# Tax Laws Amendment (2007 Measures No. 5) Act 2007

# No. 164, 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. 5) Act 2007

**No. 164, 2007**

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

[*Assented to 25 September 2007*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Tax Laws Amendment (2007 Measures No. 5) 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 4 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 2. Schedules 1 to 7 | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 3. Schedule 8 | The later of:<br>(a) the day on which this Act receives the Royal Assent; and<br>(b) the day on which the *Tax Laws Amendment (2007 Measures No. 4) Act 2007* receives the Royal Assent.<br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 25 September 2007 |
| 4. Schedule 9 | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 5. Schedule 10, Parts 1 and 2 | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 6. Schedule 10, Part 3 | 1 July 2010. | 1 July 2010 |
| 7. Schedule 10, Part 4 | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 8. Schedule 11 | The day on which this Act receives the Royal Assent. | 25 September 2007 |
| 9. Schedule 12 | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months | |

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| | beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |

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.

## 4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

(a) the assessment was made before the commencement of this section; and

(b) the amendment is made within 4 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to Schedule 2.

# Schedule 1—Tax preferred entities (asset financing)

## Part 1—Main amendments

### *Income Tax Assessment Act 1997*

#### 1 At the end of Part 3-10

Add:

## Division 250—Assets put to tax preferred use

### Table of Subdivisions

| | |
|---|---|
| | Guide to Division 250 |
| 250-A | Objects |
| 250-B | When this Division applies to you and an asset |
| 250-C | Denial of, or reduction in, capital allowance deductions |
| 250-D | Deemed loan treatment of financial benefits provided for tax preferred use |
| 250-E | Taxation of deemed loan |
| 250-F | Treatment of asset when Division ceases to apply to the asset |
| 250-G | Objections against determinations and decisions by the Commissioner |

## Guide to Division 250

### 250-1 What this Division is about

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are

assessed only to the extent of a notional gain component. This component is worked out on the basis of treating the arrangements under which the asset is put to a tax preferred use, and financial benefits are provided in relation to that tax preferred use, as a loan. Subdivision 250-E then applies to determine the amounts that are to be assessed.

## Subdivision 250-A—Objects

### Table of sections

250-5 Main objects

### 250-5 Main objects

The main objects of this Division are:

(a) to deny or reduce your *capital allowance deductions in respect of an asset if the asset is put to a *tax preferred use and you have insufficient economic interest in the asset; and

(b) if your capital allowance deductions are denied or reduced, to treat the *arrangement for the tax preferred use of the asset as a loan that is taxed as a financial arrangement (on a compounding accruals basis).

## Subdivision 250-B—When this Division applies to you and an asset

### Table of sections

**Overall test**

250-10 When this Division applies to you and an asset
250-15 General test
250-20 First exclusion—small business entities
250-25 Second exclusion—financial benefits under minimum value limit
250-30 Third exclusion—certain short term or low value arrangements
250-35 Exceptions to section 250-30
250-40 Fourth exclusion—sum of present values of financial benefits less that amount otherwise assessable
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**Tax preferred use of asset**

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250-55 ***Tax preferred end user***
250-60 ***Tax preferred use*** of an asset
250-65 ***Arrangement period*** for tax preferred use
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250-75 What constitutes a separate asset for the purposes of this Division
250-80 Treatment of particular arrangements in the same way as leases

**Financial benefits in relation to tax preferred use**

250-85 Financial benefits in relation to tax preferred use of an asset
250-90 Financial benefit provided directly or indirectly
250-95 Expected financial benefits in relation to an asset put to tax preferred use
250-100 Present value of financial benefit that has already been provided

**Discount rate to be used in working out present values**

250-105 Discount rate to be used in working out present values

**Predominant economic interest**

250-110 Predominant economic interest
250-115 Limited recourse debt test
250-120 Right to acquire asset test
250-125 Effectively non-cancellable, long term arrangement test
250-130 Meaning of ***effectively non-cancellable*** arrangement
250-135 Level of expected financial benefits test
250-140 When to retest predominant economic interest under section 250-135

## Overall test

### 250-10 When this Division applies to you and an asset

This Division applies to you and an asset at a particular time if:

(a) the general test in section 250-15 is satisfied in relation to you and the asset; and

(b) none of the exclusions in sections 250-20, 250-25, 250-30, 250-40 and 250-45 apply.

### 250-15 General test

This Division applies to you and an asset at a particular time if:

(a) the asset is being *put to a tax preferred use; and

(b) the *arrangement period for the *tax preferred use of the asset is greater than 12 months; and

(c) *financial benefits in relation to the tax preferred use of the asset have been, will be or can reasonably be expected to be, *provided to you (or a *connected entity) by:

(i) a *tax preferred end user (or a connected entity); or

(ii) any *tax preferred entity (or a connected entity); or

(iii) any entity that is not an Australian resident; and

(d) disregarding this Division, you would be entitled to a *capital allowance in relation to:

(i) a decline in the value of the asset; or

(ii) expenditure in relation to the asset; and

(e) you lack a *predominant economic interest in the asset at that time.

## 250-20 First exclusion—small business entities

This Division does not apply to you and an asset if:

(a) you are a *small business entity for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and

(b) you choose to deduct amounts under Subdivision 328-D for the asset for that income year.

## 250-25 Second exclusion—financial benefits under minimum value limit

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, at the start of the *arrangement period, the total of the nominal values of all the *financial benefits that have been, or will be or can reasonably be expected to be, provided to you (or a *connected entity):

(a) by *members of the tax preferred sector; and

(b) in relation to the *tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;

does not exceed $5 million.

(2) The amount referred to in subsection (1) is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

## 250-30 Third exclusion—certain short term or low value arrangements

*Certain short term or low value arrangements generally excluded*

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if:

(a) the *arrangement period for the *tax preferred use of the asset does not exceed:

(i) 5 years if the asset is real property and the tax preferred use of the asset is a lease; or

(ii) 3 years in any other case; or

(b) at the start of the arrangement period, the total of the nominal values of all the *financial benefits that have been, will be or can reasonably be expected to be, provided to you (or a *connected entity):

(i) by *members of the tax preferred sector; and

(ii) in relation to the tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;

does not exceed:

(iii) $50 million if the asset is real property and the tax preferred use of the asset is a lease; or

(iv) $30 million in any other case; or

(c) at the start of the arrangement period, the total of the values of all the assets that are put to a tax preferred use under the arrangement does not exceed:

(i) $40 million if the asset is real property and the tax preferred use of the asset is a lease; or

(ii) $20 million in any other case.

This subsection has effect subject to section 250-35.

(2) The amounts referred to in paragraphs (1)(b) and (c) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

## 250-35 Exceptions to section 250-30

*Debt interests*

(1) Section 250-30 does not apply if the *arrangement (either alone or together with any arrangement in relation to the *tax preferred use of the asset or the provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest.

(2) In applying subsection (1), disregard subsection 974-130(4).

*Member of tax preferred sector having certain rights in relation to the asset*

(3) Section 250-30 does not apply if:
   (a) a *member of the tax preferred sector has:
      (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
      (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; or
      (iii) a residual or reversionary interest in the asset that will arise or become exercisable at or after the end of the *arrangement period; and
   (b) the consideration for the purchase, acquisition or transfer of the right, obligation or interest is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

   To avoid doubt, this subsection does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

*Member of tax preferred sector providing financing*

(4) Section 250-30 does not apply if a *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

*Finance leases, non-cancellable operating leases, service concessions and similar arrangements*

(5) Section 250-30 does not apply if an *arrangement in relation to the *tax preferred use of the asset, or the provision of *financial benefits in relation to the tax preferred use of the asset, is or involves:

(a) a finance lease; or

(b) a non-cancellable operating lease; or

(c) a service concession or similar arrangement;

that generally accepted accounting principles, as in force at the start of the *arrangement period, require to be included as an asset or a liability in your balance sheet.

*Financial benefits irregular, not based on comparable market-based rates or not reflecting value of tax preferred use of asset*

(6) Section 250-30 does not apply if the *financial benefits that have been, or are to be provided, to you (or a *connected entity) by *members of the tax preferred sector in relation to the *tax preferred use of the asset:

(a) are not provided on a regular periodic basis (and at least annually); or

(b) are not based on comparable market-based rates; or

(c) do not reflect the value of the tax preferred use of the asset.

*Special rules if tax preferred use is a lease or hire of the asset*

(7) If the *tax preferred use of the asset is a lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:

(a) the asset is so specialised that the *end user could not carry out one or more of its functions effectively without the asset; and

(b) you would be unlikely to be able to re-lease, re-hire or resell the asset to another person who is not a *member of the tax preferred end user group.

Note: For particular arrangements that are treated as leases, see section 250-80.

*Special rules if tax preferred use is not a lease or hire of the asset*

(8) If the *tax preferred use of the asset is not the lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:

(a) a *member of the tax preferred sector has a right, if particular circumstances occur, to manage, or to assume control over, the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); or

(b) the asset is so specialised that it is unlikely that it could effectively be put to any use other than the tax preferred use; or

(c) neither you (nor a *connected entity) has effective day to day control and physical possession of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

## 250-40 Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, when that *tax preferred use of the asset starts, the Division 250 assessable amount is less than the alternative assessable amount.

(2) For the purposes of subsection (1), the ***Division 250 assessable amount*** is the sum of the present values of all the amounts that would be likely to be included in your assessable income under this Division in relation to the *tax preferred use of the asset if this Division applied to you and the asset.

(3) This is how to work out the ***alternative assessable amount*** for the purposes of subsection (1):

*Method statement*

*Step 1*. Add up the present values of the amounts that would be included in your assessable income in relation to the *financial benefits *provided in relation to the tax preferred use of the asset during the *arrangement period if this Division did not apply to you and the asset.

| | |
|---|---|
| *Step 2.* | Add up the present values of the amounts that you would be able to deduct in relation to the asset, or expenditure in relation to the asset, under Division 40 or Division 43 in relation to the *arrangement period if this Division did not apply to you and the asset. |
| *Step 3.* | Deduct the amount obtained in Step 2 from the amount obtained in Step 1. The result is the ***alternative assessable amount***. |

(4) To avoid doubt, the amounts referred to in subsections (2) and (3) are all the amounts that would be likely to be included in your assessable income, or deducted, for all the income years during the whole, or a part, of which the asset is *put to the tax preferred use.

(5) The point in time to be used in determining, for the purposes of this section:

(a) the present value of an amount that is included in your assessable income for an income year; or

(b) the present value of an amount that you would be able to deduct for an income year;

is the end of the income year.

## 250-45 Fifth exclusion—Commissioner determination

This Division does not apply to you and an asset at a particular time if:

(a) you request the Commissioner to make a determination under this subsection; and

(b) the Commissioner determines that it is unreasonable that the Division should apply to you and the asset at that time, having regard to:

(i) the circumstances because of which this Division would apply to you and the asset; and

(ii) any other relevant circumstances.

