute "*direct equity interests or *indirect equity interests".

46 Subsection 165-115C(5)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

47 Subsections 165-115C(6) and (7)

Repeal the subsections.

48 Paragraph 165-115GB(2)(a)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

49 Paragraph 165-123(7)(b)

Omit "direct or indirect equity interests", substitute "*direct equity interests or *indirect equity interests".

50 Subsection 165-123(8)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

51 Subsections 165-123(9) and (10)

Repeal the subsections.

52 Paragraph 166-272(8)(b)

Omit "direct or indirect equity interests", substitute "*direct equity interests or *indirect equity interests".

53 Subsection 166-272(8) (note)

Repeal the note.

54 Subsection 166-272(10)

Omit "direct or indirect equity interest", substitute "*direct equity interest or *indirect equity interest".

55 Subsection 166-272(10) (note)

Repeal the note.

56 Subsection 166-272(11)

Repeal the subsection.

57 Paragraph 197-20(b)

Omit "a law of the Commonwealth, or of a State or Territory,", substitute "an *Australian law".

58 Subsection 320-85(1) (note 1)

Omit “320-15(h)”, substitute “320-15(1)(h)”.

59 Subsection 713-545(6) (definition of *ordinary class tax rate*)

Omit “subparagraph 23A(a)(ii)”, substitute “paragraph 23A(a)”.

60 Paragraph 727-95(b)

Omit “direct or indirect equity interests”, substitute “*direct equity interests or *indirect equity interests”.

61 Subsections 820-37(2) and (3)

Omit “*foreign permanent establishments”, substitute “*overseas permanent establishments”.

62 Subsection 820-946(3)

Omit “that time”, substitute “the particular time mentioned in subsection (2) or (2A)”.

63 Subsection 995-1(1)

Insert:

> ***direct equity interests*** in a company are *shares in the company.

64 Subsection 995-1(1)

Insert:

> ***Environment Minister*** means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999*.

65 Subsection 995-1(1) (definition of *GST joint venture*) (the definition inserted by item 59 of Schedule 3 to the *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999*)

Repeal the definition.

66 Subsection 995-1(1)

Insert:

indirect equity interests: an entity has ***indirect equity interests*** in a company if it has *shares or other interests in entities interposed between the entity and the company.

67 Subsection 995-1(1) (paragraph (d) of the definition of *member*)

Omit "person who" (wherever occurring), substitute "entity that".

68 Subsection 995-1(1) (all the definitions of *share*)

Repeal the definitions, substitute:

share:

(a) in a company means a share in the capital of the company, and includes stock; and

(b) of an *exempting credit has the meaning given by section 208-180; and

(c) of a *franked distribution has the meaning given by section 207-55; and

(d) of a *franking credit has the meaning given by section 207-57.

Income Tax (Dividends, Interest and Royalties Withholding Tax) Act 1974

69 Section 3

Repeal the section.

70 Section 4

Omit "*Income Tax Assessment Act 1936-1974*", substitute "*Income Tax Assessment Act 1936*".

71 Paragraph 7(a)

Repeal the paragraph, substitute:

(a) in respect of income to which subsection 128B(4) of the Assessment Act applies—30%; and

72 Section 8

Repeal the section.

Income Tax Rates Act 1986

73 Subsection 3(1) (definition of *AD/RLA component*)

Repeal the definition.

74 Subsection 3(1) (definition of *CS/RA component*)

Repeal the definition.

75 Subsection 3(1) (definition of *EIB component*)

Repeal the definition.

76 Subsection 3(1) (definition of *general fund component*)

Repeal the definition.

77 Subsection 3(1) (definition of *NCS component*)

Repeal the definition.

78 Subsection 3(1) (definition of *registered organisation*)

Repeal the definition.

79 Subsection 3(1) (definition of *RSA category A component*)

Repeal the definition.

80 Subsection 3(1) (definition of *RSA category B component*)

Repeal the definition.

81 Subsection 3(1) (definition of *RSA combined component*)

Repeal the definition.

82 Subsection 3(1) (definition of *RSA component*)

Repeal the definition, substitute:

> ***RSA component*** has the same meaning as in the *Income Tax Assessment Act 1997*.

83 Subsection 3(1) (definition of *standard component*)

Repeal the definition, substitute:

standard component has the same meaning as in the *Income Tax Assessment Act 1997*.

84 Subsection 23(1A)

Omit "sections 23A, 23B and 23C", substitute "section 23A".

85 Paragraphs 23(2)(a) and (b)

Repeal the paragraphs.

86 Paragraphs 23(2)(c), (ca) and (d)

Reletter as paragraphs (a), (b) and (c).

87 Subsections 23(3), (4), (4A) and (4B)

Repeal the subsections.

88 Subsection 23(4BA)

Omit "or a registered organization".

89 Subsections 23(4BA), (4C), (4D), (5) and (6)

Renumber as subsections (3), (4), (5), (6) and (7).

90 Subsection 23(6) (as renumbered)

Omit ", not being a registered organization,".

91 Section 23A

Omit "Subject to sections 23B and 23C, the", substitute "The".

92 Paragraphs 23A(a) and (b)

Repeal the paragraphs, substitute:

(a) in respect of the ordinary class—30%; and

(b) in respect of the complying superannuation class—15%.

93 Sections 23B and 23C

Repeal the sections.

94 Subparagraph 29(2)(c)(iii)

Omit "paragraph 23(4BA)(a)", substitute "paragraph 23(3)(a)".

95 Subparagraph 29(2)(c)(iv)

Omit “paragraph 23(4A)(ba)”, substitute “paragraph 23A(b)”.

96 Application

The amendments made by items 73 to 95 apply to assessments for the 2007-08 income year and later income years.

Income Tax (Transitional Provisions) Act 1997

97 Division 136 (heading)

Repeal the heading, substitute:

Division 136—Foreign residents

Note 1: The heading to section 701C-10 is replaced by the heading “**Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a foreign resident and the subsidiary member is a company**”.

Note 2: The heading to section 701C-15 is replaced by the heading “**Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a foreign resident and the subsidiary member is a trust or partnership**”.

98 The whole of the Act

Omit “*” (wherever occurring).

Taxation Administration Act 1953

99 Section 14ZQ (paragraph (b) of the definition of *delayed administration (trustee) objection*)

Reletter as paragraph (a).

100 Section 14ZQ (paragraphs (c) to (f) of the definition of *delayed administration (trustee) objection*)

Repeal the paragraphs.

101 Section 14ZQ (paragraph (g) of the definition of *delayed administration (trustee) objection*)

Reletter as paragraph (b).

102 Subsection 288-80(4) in Schedule 1 (definition of *applicable withholding tax rate*)

Omit “subparagraph 7(a)(ii)”, substitute “paragraph 7(a)”.

Taxation (Interest on Overpayments and Early Payments) Act 1983

103 Paragraph 9(6)(b)

After “at a later”, insert “time”.

Part 2—Penalty unit conversion

104 Penalty unit conversion

(1) The provisions of the *Fringe Benefits Tax Assessment Act 1986* listed in the table are amended as set out in the table.

Penalty unit conversion

Item	Provision	Omit:	Substitute:
1	Subsection 121(1) (penalty)	$1,000	10 penalty units
2	Subsection 121(2) (penalty)	$1,000	10 penalty units
3	Subsection 121(2B) (penalty)	$1,000	10 penalty units
4	Subsection 122(1) (penalty)	$1,000	10 penalty units
5	Section 135	$500	5 penalty units

(2) The provisions of the *Income Tax Assessment Act 1936* listed in the table are amended as set out in the table.

Penalty unit conversion

Item	Provision	Omit:	Substitute:
1	Section 16 (penalty)	$10,000	100 penalty units
2	Subsection 124ZADA(3) (penalty)	$200	2 penalty units
3	Subsection 124ZADB(1) (penalty)	$200	2 penalty units
4	Subsection 202CD(1) (penalty)	$1,000	10 penalty units
5	Subsection 202CD(4) (penalty)	$1,000	10 penalty units
6	Subsection 202EE(2) (penalty)	$1,000	10 penalty units
7	Subsection 202EF(4) (penalty)	$1,000	10 penalty units
8	Subsection 213(2) (penalty)	$2,000	20 penalty units
9	Section 251A (sub-subparagraph (c)(ii)(A) of the definition of ***serious taxation offence***)	$2,000	20 penalty units
10	Subsection 251KG(1) (penalty)	$500	5 penalty units
11	Subsection 251KH(1) (penalty)	$500	5 penalty units
12	Section 251KJ (penalty)	$500	5 penalty units