## Tax preferred use of asset

### 250-50 *End user* of an asset

(1) An entity (other than you) is an ***end user*** of an asset if the entity (or a *connected entity):
  (a) uses, or effectively controls the use of, the asset; or
  (b) will use, or effectively control the use of, the asset; or
  (c) is able to use, or effectively control the use of, the asset; or
  (d) will be able to use, or effectively control the use of, the asset.

(2) The control referred to in subsection (1) may be direct or indirect.

(3) For the purposes of subsection (1), disregard any temporary control of the asset that is for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service.

(4) To avoid doubt, an entity is taken to be an ***end user*** of an asset if the entity (or a *connected entity) holds rights as a lessee under a lease of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

### 250-55 *Tax preferred end user*

An *end user of an asset is a ***tax preferred end user*** if:
  (a) the end user (or a *connected entity) is a *tax preferred entity; or
  (b) the end user is an entity that is not an Australian resident.

### 250-60 *Tax preferred use* of an asset

(1) An asset is ***put to a tax preferred use*** at a particular time if:
  (a) an *end user (or a *connected entity) holds, at that time, rights as lessee under a lease of the asset; and
  (b) either or both of the following subparagraphs is satisfied at that time:
    (i) the asset is, or is to be, used by or on behalf of an end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity);

(ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (non-resident).

If this subsection applies, the ***tax preferred use*** of the asset is the lease referred to in paragraph (a).

Note: For particular arrangements that are treated as leases, see section 250-80.

(2) An asset is also ***put to a tax preferred use*** at a particular time if:

(a) at that time the asset is, or is to be, used (whether or not by you) wholly or partly in connection with:

(i) the production, supply, carriage, transmission or delivery of goods; or

(ii) the provision of services or facilities; and

(b) either or both of the following subparagraphs is satisfied at that time:

(i) some or all of the goods, services or facilities are, or are to be, produced for or supplied, carried, transmitted or delivered to or for an *end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity) but is not an *exempt foreign government agency;

(ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (non-resident).

If this subsection applies, the ***tax preferred use*** of the asset is the production, supply, carriage, transmission, delivery or provision referred to in paragraph (a).

(3) To avoid doubt, the ***facilities*** referred to in subsection (2) include:

(a) hospital or medical facilities; or

(b) prison facilities; or

(c) educational facilities; or

(d) *land transport facilities; or

(e) other transport facilities; or

(f) the supply of water, gas or electricity; or

(g) housing or accommodation; or

(h) premises from which to operate a *business or other undertaking.

(4) If the asset is being *put to a tax preferred use:

(a) the ***members of the tax preferred end user group*** are:

(i) the *tax preferred end user; and

(ii) the *connected entities of the tax preferred end user; and

(b) the ***members of the tax preferred sector*** are:

(i) the tax preferred end user (and connected entities); and

(ii) any *tax preferred entity (or a connected entity); and

(iii) any entity that is not an Australian resident.

## 250-65 *Arrangement period* for tax preferred use

*Start of the arrangement period*

(1) The ***arrangement period*** for a particular *tax preferred use of an asset starts when that tax preferred use of the asset starts.

*End of the arrangement period*

(2) Subject to subsection (3), the ***arrangement period*** for a particular *tax preferred use of an asset is taken to end on the day that is the date on which the tax preferred use of the asset may reasonably be expected, or is likely, to end.

(3) The ***arrangement period*** for the *tax preferred use of the asset ends when this Division ceases to apply to you and the asset if that happens before the day referred to in subsection (2).

(4) In determining when a particular *tax preferred use of an asset is likely to end:

(a) regard must be had to:

(i) the terms of, and any other circumstances relating to, any *arrangement dealing with that tax preferred use of the asset; and

(ii) the terms of, and any other circumstances relating to, any arrangement dealing with the *provision of *financial benefits in relation to that tax preferred use of the asset; and

(b) it must be assumed that any right that an entity has to renew or extend such an arrangement will not be exercised (unless it is reasonable to assume that the right will be exercised because of the commercial consequences for the entity (or a *connected entity) of not exercising the right).

*Tax preferred uses of asset by entity and connected entity*

(5) For the purposes of this section:

(a) the *tax preferred use of an asset by an entity; and

(b) the tax preferred use of the asset by a *connected entity of that entity;

are taken to constitute a single tax preferred use of the asset.

## 250-70 New tax preferred use at end of arrangement period if tax preferred use continues

If:

(a) this Division applies to you and an asset because the asset is *put to a tax preferred use; and

(b) the *arrangement period for the *tax preferred use of the asset ends on a particular date (the ***termination date***); and

(c) the asset continues to be put to the tax preferred use after the termination date;

the tax preferred use of the asset after the termination date is taken to be a separate and distinct tax preferred use of the asset from the tax preferred use of the asset before the termination date.

Note: This means, among other things, that there is a new arrangement period for the tax preferred use after the termination date and that the arrangement is retested under section 250-15 against circumstances as they stand immediately after the termination date.

## 250-75 What constitutes a separate asset for the purposes of this Division

(1) This Division applies to:

(a) an improvement to land; or

(b) a fixture on land;

whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

(2) Whether a particular composite item is itself an asset or whether its components are separate assets is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is an asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate assets.

(3) This Division applies to a renewal or extension of an asset that is a right as if the renewal or extension were a continuation of the original right.

(4) This Division applies to an asset (the ***underlying asset***) in which:

(a) you have an interest; and

(b) one or more other entities also have an interest;

as if your interest in the underlying asset were itself the underlying asset.

## 250-80 Treatment of particular arrangements in the same way as leases

This Division applies to an *arrangement that:

(a) in substance or effect, depends on the use of a specific asset that is:

(i) real property; or

(ii) goods or a personal chattel (other than money or a money equivalent); and

(b) gives a right to control the use of the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); and

(c) is not a lease;

in the same way as it applies to a lease.

Note: Even if this section applies to treat an arrangement in relation to an asset as a lease, the requirements in section 250-50 still need to be satisfied before an entity can be an end user of the asset.

## Financial benefits in relation to tax preferred use

### 250-85 Financial benefits in relation to tax preferred use of an asset

(1) For the purposes of this Division, the *financial benefits ***provided in relation to a tax preferred use of an asset*** include (but are not limited to):

(a) a financial benefit provided in relation to:

(i) bringing the asset into a state, condition or location in which it can be *put to the tax preferred use; or

(ii) the start of the *tax preferred use of the asset; and

(b) a financial benefit provided in relation to the end of the tax preferred use of the asset; and

(c) a financial benefit provided in relation to the termination or expiration of an *arrangement that deals with:

(i) the tax preferred use of the asset; or

(ii) the provision of financial benefits in relation to the tax preferred use of the asset; and

(d) a financial benefit provided in relation to the purchase or acquisition of the asset by, or transfer of the asset to, the *tax preferred end user (or a *connected entity).

(2) Without limiting paragraph (1)(b), if the asset has a *guaranteed residual value:

(a) the amount of the guaranteed residual value is taken to be a *financial benefit ***provided in relation to the tax preferred use of the asset***; and

(b) that financial benefit is taken to be provided when the relevant payment is made in relation to the guaranteed residual value.

(3) The asset has a ***guaranteed residual value*** if there is an *arrangement that provides to the effect that if:

(a) on or after the end of the *arrangement period, you (or a *connected entity) sell or otherwise dispose of the asset to any person; and

(b) you (or a connected entity) receives in respect of the sale or disposal:

(i) no consideration; or

(ii) consideration that is less than an amount (the ***guaranteed amount***) specified in, or ascertainable under, the provision;

a *member of the tax preferred sector will pay to you (or a connected entity), or to someone else for your benefit (or for the benefit of a connected entity), an amount equal to:

(c) the guaranteed amount if subparagraph (b)(i) applies; or

(d) the amount by which the guaranteed amount exceeds the consideration if subparagraph (b)(ii) applies.

The amount of the guaranteed residual value is taken to be the guaranteed amount.

(4) If:

(a) an asset is *put to a tax preferred use; and

(b) an entity is an *end user of the asset because the entity manages the asset or the use to which the asset is put;

any *financial benefit that the entity (or a *connected entity) provides that is calculated by reference to the receipts, revenue or income generated by the use of the asset is also taken to be a financial benefit ***provided in relation to the tax preferred use of the asset***.

(5) For the purposes of this Division (other than this subsection), a *financial benefit provided by a *member of the tax preferred sector is taken not to be ***provided in relation to the tax preferred use of an asset*** to the extent to which the financial benefit merely passes on, or represents:

(a) financial benefits provided in relation to the use of the asset; or

(b) something derived from the use of the asset;

by someone who is not a member of the tax preferred sector.

(6) For the purposes of this Division, disregard a *financial benefit *provided in relation to the tax preferred use of the asset to the extent to which it consists solely of routine maintenance of the asset.

(7) For the purposes of this Division, if a *financial benefit is provided in relation to the use of a number of assets, a separate financial benefit of an amount or value that is reasonably attributable to each asset is taken to be provided in relation to each asset.

(8) To avoid doubt, a *financial benefit may be ***provided in relation to a tax preferred use of an asset*** even though it is provided before the *tax preferred use of the asset starts.

(9) For the purposes of this Division:
  (a) a *financial benefit that is not an amount:
    (i) is taken to become due and payable when the entity providing the financial benefit becomes liable to provide the financial benefit; and
    (ii) is taken to be paid when it is provided; and
  (b) a financial benefit that is paid without becoming due and payable is taken to have become due and payable on the day on which it was paid.

## 250-90 Financial benefit provided directly or indirectly

For the purposes of this Division, a person (the ***provider***) is taken to provide a *financial benefit to a person (the ***recipient***) in relation to a *tax preferred use of an asset whether the financial benefit is provided to the recipient:
  (a) directly; or
  (b) indirectly (including indirectly through an entity that is not a *connected entity of the recipient and is not a connected entity of the provider).

## 250-95 Expected financial benefits in relation to an asset put to tax preferred use

For the purposes this Division, the ***expected financial benefits*** at a particular time in relation to an asset that is *put to a tax preferred use are the *financial benefits that, at that time:
  (a) have been; or
  (b) will, assuming normal operating conditions, be; or
  (c) can, assuming normal operating conditions, reasonably be expected to be;

*provided in relation to the tax preferred use of the asset by a *member of the tax preferred sector to someone who is not a member of the tax preferred sector.

Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits provided in relation to the end of the tax preferred use of the asset or in relation to the purchase, disposal or transfer of the asset to be

treated as financial benefits provided in relation to the tax preferred use of the asset.

### 250-100 Present value of financial benefit that has already been provided

For the purposes of this Division, the ***present value*** of a *financial benefit at a particular time is the nominal amount or value of the financial benefit if the financial benefit has been provided before that time.

## Discount rate to be used in working out present values

### 250-105 Discount rate to be used in working out present values

(1) For the purposes of section 250-40, the discount rate to be used in working out the present value of a future amount is:

(a) the average, expressed as a decimal fraction, of the assessed secondary market yields in respect of 10-year non-rebate Treasury bonds published by the Reserve Bank during the *financial year in which the relevant *arrangement period starts; or

(b) if no assessed secondary market yield in respect of bonds of that kind was published by the Reserve Bank during the year—the decimal fraction determined by the Treasurer for the purposes of the definition of long-term bond rate in section 2 of the *Petroleum Resource Rent Tax Assessment Act 1987* in relation to the financial year in which the relevant arrangement period starts.

(2) For the purposes of section 250-135 and Subdivisions 250-C and 250-D, the discount rate to be used in working out the present value of a future amount is a rate that reflects a constant periodic rate of return (worked out on a compounding basis) on the investment in:

(a) the asset referred to in subparagraph 250-15(d)(i) if that subparagraph applies; or

(b) the expenditure referred to in paragraph 250-15(d)(ii) if that subparagraph applies;

that is implicit in the *arrangements under which the asset is *put to a tax preferred use and *financial benefits are *provided in relation to that tax preferred use.

## Predominant economic interest

### 250-110 Predominant economic interest

You lack a ***predominant economic interest*** in an asset at a particular time only if one or more of the following sections apply to you and the asset at that time:

(a) section 250-115 (limited recourse debt test);

(b) section 250-120 (right to acquire asset test);

(c) section 250-125 (effectively non-cancellable, long term arrangement test);

(d) section 250-135 (level of expected financial benefits test).

### 250-115 Limited recourse debt test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if more than the allowable percentage of the cost of your acquiring or constructing the asset is financed (directly or indirectly) by a *limited recourse debt or debts.

(2) For the purposes of subsection (1):

(a) the amount of a *limited recourse debt is to be reduced by the value of any * debt property (other than the *financed property) that is provided as security for the debt; and

(b) if the limited recourse debt finances the acquisition or construction of 2 or more assets, only the amount of the debt that is reasonably attributable to the asset referred to in subsection (1) is to be taken into account.

(3) For the purposes of subsection (1), the allowable percentage is:

(a) 80% if the asset is taken to be *put to a tax preferred use because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use by *tax preferred entities); or

(b) 55% if the asset is taken to be put to a tax preferred use because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end use by non-residents).

(4) This section does not apply to the asset if:

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

(b) the *tax preferred use of the asset is not the lease or hire of the asset (and is not the use of the asset under a lease or hire arrangement); and

(c) the asset is *put to the tax preferred use wholly or principally in Australia; and

(d) no *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

(5) Paragraph (4)(b) does not apply if:

(a) the asset is real property (or an interest in real property); and

(b) the *tax preferred use of the asset is a lease; and

(c) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants.

(6) This section also does not apply to the asset if:

(a) you hold the asset as a trustee; and

(b) the asset is real property (or an interest in real property); and

(c) the *tax preferred use of the asset is a lease; and

(d) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants; and

(e) the asset is *put to the tax preferred use wholly or principally in Australia; and

(f) no member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

## 250-120 Right to acquire asset test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) the asset is to be transferred to a *member of the tax preferred sector after the end of the *arrangement period; and

(b) the consideration for the transfer is not fixed as the *market value of the asset at the time of the transfer.

(2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) a *member of the tax preferred end user group has, or will have:

(i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or

(ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; and

(b) the consideration for the purchase, acquisition or transfer is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this section does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

## 250-125 Effectively non-cancellable, long term arrangement test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if:

(a) any *arrangement that relates to:

(i) the *tax preferred use of the asset; or

(ii) the *financial benefits to be *provided by the *members of the tax preferred sector in relation to the tax preferred use of the asset;

is *effectively non-cancellable (see section 250-130); and

(b) the *arrangement period for the tax preferred use of the asset is:

(i) greater than 30 years; or

(ii) if the arrangement period is less than or equal to 30 years—75% or more of that part of the asset's *effective life that remains when the tax preferred use of the asset starts.

(2) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (1)(b)(ii).

## 250-130 Meaning of *effectively non-cancellable* arrangement

(1) An *arrangement that relates to *financial benefits to be *provided by a *member of the tax preferred sector in relation to the tax preferred use of an asset is ***effectively non-cancellable*** if:

(a) the arrangement can be cancelled only with:

(i) your permission; or

(ii) the permission of a *connected entity of yours; or

(iii) an agent or entity acting on your behalf (or on behalf of a connected entity of yours); or

(b) the arrangement can be cancelled without the permission of an entity referred to in paragraph (a) but, if the arrangement were cancelled, the member of the tax preferred sector or another member of the tax preferred sector:

(i) would be required to enter into a new arrangement for the *provision of financial benefits in relation to the tax preferred use of the asset; or

(ii) would incur a penalty and the magnitude of the penalty would be such as to discourage cancellation.

(2) For these purposes, if a *member of the tax preferred sector defaults under an *arrangement and the arrangement is cancelled, the arrangement is to be taken to have been cancelled without the permission of an entity referred to in paragraph (1)(a).

## 250-135 Level of expected financial benefits test

*Effective guarantee or indemnity for value of asset*

(1) You lack a ***predominant economic interest*** in an asset at a particular time if the asset has a *guaranteed residual value at that time.

*Likely financial benefits exceeding 70% limit*

(2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) the *arrangement under which the asset is *put to the tax preferred use (either alone or together with any other arrangement in relation to the *tax preferred use of the asset or the *provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest; or

(b) the sum of the present values of the *expected financial benefits that *members of the tax preferred sector have provided, or are or are reasonably likely to provide, to you (or a *connected entity) in relation to the tax preferred use of the asset exceeds 70% of:

(i) the *market value of the asset if subparagraph 250-15(d)(i) applies; or

(ii) so much of the market value of the asset as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

## 250-140 When to retest predominant economic interest under section 250-135

*Purpose for applying section*

(1) This section applies for the purposes of working out whether this Division applies to you and to an asset that is *put to a tax preferred use.

*No need to keep retesting if section 250-135 does not apply at start of tax preferred use of asset*

(2) If section 250-135 does not apply to you and the asset at the time when the *tax preferred use of the asset starts, that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if section 250-135 does not apply to the arrangement when the tax preferred use of the asset starts, the arrangement does not need to be retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*No need to keep retesting if section 250-135 does not apply when you do something to increase value of expected financial benefits*

(3) If:

(a) you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, at a particular time that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset; and

(b) section 250-135 does not apply to the asset at that time;

that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if the arrangement is retested against section 250-135 at a particular time and section 250-135 does not apply to the arrangement on that retesting, the arrangement does not need to be again retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*Retesting when you do something to increase the value of expected financial benefits*

(4) Subsection (2) or (3) ceases to apply to you and the asset if you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset.

*Certain financial benefits ignored when retesting*

(5) For the purposes of reapplying section 250-135 to the asset, disregard *financial benefits provided before subsection (2) or (3) of this section ceased to apply to the asset.

Note: If:

(a) subsection (2) or (3) ceases to apply to the asset at a particular time under this subsection; and

(b) the asset is retested at that time against section 250-135; and

(c) on the retesting, that section is found to apply to the asset at that time;

subsection (3) will start to apply to the asset again from that time because paragraph (3)(b) will have been satisfied.

*Clarification that retesting only required if you do something to increase value of expected benefits*

(6) To avoid doubt, subsection (2) or (3) does not cease to apply merely because the value of the *expected financial benefits in

relation to the asset increase because of something other than action taken, or an omission made, by you (or a *connected entity) or a *member of the tax preferred sector.

Note: This subsection means that retesting under subsection (4) is not triggered by an increase in the value of expected financial benefits that happens because of external circumstances (circumstances external to activities and omissions of yours, your connected entities and members of the tax preferred sector).

## Subdivision 250-C—Denial of, or reduction in, capital allowance deductions

### Table of sections

250-145 Denial of capital allowance deductions
250-150 Apportionment rule

### 250-145 Denial of capital allowance deductions

(1) If this Division applies to you and an asset at a particular time, any condition that needs to be satisfied for you to be able to deduct an amount under a *capital allowance provision in relation to:
  (a) a decline in the value of the asset; or
  (b) expenditure in relation to the asset;
  is taken not to be satisfied at that time.

(2) This section has effect subject to section 250-150.

### 250-150 Apportionment rule

(1) This section applies if:
  (a) this Division applies to you and an asset that is *put to a tax preferred use; and
  (b) it is reasonable to expect that, during the *arrangement period for the *tax preferred use of the asset, particular *financial benefits will be provided to you (or a *connected entity); and
  (c) it is reasonable to expect that those financial benefits:
    (i) will be provided in relation to a use of the asset that is not that tax preferred use and is not a private use; or
    (ii) will be *provided in relation to that tax preferred use of the asset but will not be attributable, directly or

indirectly, to financial benefits that are provided by *members of the tax preferred sector; and

(d) the amount or value of those financial benefits is known or can reasonably be estimated; and

(e) you choose to have this section apply to the asset.

In applying paragraph (c), disregard financial benefits that are provided under an *arrangement that is a *debt interest.

(2) A choice under paragraph (1)(e) in relation to an asset:

(a) must be made before the due date for you to lodge your *income tax return for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and

(b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and

(c) must extend to all assets that are, or are to be, *put to a tax preferred use under the *arrangement under which the asset is put to that use; and

(d) is irrevocable.

The choice may extend to an asset referred to in paragraph (c) even if it is likely that paragraphs (1)(b) and (c) will not apply to that asset.

(3) If this section applies, section 250-145 applies to you and the asset only to the extent of the *disallowed capital allowance percentage.

(4) Subject to subsection (6), the ***disallowed capital allowance percentage*** is the following ratio (expressed as a percentage):

$$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$

(5) The Commissioner may, before the due date for you to lodge your *income tax return for the income year to which the *arrangement period for the *tax preferred use of the asset starts, approve an alternative method for working out the *disallowed capital allowance percentage for you and the asset.

(6) If the Commissioner approves an alternative method under subsection (5), the ***disallowed capital allowance percentage*** is the percentage worked out in accordance with that alternative method.

## Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use

### Table of sections

250-155 Arrangement treated as loan
250-160 Financial benefits that are ***subject to deemed loan treatment***
250-165 ***Financial arrangement***
250-170 Financial arrangement (equity interest or right or obligation in relation to equity interest)
250-175 Rights, obligations and arrangements (grouping and disaggregation rules)
250-180 ***End value*** of asset
250-185 Financial benefits subject to deemed loan treatment not assessed

### 250-155 Arrangement treated as loan

*Loan with characteristics provided for in this section taken to exist*

(1) If this Division applies to you and an asset at a particular time in an income year, a *financial arrangement in the form of a loan (with the characteristics provided for in this section) is taken to exist at that time for the purposes of working out your taxable income for that income year.

Note: See Subdivision 250-E for the taxation treatment of the financial arrangement.

*Lender*

(2) You are taken to be the lender in relation to the loan.

*Amount lent and unpaid at the start of the arrangement period*

(3) The amount worked out under subsection (4) is taken to be the amount that you have lent, and that the borrower has not repaid, at the start of the *arrangement period.