Penalty unit conversion			
Item	**Provision**	**Omit:**	**Substitute:**
13	Subsection 251KK(2) (penalty)	$500	5 penalty units
14	Subsections 251N(1), (2) and (2B) (penalty)	$1,000	10 penalty units
15	Subsection 251O(1) (penalty)	$1,000	10 penalty units
16	Subsection 252(3)	$50	1 penalty unit
17	Subsection 252A(1)	$50	1 penalty unit
18	Section 266	$500	5 penalty units

(3) The provisions of the *Taxation Administration Act 1953* listed in the table are amended as set out in the table.

Penalty unit conversion			
Item	**Provision**	**Omit:**	**Substitute:**
1	Subsection 3D(21)	$10,000	100 penalty units
2	Subsection 8E(1)	$2,000	20 penalty units
3	Subsection 8E(2)	$4,000	40 penalty units
4	Subsection 8E(3)	$5,000	50 penalty units
5	Subsection 8H(1)	$5,000	50 penalty units
6	Subsection 8M(1)	$2,000	20 penalty units
7	Subsection 8M(2)	$4,000	40 penalty units
8	Subsection 8R(1)	$3,000	30 penalty units
9	Subsection 8R(2)	$5,000	50 penalty units
10	Subsection 8V(1)	$5,000	50 penalty units
11	Subsection 8V(2)	$10,000	100 penalty units
12	Subsection 8WA(1) (penalty)	$10,000	100 penalty units
13	Subsection 8WB(1) (penalty)	$10,000	100 penalty units
14	Subsection 8WC(1) (penalty)	$10,000	100 penalty units
15	Section 8XA (penalty)	$10,000	100 penalty units
16	Subsection 8XB(1) (penalty)	$10,000	100 penalty units
17	Subsection 13F(4) (penalty)	$1,000	10 penalty units
18	Subsection 14J(3) (penalty)	$1,000	10 penalty units
19	Subsection 14R(1) (penalty)	$5,000	50 penalty units
20	Subsection 14ZA(1) (penalty)	$500	5 penalty units

Schedule 8—Family trusts

Income Tax Assessment Act 1936

1 After paragraph 270-25(1)(d) in Schedule 2F

Insert:

(da) a trust with the same individual specified in its family trust election; or

2 Subsection 272-80(5) in Schedule 2F

Repeal the subsection, substitute:

Election generally cannot be varied or revoked

(5) Subject to subsections (5A), (5B), (5C), (6) and (6A), the election cannot be varied or revoked.

Variation cases

(5A) The trustee of a trust may, in respect of an income year during the period specified in subsection (6B), vary an election so that a different individual (the ***new individual***) is specified for the purposes of subsection (3) as the individual whose family group is to be taken into account in relation to the election if:

(a) the new individual was a member of the family of the individual originally specified in the election at the election commencement time; and

(b) any conferrals of present entitlement to income or capital of:

(i) the trust; and

(ii) an entity for which an interposed entity election has been made in relation to the trust;

during the period in which the election has been in force have been made on the new individual or on persons who would have been members of the new individual's family group at the time of the conferral; and

(c) any distributions of income or capital of:

(i) the trust; and

(ii) an entity for which an interposed entity election has been made in relation to the trust;

during the period in which the election has been in force have been made to the new individual or to persons who would have been members of the new individual's family group at the time of the distribution.

(5B) A variation of an election under subsection (5A) in relation to a trust can only be made once.

(5C) The trustee of a trust may vary an election so that a different individual (the ***new individual***) is specified for the purposes of subsection (3) as the individual whose family group is to be taken into account in relation to the election if:

(a) an order; or

(b) an agreement; or

(c) an award;

of a kind mentioned in paragraphs 126-5(1)(a) to (f) of the *Income Tax Assessment Act 1997* results in the new individual, or a group comprising the new individual and members of the new individual's family, having control of the trust under subsection (5D).