(4) The amount is worked out by taking:
  (a) the amount that, at the start of the *arrangement period, is:
    (i) the *adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
    (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies; or

(b) if section 250-150 applies—the amount that, at the start of the arrangement period, is the *disallowed capital allowance percentage of:

(i) the adjustable value of the asset if subparagraph 250-15(d)(i) applies; or

(ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies;

and deducting the sum of all *financial benefits that are *subject to deemed loan treatment and that have become due and payable before the start of the arrangement period.

(5) If subparagraph 250-15(d)(ii) applies, the amount worked out under this subsection for the purposes of subsection (4) is:

| Item | If the expenditure referred to in that subparagraph is ... | the amount is ... |
|---|---|---|
| 1 | capital expenditure under Division 40 | the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40 |
| 2 | capital expenditure under Division 43 | the *undeducted construction expenditure in relation to the capital expenditure |

*Amounts paid to you by borrower under the loan*

(6) Any *financial benefit that:

(a) a person provides; and

(b) is *subject to deemed loan treatment;

is taken to be an amount that the borrower pays you under the loan.

Note 1: Section 250-160 tells you which financial benefits are subject to the deemed loan treatment.

Note 2: These benefits may be ones that are provided either to you or to a connected entity.

*Period of the loan*

(7) The *arrangement period is taken to be the period of the loan.

*Applying Subdivision 250-E to the loan*

(8) For the purposes of applying Subdivision 250-E to the loan:

(a) you are taken to have an overall gain from the loan and that overall gain is taken to be sufficiently certain at the time when you start to have the loan; and

(b) the amount of that overall gain is taken to be the sum of the *financial benefits that are *subject to the deemed loan treatment less the amount worked out under subsection (4); and

(c) you are taken:

(i) to start to have the loan at the start of the *arrangement period; and

(ii) to cease to have the loan at the end of the arrangement period; and

(d) any right that you (or a connected entity) have to a financial benefit that is subject to deemed loan treatment is taken to be a right that you have under the loan; and

(e) if a *connected entity transfers to another person a right to a financial benefit subject to deemed loan treatment:

(i) you are taken to transfer the right to that other person; and

(ii) any consideration that the connected entity receives in relation to the transfer is taken to be consideration that you receive in relation to the transfer; and

(f) if a right that a connected entity has to a financial benefit subject to deemed loan treatment ceases and the connected entity receives consideration in relation to that cessation—you are taken to receive that consideration in relation to the cessation; and

(g) you are taken to start to have the loan, or to cease to have the loan, as consideration for something if you start to have the rights to the financial benefits that are subject to deemed loan treatment, or cease to have those rights, as consideration for that thing; and

(h) in applying sections 250-265 to 250-275:

(i) the amount that you are taken, under subsections (3), (4) and (5), to have lent are the only financial benefits that you provide under the loan; and

(ii) the financial benefits you have received under the loan are taken to include financial benefits that are subject to deemed loan treatment that a person is, at the end of the arrangement period, liable to provide to you.

(9) If, under subsection 250-160(2), a particular percentage of a reasonable estimate of the *end value of the asset was taken to be a *financial benefit that is *subject to the deemed loan treatment, subsection 250-275(1) applies to the loan at the end of the *arrangement period as if you had received under the loan a financial benefit equal to the relevant percentage of the end value of the asset.

## 250-160 Financial benefits that are *subject to deemed loan treatment*

*General rule*

(1) Subject to subsections (3) and (4), a *financial benefit is ***subject to deemed loan treatment*** if:

(a) the financial benefit:

(i) has been; or

(ii) will, assuming normal operating conditions, be; or

(iii) can, assuming normal operating conditions, reasonably be expected to be;

provided to you (or a *connected entity); and

(b) the financial benefit has been, will be or can reasonably be expected to be *provided directly or indirectly by a *member of the tax preferred sector in relation to the *tax preferred use of the asset; and

(c) the right to receive, or the obligation to provide, the financial benefit is *cash settlable; and

(d) the financial benefit has not been, will not be or can be expected not to be provided by one of your connected entities.

Note: Paragraph (d) stops a financial benefit passing between you and any of your connected entities from being counted twice.

*End value also taken to be financial benefit subject to deemed loan treatment*

(2) The relevant percentage of a reasonable estimate of the *end value of the asset is also taken to be a *financial benefit that is ***subject to deemed loan treatment*** if:

(a) the asset is not to be purchased or acquired by, or transferred to, a *member of the tax preferred sector at the end of the *arrangement period under a legally enforceable *arrangement; or

(b) the asset:

(i) is, or is to become, a *privatised asset; or

(ii) would be, or would become, a privatised asset if it were a *depreciating asset; or

(iii) would be a privatised asset if the asset were a depreciating asset and paragraphs 58-5(2)(a) and 58-5(4)(a) were not limited to acquisitions of depreciating assets that occurred on or after 1 July 2001.

The relevant percentage is the *disallowed capital allowance percentage if section 250-150 applies. Otherwise it is 100%.

Note: See section 250-180 for how to work out the end value of the asset.

*Financial benefits only subject to deemed loan treatment to the extent to which they represent a return on investment*

(3) The *financial benefit is ***subject to deemed loan treatment*** only to the extent to which it reasonably represents a return of, or on, an investment in the asset (as distinct, for example, from representing consideration for the provision of services or the recovery of production costs), having regard to:

(a) the *market value of the asset; and

(b) the discount rate applicable under subsection 250-105(2); and

(c) your costs in relation to funding your interest in the asset; and

(d) any other relevant matter.

The regulations may provide rules to be applied in determining the extent to which a financial benefit reasonably represents a return of or on an investment in the asset.

*Only financial benefits provided after Division starts applying to you and the asset*

(4) If the *tax preferred use of the asset starts before this Division starts applying to you and the asset, only *financial benefits provided after this Division starts applying to you and the asset are ***subject to deemed loan treatment***.

## 250-165 *Financial arrangement*

(1) You have a ***financial arrangement*** if you have, under an *arrangement:

(a) a *cash settlable legal or equitable right to receive a *financial benefit; or

(b) a cash settlable legal or equitable obligation to provide a financial benefit; or

(c) a combination of one or more such rights and/or one or more such obligations;

unless:

(d) you also have under the arrangement one or more legal or equitable rights to receive something and/or one or more legal or equitable obligations to provide something; and

(e) for one or more of the rights and/or obligations covered by paragraph (d):

(i) the thing that you have the right to receive, or the obligation to provide, is not a financial benefit; or

(ii) the right or obligation is not cash settlable; and

(f) the one or more rights and/or obligations covered by paragraph (e) are not insignificant in comparison with the right, obligation or combination covered by paragraph (a), (b) or (c).

The right, obligation or combination covered by paragraph (a), (b) or (c) constitutes the financial arrangement.

(2) A right you have to receive, or an obligation you have to provide, a *financial benefit is ***cash settlable*** if, and only if:

(a) the benefit is money or a *money equivalent; or

(b) in the case of a right—you intend to satisfy or settle it by receiving money, or a money equivalent, or by starting to have, or ceasing to have, another *financial arrangement; or

(c) in the case of an obligation—you intend to satisfy or settle it by providing money, or a money equivalent, or by starting to have, or ceasing to have, another financial arrangement; or

(d) you have a practice of satisfying or settling similar rights or obligations as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way); or

(e) you deal with the right or obligation, or with similar rights or obligations, in order to generate a profit from short-term fluctuations in price, from a dealer's margin, or from both; or

(f) none of paragraphs (a) to (e) applies but:

(i) the financial benefit is readily convertible into money or a money equivalent or there is a market for the financial benefit that has a high degree of liquidity; and

(ii) you do not have, as your sole or dominant purpose for entering into the *arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the benefit as part of your expected purchase, sale or usage requirements in the ordinary course of *business; or

(g) you are able to settle the right or obligation as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way) and you do not have, as your sole or dominant purpose for entering into the arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the financial benefit as part of your expected purchase, sale or usage requirements in the ordinary course of business.

Note: The following are examples of dealing of the kind covered by paragraph (e):

(a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short term basis or frequent and short term basis;

(b) acquiring the right or obligation, or similar rights or obligations, and managing the resulting risk by entering into offsetting arrangements that provide a profit margin.

## 250-170 Financial arrangement (equity interest or right or obligation in relation to equity interest)

(1) You also have a ***financial arrangement*** if you have an *equity interest. The equity interest constitutes the financial arrangement.

(2) You also have a ***financial arrangement*** if:

(a) you have, under an *arrangement:

(i) a legal or equitable right to receive something that is a *financial arrangement under this section; or

(ii) a legal or equitable obligation to provide something that is a financial arrangement under this section; or

(iii) a combination of one or more such rights and/or obligations; and

(b) the right, obligation or combination does not constitute a financial arrangement under section 250-165.

The right, obligation or combination referred to in paragraph (a) constitutes the financial arrangement.

## 250-175 Rights, obligations and arrangements (grouping and disaggregation rules)

*Single right or obligation or multiple rights or obligations?*

(1) If you have a right to receive 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate right to receive each of those financial benefits.

(2) If you have an obligation to provide 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate obligation to provide each of those financial benefits.

(3) Subsections (1) and (2) apply for the avoidance of doubt.

*Matters relevant to determining what rights and/or obligations comprise particular arrangements*

(4) For the purposes of this Division, whether a number of rights and/or obligations are themselves an *arrangement or are 2 or more separate arrangements is a question of fact and degree that you determine having regard to the following:

(a) the nature of the rights and/or obligations;

(b) their terms and conditions (including those relating to any payment or other consideration for them);

(c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of one or more of the persons involved);

(d) whether they can be dealt with separately or must be dealt with together;

(e) normal commercial understandings and practices in relation to them (including whether they are regarded commercially as separate things or as a group or series as whole);

(f) the objects of this Division.

In applying this subsection, have regard to the matters referred to in paragraphs (a) to (f) both in relation to the rights and/or obligations separately and in relation to the rights and/or obligations in combination with each other.

Example 1: Your rights and obligations under a typical convertible note, including the right to convert the note into a share or shares, would comprise one arrangement.

Example 2: Your rights and obligations under a typical price-linked or index-linked bond with option or forward components would comprise one arrangement.

Note 1: If you raised funds by means of a contract that you would not have entered into without entering into another contract, and neither contract could be assigned to a third party without the other also being assigned, this would tend to indicate that your rights and obligations under the 2 contracts together comprise one arrangement.

Note 2: If the commercial effect of your individual rights and/or obligations in a group or series cannot be understood without reference to the group or series as a whole, this would tend to indicate that all of your rights and/or obligations in the group or series together comprise one arrangement.

## 250-180 *End value* of asset

(1) The ***end value*** of an asset is worked out in accordance with this section.

(2) If the asset has a *guaranteed residual value, the ***end value*** of the asset is:

(a) the amount of the guaranteed residual amount if subparagraph 250-15(d)(i) applies; or

(b) so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

(3) If the asset does not have a *guaranteed residual value and is a *depreciating asset, the ***end value*** of the asset is:

(a) if subparagraph 250-15(d)(i) applies—the amount that would have been the *adjustable value of the asset at the end of the *arrangement period if:

(i) this Division had not applied to you and the asset; and

(ii) the decline in the asset's value were worked out on the basis of the asset's *effective life and using the *prime cost method; or

(b) if subparagraph 250-15(d)(ii) applies—so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in that subparagraph.

(4) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (3)(a)(ii).

(5) If neither subsection (2) nor subsection (3) applies and an estimate of the value of the asset is recognised for accounting purposes, the ***end value*** of the asset is:

(a) the value of the relevant asset at the end of the *arrangement period that would be recognised for accounting purposes if subparagraph 250-15(d)(i) applies; or

(b) so much of the value of referred to in paragraph (a) as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

The ***end value*** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

(6) If none of subsections (2), (3) and (5) apply to the asset, the ***end value*** of the asset is:

(a) a reasonable estimate of the *market value of the asset at the end of the *arrangement period if subparagraph 250-15(d)(i) applies; or

(b) so much of the estimate referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

The ***end value*** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

### 250-185 Financial benefits subject to deemed loan treatment not assessed

A *financial benefit is not included in your assessable income if the financial benefit:

(a) is *provided to you in relation to the tax preferred use of the asset; and

(b) is provided directly or indirectly by a *member of the tax preferred sector; and

(c) is *subject to deemed loan treatment.

The financial benefit is not assessable income and is not *exempt income.

## Subdivision 250-E—Taxation of deemed loan

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## Guide to Subdivision 250-E

### 250-190 What this Subdivision is about

This Subdivision is about the tax treatment of gains and losses from the financial arrangement that you are taken to have under section 250-155.

You recognise gains and losses from the financial arrangement, as appropriate, over the life of the financial arrangement and ignore distinctions between income and capital. You use a compounding accruals method to recognise the gain or loss.

A change in circumstances may cause a re-estimation of gains and losses that the accruals method is being applied to.

A balancing adjustment is made if you transfer particular rights or obligations or particular rights or obligations cease.

## Application and objects of Subdivision

### 250-195 Application of Subdivision

This Subdivision applies for the purposes of working out the amount of the gain or loss that is to be included in your assessable income or allowed as a deduction in relation to the *financial arrangement that is taken to exist under section 250-155.

### 250-200 Objects of this Subdivision

The objects of this Subdivision are:

(a) to properly recognise gains and losses from the *financial arrangement by allocating them to appropriate periods of time; and

(b) to minimise tax deferral.

## Tax treatment of gains and losses from financial arrangements

### 250-205 Gains are assessable and losses deductible

*Gains*

(1) Your assessable income includes a gain you make from the *financial arrangement.

*Losses*

(2) You can deduct a loss you make from the *financial arrangement, but only to the extent that:

(a) you make it in gaining or producing your assessable income; or

(b) you necessarily make it in carrying on a *business for the purpose of gaining or producing your assessable income.

### 250-210 Gain or loss to be taken into account only once under this Act

*Purpose of this section*

(1) The purpose of this section is to ensure that your gains that are assessable under this Subdivision, and your losses that are

deductible under this Subdivision, are taken into account only once under this Act in working out your taxable income.

*Gain or loss*

(2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Subdivision, the gain or loss is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any other provisions of this Act for the same or any other income year.

*Associated financial benefits*

(3) If the amount or value of a *financial benefit is taken into account in working out whether you make, or the amount of, a gain or loss that is, or is to be, included in your assessable income or allowable as a deduction for you for an income year under this Subdivision, the benefit is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any other provision of this Act for the same or any other income year.

## Method to be applied to take account of gain or loss

### 250-215 Methods for taking gain or loss into account

The methods that can be applied to take account of a gain or loss you make from the *financial arrangement you have are:

(a) the accruals method provided for in sections 250-235 to 250-255; or

(b) a balancing adjustment provided for in sections 250-265 to 250-275.

A gain or loss is not taken into account under the method referred to in paragraph (a) to the extent to which the gain or loss is taken into account under sections 250-265 to 250-275.

## General rules

### 250-220 Consistency in working out gains or losses (integrity measure)

*Object of section*

(1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

*Consistent treatment for particular financial arrangement*

(2) If:
  (a) this Subdivision provides that a particular method applies to gains or losses you make from the *financial arrangement; and
  (b) that method allows you to choose the particular manner in which you apply that method;

you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

(3) If:
  (a) this Subdivision provides that a particular method applies to gains or losses you make from 2 or more *financial arrangements; and
  (b) that method allows you to choose the particular manner in which you apply that method;

you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

### 250-225 Rights and obligations include contingent rights and obligations

To avoid doubt:
  (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and

(b) an obligation is treated as an obligation for the purpose of this Division even if it is subject to a contingency.

## The accruals method

### 250-230 Application of accruals method

The accruals method provided for in sections 250-235 to 250-255 applies to a gain or loss you make from the *financial arrangement if:

(a) the gain or loss is an overall gain or loss from the arrangement; and

(b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

### 250-235 Overview of the accruals method

If the accruals method applies to a gain or loss you make from the *financial arrangement:

(a) you use section 250-240 to work out the period over which the gain or loss is to be spread; and

(b) you use section 250-245 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and

(c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 250-250 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

### 250-240 Applying accruals method to work out period over which gain or loss is to be spread

If you have a sufficiently certain overall gain or loss from the *financial arrangement, the period over which the gain or loss is to be spread is the period that:

(a) starts when you start to have the arrangement; and

(b) ends when you will cease to have the arrangement.

In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

## 250-245 How gain or loss is spread

*How to spread gain or loss*

(1) This section tells you how to spread a gain or loss to which the accruals method applies.

*Compounding accruals or approximation*

(2) The gain or loss is to be spread using:
  (a) compounding accruals (with the intervals to which parts of the gain or loss are allocated complying with subsection (3)); or
  (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).

*Intervals to which parts of gain or loss allocated*

(3) The intervals to which parts of the gain or loss are allocated must:
  (a) not exceed 12 months; and
  (b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

*Assumption of continuing hold arrangement for the rest of its life*

(4) The gain or loss is to be spread assuming that you will continue to have the *financial arrangement for the rest of its life.

## 250-250 Allocating gain or loss to income years

(1) You are taken, for the purposes of section 250-205, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
  (a) that part of the gain or loss is allocated to an interval under section 250-245; and
  (b) that interval falls wholly within that income year.

(2) If:
  (a) a part of a gain or loss is allocated to an interval under section 250-245; and

(b) that interval straddles 2 income years;

you are taken, for purposes of section 250-205, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.

(3) If:

(a) a *consolidated group or *MEC group has a *financial arrangement; and

(b) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***exit time***); and

(c) immediately after the exit time, the subsidiary member has the financial arrangement;

an income year of the group is taken, for the purposes of applying this section to the group and the financial arrangement, to end at the exit time.

## 250-255 When to re-estimate

*When re-estimation necessary*

(1) You re-estimate a gain or loss from the *financial arrangement under subsection (4) if circumstances arise that materially affect:

(a) the amount or value; or

(b) the timing;

of *financial benefits that were taken into account in working out the amount of the gain or loss. You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (b).

(2) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):

(a) a material change in market conditions that are relevant to the amount or value of the *financial benefits to be received or provided under the *financial arrangement;

(b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimated is not insignificant;

(c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt.

(3) You do not re-estimate a gain or loss from a *financial arrangement under subsection (4) merely because of any one or more of the following:

(a) a change in the credit rating, or the creditworthiness, of a party or parties to the financial arrangement;

(b) the impairment (within the meaning of the *accounting standards) of the arrangement or a debt that forms part of the arrangement.

*Nature of re-estimation*

(4) Making a re-estimation in relation to a gain or loss under this subsection involves:

(a) a fresh determination of the amount of the gain or loss; and

(b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

(5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:

(a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;

(b) adjusting the rate of return and maintaining the amount to which you apply the rate of return.

The object to be achieved by both bases is allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

(6) If you adopt a particular basis under subsection (5) for a gain or loss from the *financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

*Balancing adjustment if rate of return maintained*

(7) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph (5)(a), you must make the following balancing adjustment:

(a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the *financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;

(c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, the income year in which you make the re-estimation, equal to the amount of the decrease.

## 250-260 Re-estimation if balancing adjustment on partial disposal

*Re-estimation if balancing adjustment on partial disposal*

(1) You also re-estimate a gain or loss from a *financial arrangement under subsection (2) if a balancing adjustment is made in relation to the financial arrangement under sections 250-265 to 250-275 because you transfer to another person:

(a) a proportionate share of all of your rights and/or obligations under a *financial arrangement; or

(b) a right or obligation that you have under a financial arrangement to a specifically identified *financial benefit; or

(c) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

*Nature of re-estimation*

(2) Making a re-estimation in relation to a gain or loss under this subsection involves:

(a) a fresh determination of the amount of the gain or loss disregarding:

(i) *financial benefits; and

(ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;

to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and

(b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

(3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is allow you to bring the remainder of the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

## Balancing adjustment

### 250-265 When balancing adjustment made

*When balancing adjustment made*

(1) A balancing adjustment is made under section 250-275 if:

(a) you transfer to another person all of your rights and/or obligations under the *financial arrangement; or

(b) all of your rights and/or obligations under the financial arrangement otherwise substantially cease; or

(c) you transfer to another person:
  (i) a proportionate share of all of your rights and/or obligations under the financial arrangement; or
  (ii) a right or obligation that you have under the financial arrangement to a specifically identified *financial benefit; or
  (iii) a proportionate share of a right or obligation that you have under the financial arrangement to a specifically identified financial benefit.

*Modifications for arrangements that are assets*

(2) The following modifications are made if the *financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:
  (a) paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other person substantially all the risks and rewards of ownership of the interest transferred;
  (b) for the purposes of applying section 250-275 to the arrangement, you are treated as transferring a right under the arrangement to another person if:
    (i) you retain the right but assume a new obligation; and
    (ii) your assumption of the new obligation has the same effect, in substance, as transferring the right to another person; and
    (iii) the new obligation arises only to the extent to which the right to *financial benefits under the financial arrangement is satisfied; and
    (iv) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
    (v) you must, under the new obligation, provide financial benefits you receive in relation to the right to the person to whom you owe the new obligation without delay.

## 250-270 Exception for subsidiary member leaving consolidated group

A balancing adjustment is not made under section 250-275 in relation to a subsidiary member of a*consolidated group or a *MEC group that has the *financial arrangement ceasing to be a member of the group.

## 250-275 Balancing adjustment

*Complete cessation or transfer*

(1) Use the following method statement to make the balancing adjustment if paragraph 250-265(1)(a) or (b) applies:

*Method statement for balancing adjustment*

*Step 1*. Add up the following:

(a) the total of all the *financial benefits provided to you under the *financial arrangement;

(b) the amount or value of any other consideration you receive in relation to the transfer or cessation referred to in subsection 250-265(1);

(c) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

(d) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions.

*Step 2*. Add up the following:

(a) the total of all the *financial benefits you have provided under the *financial arrangement;

(b) the amount or value of any other consideration you provide in relation to the transfer or cessation referred to in subsection 250-265(1);

(c) the total of the amounts that have been included in your assessable income, because of circumstances

that have occurred before the transfer or cessation, as gains from the arrangement;

(d) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable.