(5D) The new individual, or a group comprising the new individual and members of the new individual's family, have control of the trust for the purposes of subsection (5C) if any of paragraphs 272-87(2)(a) to (g) are satisfied in relation to a group consisting of:

(a) the new individual; or

(b) the new individual and members of the new individual's family.

3 After subsection 272-80(6) in Schedule 2F

Insert:

(6A) The trustee of a trust may, in respect of an income year during the period specified in subsection (6B), revoke the election unless:

(a) the trust, or another entity, has incurred a tax loss and had its assessable income reduced by part or all of the loss in an income year or years during the period:

(i) starting at the beginning of the income year specified in the election; and

(ii) finishing at the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (8));

and the trust, or the other entity, could not have had its assessable income so reduced had the election not been in force; or

(b) the trust, or another entity, has claimed a deduction for bad debts in an income year or years during the period specified in paragraph (a) and the trust, or the other entity, could not have claimed the deduction had the election not been in force; or

(c) a beneficiary of the trust in an income year during the period specified in paragraph (a) received a franked distribution indirectly through the trust and paragraph 207-150(1)(a) of the *Income Tax Assessment Act 1997* would have applied in relation to the distribution had the election not been in force.

Period to vary or revoke the election

(6B) The trustee of a trust cannot vary or revoke the election under subsections (5A) or (6A) unless the variation or revocation is in respect of an income year that occurs during the period:

(a) starting at the beginning of the income year specified in the election and finishing at the end of the fourth income year after the income year specified in the election; or

(b) starting at the beginning of the income year in which Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* commenced and finishing at the end of the subsequent income year.

Note: The heading to subsection 272-80(6) is altered by omitting "*case*" and substituting "*cases*".

4 Subsections 272-80(7), (8) and (9) in Schedule 2F

Repeal the subsections, substitute:

How to vary or revoke the election

(7) To revoke an election under subsection (6), the revocation must be made in the trust's return of income for the income year in which the later time occurs. If the trustee is not required to give a return for the income year, the revocation must:

(a) be in writing and in the approved form; and
(b) specify the later time; and
(c) be given to the Commissioner before the end of:
(i) 2 months after the end of the income year in which the later time occurs; or
(ii) such later day as the Commissioner allows.

(8) To vary or revoke an election under subsection (5A), (5C) or (6A), the variation or revocation must be made in the trust's return of income for the income year from which the variation or revocation is to be effective. If the trustee is not required to give a return for the income year, the variation or revocation must:
(a) be in writing and in the approved form; and
(b) specify the income year from which the variation or revocation is to be effective; and
(c) be given to the Commissioner on or before:
(i) 2 months after the end of that income year; or
(ii) such later day as the Commissioner allows.

When election is in force

(9) The election is in force:
(a) if it is not revoked—at all times after the election commencement time (see subsection (10)); or
(b) if it is revoked under subsection (6)—at all times from the election commencement time until the later time specified in the revocation; or
(c) if it is revoked under subsection (6A)—at all times from the election commencement time until the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (8)).

5 Subsection 272-85(1) in Schedule 2F

Omit "in accordance with subsection 272-80(3)".

6 Subsections 272-85(5) and (6) in Schedule 2F

Repeal the subsections, substitute:

Election generally cannot be revoked

(5) Subject to subsections (5A) and (5B), the election cannot be revoked.

Revocation cases

(5A) A company, the partners in any partnership or the trustee of a trust may, in respect of an income year during the period specified in subsection (5C), revoke the election if at the election commencement time, or at a later time, the entity was, or becomes, a member of the family group (within the meaning of subsection 272-90(3A) or (5)) of the individual specified in the family trust election.

(5B) The election is taken to be revoked if the family trust election to which it relates is revoked.

Period to revoke the election

(5C) A company, the partners in any partnership or the trustee of a trust cannot revoke an election under subsection (5A) unless the revocation is in respect of an income year that occurs during the period:

(a) starting at the later of:

(i) the beginning of the income year specified in the election; and

(ii) the beginning of the income year in which the entity became a member of the family group;

and finishing at the end of the fourth income year after the income year referred to in subparagraph (i) or (ii); or

(b) starting at the beginning of the income year in which Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* commenced and finishing at the end of the subsequent income year.