*Step 3.* Compare the amount obtained under Step 1 (the ***Step 1 amount***) with the amount obtained under Step 2 (the ***Step 2 amount***). If the Step 1 amount exceeds the Step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the *financial arrangement for the purposes of this Subdivision. If the Step 2 amount exceeds the Step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the Step 1 amount and the Step 2 amount are equal, no balancing adjustment is made.

*Proportionate transfer of all rights and/or obligations under financial arrangement*

(2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:

(a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

(3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:

(a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

(4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:

(a) as if the references to:

(i) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(ii) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(iii); and

(b) by reducing those amounts by applying the proportion referred to in subparagraph 250-265(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

(5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:

(a) the nature of the rights and obligations under the *financial arrangement; and

(b) the risks associated with each *financial benefit, right and obligation under the arrangement; and

(c) the time value of money.

*Income year for which gain or loss is made*

(6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 250-265(1) occurs.

## Other provisions

### 250-280 Financial arrangement received or provided as consideration

(1) If:

(a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and

(b) you start to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:

(i) something (the ***thing provided***) that you provided, or are to provide, to someone else; or

(ii) something (the ***thing acquired***) that someone else has provided, or is to provide, to you; and

(c) the thing provided or the thing acquired is not money;

the amount of the benefit (or that part of the benefit) that you obtained for the thing provided, or gave for the thing acquired, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you start to have the financial arrangement.

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing provided or the thing acquired.

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

(2) If subsection (1) applies, you are taken to have received, or provided, as consideration for starting to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you started to have the financial arrangement.

(3) If, but for this subsection:

(a) subsection (2) would apply to your starting to have a *financial arrangement; and

(b) subsection (1) or (4) would also apply to your starting to have the financial arrangement;

subsection (2) applies to your starting to have the financial arrangement and subsection (1) or (4) does not.

(4) If:

(a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and

(b) you cease to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:

(i) something (the ***thing acquired***) that someone else provides, or is to provide, to you; or

(ii) something (the ***thing provided***) that you provided, or are to provide, to someone else; and

(c) the thing acquired or the thing provided is not money;

the amount of the benefit (or that part of the benefit) that you provided for the thing acquired, or obtained for the thing provided, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you cease to have the financial arrangement (or that part of the financial arrangement).

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing acquired or the thing provided.

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

(5) If subsection (4) applies, you are taken to have provided, or received, as consideration for ceasing to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you ceased to have the financial arrangement.

(6) If, but for this subsection:

(a) subsection (5) would apply to your ceasing to have a *financial arrangement; and

(b) subsection (1) or (4) would also apply to your ceasing to have the financial arrangement;

subsection (5) applies to your ceasing to have the financial arrangement and subsection (1) or (4) does not.

(7) Without limiting subsections (1) and (4), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

## Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset

### Table of sections

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### 250-285 Treatment of asset after Division ceases to apply to the asset

(1) For the purposes of Division 40, if:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends at a particular time; and

(c) the asset would have had an *adjustable value at that time, for the purposes of Division 40, if this Division had never applied to the asset;

the adjustable value of the asset, immediately after the end of the arrangement period, is taken to be equal to the amount worked out using the following method statement:

*Method statement*

*Step 1.* Work out whether section 250-150 applies.

*Step 2.* If section 250-150 does not apply, the amount is the *end value of the asset at the end of the arrangement period.

*Step 3.* If section 250-150 does apply, the amount is worked out by:

(a) multiplying the *end value of the asset at the end of the *arrangement period by the *disallowed capital percentage; and

(b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and

(c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).

(2) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(4) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the difference between the following is taken to have been allowed for expenditure by you in connection with the asset:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(5) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the sum of the following is taken to have been allowed for expenditure by you in connection with the asset:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard subsection 250-160(2) (reasonable estimate of end value treated as financial benefit subject to deemed loan treatment).

### 250-290 Balancing adjustment under Subdivision 40-D in some circumstances

(1) This section applies if:
  (a) this Division applies to you and an asset; and
  (b) the *arrangement period for the *tax preferred use of the asset ends because a particular event happens; and
  (c) the event would have been a *balancing adjustment event for the asset for the purposes of Subdivision 40-D if this Division had not applied to you and the asset when the event happened.

(2) A balancing adjustment is made under Subdivision 40-D as if:
  (a) the event were a *balancing adjustment event for the asset; and
  (b) the *adjustable value of the asset, just before the event happened, were the adjustable value worked out under subsection 250-285(1); and
  (c) sections 40-290 and 40-292 did not apply.

## Subdivision 250-G—Objections against determinations and decisions by the Commissioner

### Table of sections

250-295 Objections against determinations and decisions by the Commissioner

### 250-295 Objections against determinations and decisions by the Commissioner

(1) This section applies to a determination by the Commissioner under section 250-45.

(2) This section also applies to a decision by the Commissioner under subsection 250-150(5).

(3) A person who is dissatisfied with a determination or decision to which this section applies may object against the determination or

decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## 2 Subsection 995-1(1)

Insert:

***arrangement period*** for a *tax preferred use of an asset has the meaning given by section 250-65.

## 3 Subsection 995-1(1)

Insert:

***cash settlable*** has the meaning given by subsection 250-165(2).

## 4 Subsection 995-1(1)

Insert:

***disallowed capital allowance percentage*** has the meaning given by subsection 250-150(4).

## 5 Subsection 995-1(1)

Insert:

***effectively non-cancellable*** has the meaning given by section 250-130.

## 6 Subsection 995-1(1)

Insert:

***end user*** of an asset has the meaning given by section 250-50.

## 7 Subsection 995-1(1)

Insert:

***end value*** of an asset has the meaning given by section 250-180.

## 8 Subsection 995-1(1)

Insert:

***excluded STB*** has the same meaning as in section 24AT of the *Income Tax Assessment Act 1936*.

## 9 Subsection 995-1(1)

Insert:

> ***expected financial benefits*** has the meaning given by section 250-95.

## 10 Subsection 995-1(1)

Insert:

> ***financial arrangement*** has the meaning given by sections 250-165 to 250-175.

## 11 Subsection 995-1(1)

Insert:

> ***guaranteed residual value*** for an asset that is put to a tax preferred use has the meaning given by subsection 250-85(3).

## 12 Subsection 995-1(1)

Insert:

> ***member of the tax preferred end user group*** has the meaning given by paragraph 250-60(4)(a).

## 13 Subsection 995-1(1)

Insert:

> ***member of the tax preferred sector*** has the meaning given by paragraph 250-60(4)(b).

## 14 Subsection 995-1(1)

Insert:

> ***money equivalent*** means a right to receive:
>
> (a) money; or
>
> (b) something that is a *money equivalent under this definition.

## 15 Subsection 995-1(1)

Insert:

***predominant economic interest*** in an asset has the meaning given by sections 250-110 to 250-140.

## 16 Subsection 995-1(1)

Insert:

***prescribed excluded STB*** means an *excluded STB that is prescribed by the regulations for the purposes of Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

## 17 Subsection 995-1(1)

Insert:

***present value*** of a *financial benefit has a meaning affected by section 250-100.

## 18 Subsection 995-1(1)

Insert:

***provided in relation to a tax preferred use of an asset***, in relation to a *financial benefit, has a meaning affected by section 250-85.

## 19 Subsection 995-1(1)

Insert:

***put to a tax preferred use***, in relation to an asset, has the meaning given by section 250-60.

## 20 Subsection 995-1(1) (after paragraph (a) of the definition of *special accrual amount*)

Insert:

(aa) Subdivision 250-E of this Act if all the *financial benefits provided and received under the *financial arrangement concerned are denominated in a particular foreign currency;

## 21 Subsection 995-1(1)

Insert:

***subject to deemed loan treatment***, in relation to a *financial benefit, has the meaning given by section 250-160.

## 22 Subsection 995-1(1)

Insert:

***tax preferred end user*** has the meaning given by section 250-55.

## 23 Subsection 995-1(1)

Insert:

***tax preferred entity*** means:

(a) an *exempt entity; or

(b) an *exempt Australian government agency; or

(c) an *associated government entity of an exempt Australian government agency; or

(d) a *prescribed excluded STB; or

(e) an *exempt foreign government agency.

## 24 Subsection 995-1(1)

Insert:

***tax preferred use*** of an asset has the meaning given by sections 250-60(1) and (2).

# Part 2—Consequential amendments

## *Development Allowance Authority Act 1992*

### 25 Subparagraph 93R(b)(v)

Repeal the subparagraph, substitute:

(v) if the certificate applies to a direct infrastructure borrowing—not do anything that:

(A) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or

(B) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made; and

### 26 Subparagraph 93R(c)(ii)

Repeal the subparagraph, substitute:

(ii) not do anything that:

(A) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or

(B) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made; and

## *Income Tax Assessment Act 1936*

### 27 After subsection 51AD(1)

Insert:

(1A) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:

(a) starts on or after 1 July 2007; and

(b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.

(1B) This section does not apply to property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

(c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.

(1C) This section does not apply to property on or after 1 July 2007 if:

(a) Division 16D applied to the property immediately before 1 July 2007; or

(b) this section did not apply to the property immediately before 1 July 2007 and Division 16D would apply to the property on or after 1 July 2007 but for subsection 159GH(2).

For the purposes of applying paragraph (b), disregard the operation of section 159GL.

(1D) Subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D) do not apply to property acquired by a taxpayer if:

(a) the property is acquired by the taxpayer on or after 1 July 2007; and

(b) the property is not acquired under a legally enforceable arrangement entered into before 1 July 2007.

## 28 Subsection 51AD(4)

Omit “subsection (8)”, substitute “subsections (1A), (1B), (1C), (1D) and (8)”.

## 29 At the end of subsection 73B(15AA)

Add:

Note: If Division 250 of the *Income Tax Assessment Act 1997* applies to you and an asset:

(a) if section 250-150 of that Act applies—you are taken to have qualifying expenditure in relation to the use of the asset to the extent specified in a determination made under subsection 250-150(3) of that Act; or

(b) otherwise—you are taken not to have such expenditure.

## 30 Subsection 73BC(2) (note)

Omit "Note", substitute "Note 1".

## 31 At the end of subsection 73BC(2)

Add:

Note 2: If Division 250 of the *Income Tax Assessment Act 1997* applies to you and an asset:

(a) if section 250-150 of that Act applies—the asset is taken to be used, or installed ready for use, for the purpose of carrying on, by or on behalf of an eligible company, research or development activities to the extent specified in a determination made under subsection 250-150(3) of that Act; or

(b) otherwise—the asset is taken not to be used, or installed ready for use, for such a purpose.

## 32 After section 82KZL

Insert:

### 82KZLA Subdivision does not apply to financial arrangements to which Subdivision 250-E applies

To avoid doubt, this Subdivision does not apply to:

(a) a financial arrangement to which Subdivision 250-E of the *Income Tax Assessment Act 1997* applies; or

(b) a financial benefit (within the meaning of that Act) that is provided or received in relation to such an arrangement.

Note: See section 250-210 of the *Income Tax Assessment Act 1997*.