How revocation is made

(6) A revocation must be made in the entity's return of income for the income year from which the revocation is to be effective. If the entity is not required to give a return for the income year, the revocation must:

(a) be in writing and in the approved form; and

(b) specify the income year from which the revocation is to be effective; and

(c) be given to the Commissioner on or before:

(i) 2 months after the end of that income year; or

(ii) such later day as the Commissioner allows.

When election is in force

(6A) The election is in force:

(a) if it is not revoked—at all times after the election commencement time (see subsection (6B)); or

(b) if it is revoked under subsection (5A)—at all times from the election commencement time to the end of the income year immediately prior to the income year from which the revocation is to be effective (see subsection (6)); or

(c) if the family trust election to which it relates is revoked under subsection 272-80(6)—at all times from the election commencement time until the later time specified in that revocation; or

(d) if the family trust election to which it relates is revoked under subsection 272-80(6A)—at all times from the election commencement time to the end of the income year immediately prior to the income year from which the family trust revocation is to be effective (see subsection 272-80(8)).

Election commencement time

(6B) The ***election commencement time*** is:

(a) if the company, partnership or trust does not pass the family control test at all times in the specified income year—the later of:

(i) the beginning of the specified day; and

(ii) the earliest time from which the company, partnership or trust does pass the family control test for the remainder of the specified income year; or

(b) in any other case—the beginning of the specified day.

7 At the end of section 272-85 in Schedule 2F

Add:

(8) For the purposes of subsection (7) disregard an election that has been revoked under subsection (5A) or (5B).

8 After subsection 272-90(2) in Schedule 2F

Insert:

Certain former family members

(2A) The following persons are members of the primary individual's family group in relation to the conferral or distribution:

(a) a person who was a spouse of either the primary individual or of a member of the primary individual's family before a breakdown in the marriage; and

(b) a person who was a widow or widower (whichever is applicable) of either the primary individual or of a member of the primary individual's family and who is now the spouse of a person who is not a member of the primary individual's family; and

(c) a person who was a step-child of either the primary individual or of a member of the primary individual's family before a breakdown in the marriage of the primary individual or the member of the primary individual's family.

Note: The fact that a person is a member of the family group of an individual under this subsection does not mean that the person is a member of the individual's family under section 272-95.

9 After subsection 272-90(3) in Schedule 2F

Insert:

Trust with same primary individual

(3A) A trust with the same primary individual specified in its family trust election is a member of the primary individual's family group in relation to the conferral or distribution.

10 Section 272-95 in Schedule 2F

Repeal the section, substitute:

272-95 Family

(1) The ***family*** of an individual (the ***test individual***) consists of the test individual and all of the following (if applicable):

(a) any parent, grandparent, brother or sister of the test individual or the test individual's spouse;

(b) any nephew, niece or child of the test individual or the test individual's spouse;

(c) any lineal descendant of a nephew, niece or child referred to in paragraph (b);

(d) the spouse of the test individual or of anyone who is a member of the test individual's family because of paragraphs (a), (b) and (c).

Note: ***Child*** and ***spouse*** are defined in subsection 6(1).

(2) A person does not cease to be a family member merely because of the death of any other family member.

(3) In this section, an adopted child, step-child or ex-nuptial child of a person is taken to be a lineal descendant of that person for the purposes of determining the lineal descendants of that person or any other person.

Note: A person who is no longer a member of an individual's family under this section may still be a member of the individual's family group under subsection 272-90(2A).

11 Section 272-140 in Schedule 2F

Before "In this Schedule", insert "(1)".

12 Section 272-140 in Schedule 2F

Insert:

specified individual in relation to a family trust election has the meaning given by subsection (2).

13 At the end of section 272-140 in Schedule 2F

Add:

(2) A reference in this Schedule to a person specified in a family trust election is a reference to:

(a) if the family trust election has not been varied—the person specified for the purposes of subsection 272-80(3); or

(b) if the family trust election has been varied—the person most recently specified under subsection 272-80(5A) or (5C).

14 Application

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

[*Minister's second reading speech made in—*
House of Representatives on 21 June 2007
Senate on 14 August 2007]

(136/07)