## 33 Before subsection 159GH(1)

Insert:

(1A) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if the tax preferred use:

(a) starts on or after 1 July 2007; and

(b) does not occur under a legally enforceable arrangement entered into before 1 July 2007.

(1B) This Division does not apply in relation to the item of eligible property that is put to a tax preferred use (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

(c) an election is made under item 71 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* to have subitem 71(2) of that Schedule apply to the property.

### 34 Subsection 159GH(1)

Omit "subsection (2)", substitute "subsections (1A), (1B) and (2)".

### 35 Subsection 170(10AA) (after table item 170)

Insert:

| | | |
|---|---|---|
| 173 | Division 250 | Asset is put to a tax preferred use by a tax preferred end user |

## *Income Tax Assessment Act 1997*

### 36 Section 11-55 (table item headed "notional sale and loan")

After:

| | |
|---|---|
| luxury car leases, lease payments that the lessor receives or is entitled to receive | **42A-40 in Schedule 2E** |

insert:

| | |
|---|---|
| deemed loan treatment for financial benefits provided for tax preferred use of asset | 250-160 |

### 37 Section 12-5 (table item headed "capital allowances")

After:

| | |
|---|---|
| spectrum licences | Subdivision 40-B |

insert:

| | |
|---|---|
| tax preferred use of asset | Division 250 |

## 38 Section 12-5 (table item headed "leases")

After:

| | |
|---|---|
| finance leases and arrangements, use of property if end-user an exempt public body or use outside Australia to produce exempt income ..... | **159GE to 159GO** |

insert:

| | |
|---|---|
| leases of assets being put to tax preferred use ..... | Division 250 |

## 39 Section 12-5 (table item headed "notional sales and loans")

After "240-50", insert ", 250-155".

## 40 Section 12-5 (table item headed "notional sales and loans")

Before:

| | |
|---|---|
| payments to acquire property, no deduction for ..... | 240-85 |

insert:

| | |
|---|---|
| deemed loan treatment for financial benefits provided for tax preferred use of asset ..... | Subdivision 250-C |

## 41 Section 12-5 (table item headed "property")

Before:

| | |
|---|---|
| arrangements relating to use of property if end-user an exempt public body or use outside Australia to produce exempt income..... | **159GE to 159GO** |

insert:

| | |
|---|---|
| arrangements relating to assets being put to tax preferred use ..... | Division 250 |

## 42 Section 12-5 (after table item headed "tax losses")

Insert:

**tax preferred asset financing**

generally ..... Division 250
denial of capital allowance deductions in relation to asset being put to tax preferred use ..... 250-145
reduction in capital allowance deductions in relation to asset being put to tax preferred use ..... 250-150

## 43 Subsection 40-25(7)

Omit "A ***taxable purpose***", substitute "Subject to subsection (8), a ***taxable purpose***".

## 44 At the end of section 40-25

Add:

(8) If Division 250 applies to you and an asset that is a *depreciating asset:

(a) if section 250-150 applies—you are taken to be using the asset for a *taxable purpose to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you are taken not to be using the asset for such a purpose.

## 45 At the end of subsection 40-85(1)

Add:

Note: The adjustable value of a depreciating asset may be modified by section 250-285.

## 46 At the end of subsection 40-525(1)

Add:

Note: If Division 250 applies to you and an asset that is a water facility:

(a) if section 250-150 applies—the condition in this subsection is taken to be satisfied for the facility to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—the condition in this subsection is taken not to be satisfied for the facility.

## 47 At the end of subsection 40-525(2)

Add:

Note: If Division 250 applies to you and an asset that is a horticultural plant:

(a) if section 250-150 applies—a condition in this subsection is taken to be satisfied for the plant to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—the conditions in this subsection are taken not to be satisfied for the horticultural plant.

## 48 At the end of subsection 40-630(1)

Add:

Note: If Division 250 applies to you and an asset that is land:

(a) if section 250-150 applies—you are taken to be using the land for the purpose of carrying on a primary production business, or a business for the purpose of producing assessable income from the use of rural land (except a business of mining operations), to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you are taken not to be using the land for such a purpose.

## 49 At the end of subsection 40-730(1)

Add:

Note: If Division 250 applies to you and an asset that is land:

(a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

## 50 Subsection 40-735(1) (note)

Omit “Note”, substitute “Note 1”.

## 51 At the end of subsection 40-735(1)

Add:

Note 2: If Division 250 applies to you and an asset that is land:

(a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

## 52 Subsection 40-750(1) (note)

Omit “Note”, substitute “Note 1”.

## 53 At the end of subsection 40-750(1)

Add:

Note 2: If Division 250 applies to you and an asset:

(a) if section 250-150 applies—you can deduct expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

## 54 At the end of subsection 40-755(1)

Add:

Note: If Division 250 applies to you and an asset that is land:

(a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

## 55 At the end of section 40-835

Add:

Note: If Division 250 applies to you and an asset:

(a) if section 250-150 applies—you are taken to be using the asset for taxable purposes to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you are taken not to be using the asset for such purposes.

## 56 At the end of subsection 40-880(1)

Add:

Note: If Division 250 applies to you and an asset:

(a) if section 250-150 applies—you can deduct an amount for capital expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you cannot deduct an amount for such expenditure.

## 57 Subsection 43-140(1) (note)

Omit “Note”, substitute “Note 1”.

## 58 At the end of subsection 43-140(1)

Add:

Note 2: If Division 250 applies to you and an asset that is a capital work:

(a) if section 250-150 applies—you are taken to be using the capital work for the purpose of producing assessable income, or for the purpose of carrying on research and development activities, to the extent specified in a determination made under subsection 250-150(3); or

(b) otherwise—you are taken not to be using the capital work for such a purpose.

## 59 Section 112-97 (before table item 25)

Insert:

| | | | |
|---|---|---|---|
| 23 | The arrangement period for the tax preferred use of an asset ends | The total cost base and reduced cost base | subsection 250-285(3) |

## 60 After section 118-25

Insert:

### 118-27 Financial arrangements to which Subdivision 250-E applies

A *capital gain or *capital loss you make from a *CGT asset is disregarded if, at the time of the *CGT event, the asset is, or is part of, a *financial arrangement to which Subdivision 250-E applies.

## 61 Subsection 396-75(2) (example)

Repeal the example, substitute:

Example: The Commissioner may advise the Minister that:

- a lender is a foreign resident; or
- section 51AD of the *Income Tax Assessment Act 1936* may apply to the project; or
- Division 250 may apply in relation to the land transport facilities.

## 62 Paragraph 396-85(1)(c)

Repeal the paragraph, substitute:

(c) that the borrower will not do anything that:

(i) will cause Division 250 of this Act to apply to any of the facilities concerned; or

(ii) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or

(iii) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made;

## 63 After subsection 705-25(4)

Insert:

*Financial arrangements to which Subdivision 250-E applies*

(4A) The *tax cost setting amount is instead equal to the joining entity's *terminating value for the *retained cost base asset if the asset is a *financial arrangement to which Subdivision 250-E applies immediately before the joining time.

## 64 After subsection 705-30(3)

Insert:

*Financial arrangements to which Subdivision 250-E applies*

(3A) If an asset of the joining entity is a *financial arrangement to which Subdivision 250-E applies, the joining entity's ***terminating value*** for the asset is equal to the amount of consideration that the joining entity would need to receive, if it were to dispose of the asset just before the joining time, without an amount being assessable income of, or deductible to, the joining entity under Subdivision 250-E.

## 65 Section 960-265 (at the end of the table)

Add:

| | | |
|---|---|---|
| 13 | Thresholds for application of Division 250 | sections 250-25 and 250-30 |

## 66 At the end of paragraph 974-130(4)(a)

Add:

(vi) Division 250 of this Act does not apply to a person and the property leased or bailed;

## 67 At the end of paragraph 974-130(4)(d)

Add:

; or (iii) a scheme or arrangement for the payment of royalties in relation to an asset if Division 250 of this Act applies to a person and the asset.

## *Taxation Administration Act 1953*

### 68 Subsection 45-5(3) in Schedule 1

After "(2A)", insert "or the net capital gains specified in subsection 45-120(2B)".

### 69 After subsection 45-120(2A) in Schedule 1

Insert:

*Net gains under Subdivision 250-E of the Income Tax Assessment Act 1997 included in instalment income*

(2B) Your ***instalment income*** for a period also includes the difference between:

(a) a gain (or gains) you make from a *financial arrangement to the extent to which it is (or they are):

(i) assessable under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and

(ii) reasonably attributable to that period; and

(b) a loss (or losses) you make from a financial arrangement to the extent to which it is (or they are):

(i) allowable to you as a deduction under Subdivision 250-E of the *Income Tax Assessment Act 1997*; and

(ii) reasonably attributable to that period.

This is so only if the gain (or gains) referred to in paragraph (a) exceeds the loss (or losses) referred to in paragraph (b).

### 70 After subsection 45-330(2A) in Schedule 1

Insert:

*Amounts assessable under Subdivision 250-E of the Income Tax Assessment Act 1997*

(2AA) To avoid doubt, paragraph (1)(a) does not apply to a *net capital gain that is included in your assessable income under Subdivision 250-E of the *Income Tax Assessment Act 1997*.

# Part 3—Application

## 71 Application

(1) Subject to subitems (4), (6) and (8), Division 250 applies in relation to a tax preferred use of an asset if, and only if, the tax preferred use:

(a) starts on or after 1 July 2007; and

(b) does not occur under a legally enforceable arrangement that was entered into before 1 July 2007.

(2) This subitem applies to an asset that is put to a tax preferred use if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

(c) but for this subitem:

(i) section 51AD would apply to the asset in relation to a taxpayer; or

(ii) Division 16D would apply to the asset; and

(d) you elect to have this subitem apply to the asset.

(3) An election under paragraph (2)(d) in relation to an asset that is put to a tax preferred use:

(a) must be made by the day you lodge your income tax return for the income year in which the tax preferred use starts; and

(b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and

(c) must extend to all assets that are, or are to be, put to a tax preferred use under the arrangement under which the asset is put to that use; and

(d) is irrevocable.

(4) If subitem (2) applies:

(a) section 51AD and Division 16D do not apply to the asset; and

(b) Division 250 applies to the tax preferred use of the asset.

(5) This subitem applies to an asset that is put to a tax preferred use if:

(a) the tax preferred use starts on or after 1 July 2007; and

(b) the tax preferred use occurs under a legally enforceable arrangement that was entered into before 1 July 2007; and

(c) immediately before 1 July 2007:

(i) section 51AD did not apply to the asset in relation to a taxpayer; and

(ii) Division 16D did not apply to the asset; and

(d) the arrangement referred to in paragraph (b) is materially altered on or after 1 July 2007; and

(e) but for this subitem and subitem (6):

(i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or

(ii) Division 16D would apply to the asset immediately after the alteration.

For the purposes of applying paragraph (c), assume that the asset was in existence and was being put to the tax preferred use immediately before 1 July 2007.

(6) If subitem (5) applies:

(a) section 51AD and Division 16D do not apply to the asset; and

(b) Division 250 applies to the tax preferred use of the asset after the alteration instead.

(7) This subitem applies to an asset that is put to a tax preferred use if:

(a) the tax preferred use started before 1 July 2007; and

(b) immediately before 1 July 2007:

(i) section 51AD did not apply to the asset in relation to a taxpayer; and

(ii) Division 16D did not apply to the asset; and

(c) the arrangement under which the tax preferred use of the asset occurs is materially altered on or after 1 July 2007; and

(d) but for this subitem and subitem (8):

(i) section 51AD would apply to the asset in relation to a taxpayer immediately after the alteration; or

(ii) Division 16D would apply to the asset immediately after the alteration.

(8) If subitem (7) applies:

(a) section 51AD and Division 16D do not apply to the asset; and

(b) Division 250 applies to the tax preferred use of the asset after the alteration instead.

(9) For the purposes of applying subparagraphs (5)(c)(ii) and (e)(ii) and (7)(b)(ii) and (d)(ii), disregard the operation of section 159GL of the *Income Tax Assessment Act 1936*.

(10) For the purposes of applying Division 250 to the tax preferred use of an asset in accordance with subitem (6) or (8), the ***arrangement period*** for the tax preferred use of the asset is taken to start on the day on which the alteration referred to in paragraph (5)(d) or (7)(c) occurs.

(11) Section 51AD does not apply to an asset for the income year commencing on 1 July 2007, or a later income year, if:

(a) the asset is put to a tax preferred use under a legally enforceable arrangement; and

(b) the arrangement was entered into before 1 July 2007; and

(c) the tax preferred use of the asset starts on or after 1 July 2003 and before 1 July 2007.

(12) The amendment made by item 69 of this Schedule applies in relation to an income year that begins on or after 1 July 2008.

(13) In this item:

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

***asset*** includes property (within the meaning of section 51AD and Division 16D).

***Division 16D*** means Division 16D of Part III of the *Income Tax Assessment Act 1936*.

***Division 250*** means Division 250 of the *Income Tax Assessment Act 1997*.

***section 51AD*** means section 51AD of the *Income Tax Assessment Act 1936*.

***tax preferred use*** has the same meaning as in the *Income Tax Assessment Act 1997*.

# Schedule 2—Thin capitalisation: excluded equity interests

## *Income Tax Assessment Act 1997*

### 1 At the end of subsection 820-946(2A)

Add:

> However, the interest is taken *not* to have been an ***excluded equity interest*** at the time if the total period for which the interest remains on issue is 180 days or more.

### 2 Application

The amendment made by this Schedule applies to income years starting on or after 1 July 2002.

# Schedule 3—Thin capitalisation: groups containing certain ADIs

## *Income Tax Assessment Act 1997*

### 1 At the end of section 820-585

Add:

(3) Subsection (1) does not apply if, at each time in the period mentioned in subsection (2), all the *ADIs that are *members of the group then are *specialist credit card institutions.

### 2 After section 820-587

Insert:

#### 820-588 Choice to treat specialist credit card institutions as being financial entities and not ADIs

(1) If the conditions in subsection (2) are met in relation to a *consolidated group or *MEC group and a period that is all or part of an income year, this Division (except this section) has effect as if:

(a) none of the *members of the group were an *ADI at any time in the period; and

(b) each member of the group that is an ADI (ignoring paragraph (a)) at any time in the period were a financial entity at that time.

Note 1: One result of this Division having effect in that way is that Subdivision 820-D (and related provisions, such as section 820-589) will not apply in relation to the head company, because:

(a) the head company of the group will not be classified under section 820-583 as an outward investing entity (ADI); and

(b) section 820-587 will not apply that Subdivision.

Note 2: Another result of this Division having effect in that way is that Subdivision 820-B or 820-C may apply in relation to the head company, because it may be classified under section 820-583 as either:

(a) an outward investing entity (non-ADI) and an outward investor (financial); or

(b) an inward investing entity (non-ADI) and an inward investment vehicle (financial).

(2) The conditions are that:

(a) at all times in the period at least one *member of the *consolidated group or *MEC group is an *ADI; and

(b) each ADI that is a member of the group at any time in the period is a *specialist credit card institution at that time; and

(c) the *head company of the group for the period chooses, before lodging its *income tax return for the income year, that this Division should have effect in that way in relation to the group and every period for which the conditions in paragraphs (a) and (b) are met in the income year.

(3) An *ADI is a ***specialist credit card institution*** at a time if, at that time, the ADI's authority under section 9 of the *Banking Act 1959* to carry on banking business (as defined in that Act) authorises the ADI to carry on only banking business that:

(a) is participation in a payment system (as defined in the *Payment Systems (Regulation) Act 1998*) that is a credit card scheme and is designated under section 11 of that Act; and

(b) is either or both of the following:

(i) credit card acquiring (as defined in regulations made for the purposes of the *Banking Act 1959*);

(ii) credit card issuing (as defined in those regulations).

(4) To avoid doubt, a choice for the purposes of paragraph (2)(c) cannot be revoked.

## 3 Paragraph 820-609(2)(a)

Repeal the paragraph, substitute:

(a) section 820-585 would prevent the disallowance of a *debt deduction for the income year including the trial period; or

## 4 At the end of subsection 820-609(7)

Add "and section 820-610".

## 5 After section 820-609

Insert:

## 820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI)

(1) This section applies if:

(a) apart from this section, the *head company or single company would, under section 820-609, be an *outward investing entity (ADI) or an *inward investing entity (ADI) for the trial period; and

(b) at all times in the trial period, each of the following entities that is an *ADI is a *specialist credit card institution:

(i) the head company or single company;

(ii) an establishment entity whose *Australian permanent establishments the head company or single company has chosen under section 820-597 or 820-599 to have treated as part of the company for the period.

(2) The *head company or single company is an ***outward investing entity (non-ADI)*** and an ***outward investor (financial)*** for the trial period if:

(a) apart from this section, the company would, under section 820-609, be an *outward investing entity (ADI) for the trial period; and

(b) the company chooses, before lodging its *income tax return for the income year including the trial period, to be an outward investing entity (non-ADI) and an outward investor (financial) for that period.

(3) The *head company or single company is an ***inward investing entity (non-ADI)*** and an ***inward investment vehicle (financial)*** for the trial period if:

(a) apart from this section, the company would, under section 820-609, be an *inward investing entity (ADI) for the trial period; and

(b) the company chooses, before lodging its *income tax return for the income year including the trial period, to be an inward investing entity (non-ADI) and an inward investment vehicle (financial) for that period.

(4) This section has effect despite sections 820-85, 820-185 and 820-609.

### 6 Subsection 995-1(1) (definition of *inward investing entity (non-ADI)*)

Omit “and 820-609”, substitute “, 820-609 and 820-610”.

### 7 Subsection 995-1(1) (definition of *inward investment vehicle (financial)*)

Omit “and 820-609”, substitute “, 820-609 and 820-610”.

### 8 Subsection 995-1(1) (definition of *outward investing entity (non-ADI)*)

Omit “and 820-609”, substitute “, 820-609 and 820-610”.

### 9 Subsection 995-1(1) (definition of *outward investor (financial)*)

Omit “and 820-609”, substitute “, 820-609 and 820-610”.

### 10 Subsection 995-1(1)

Insert:

> ***specialist credit card institution*** has the meaning given by section 820-588.

### 11 Application

The amendments made by this Schedule apply to income years starting on or after 1 January 2004.

# Schedule 4—Extending the CGT small superannuation funds roll-over on marriage breakdown

## *Income Tax Assessment Act 1997*

### 1 Section 112-150 (table item 7)

Omit "one small superannuation fund to another", substitute "a small superannuation fund to another complying superannuation fund".

### 2 Subparagraph 126-5(1)(f)(ii)

Repeal the subparagraph, substitute:

(ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.

### 3 Subparagraph 126-15(1)(f)(ii)

Repeal the subparagraph, substitute:

(ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.

### 4 Paragraph 126-140(1)(c)

Omit "small", substitute "*complying".

### 5 Paragraph 126-140(2)(b)

Omit "small", substitute "*complying".

### 6 After subsection 126-140(2)

Insert:

*Transfer of own interest in a small superannuation fund*

(2A) There is also a roll-over if:

(a) an individual has an interest in a *small superannuation fund (the ***first fund***); and

(b) the individual's *spouse, or former spouse, also has an interest in the first fund; and

(c) the trustee (the ***transferor***) of the first fund transfers a *CGT asset to the trustee (the ***transferee***) of another *complying superannuation fund for the benefit of the individual; and

(d) the transfer is in accordance with an award, order or agreement mentioned in subsection (2B); and

(e) if the transfer is part of a series of transfers in accordance with the award, order or agreement—the individual will no longer have an interest in the first fund when the series of transfers is complete; and

(f) if the transfer is not part of a series of transfers in accordance with the award, order or agreement—as a result of the transfer, the individual no longer has an interest in the first fund; and

(g) there has not been a roll-over under subsection (1) or (2) or this subsection in relation to the transfer of another CGT asset from the first fund, where the transfer was:

(i) made because of the award, order or agreement; and

(ii) for the benefit of that spouse, or former spouse; and

(h) if the transfer is in accordance with an agreement mentioned in paragraph (2B)(d) or (e), the conditions in subsection (2C) are satisfied.

Note: CGT event E2 may apply to the transfer.

(2B) The awards, orders and agreements are:

(a) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975* or a corresponding award made in an arbitration under a corresponding *State law, *Territory law or *foreign law; or

(b) a court order made under section 79 or subsection 90AE(2) or 90AF(2) of the *Family Law Act 1975* or a corresponding foreign law; or

(c) a court order made under a State law, Territory law or foreign law relating to de facto marriage breakdowns that

corresponds to an order made under section 79 or subsection 90AE(2) or 90AF(2) of the *Family Law Act 1975*; or

(d) a financial agreement made under Part VIIIA of the F*amily Law Act 1975* that is binding because of section 90G of that Act or a corresponding written agreement that is binding because of a corresponding foreign law; or

(e) a written agreement:

(i) that is binding under a State law, Territory law or foreign law relating to de facto marriage breakdowns; and

(ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.

(2C) The conditions are that:

(a) at the time of the transfer:

(i) the *spouses, or former spouses, involved are separated; and

(ii) there is no reasonable likelihood of cohabitation being resumed; and

(b) the transfer happened because of reasons directly connected with the breakdown of the marriage or de facto marriage.

(2D) For the purposes of subsection (2C), the question whether *spouses, or former spouses, have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

## 7 Application

The amendments made by this Schedule apply in relation to CGT events that happen on or after 1 July 2007, regardless of when the award, court order or agreement was made.

# Schedule 5—Prime Minister's Prizes

## *Income Tax Assessment Act 1997*

### 1 Section 11-10 (after table item headed "non-cash benefits")

Insert:

**prizes**

| | |
|---|---|
| Prime Minister's Prize for Australian History ..... | 51-60 |
| Prime Minister's Prize for Science ..... | 51-60 |

### 2 At the end of Division 51

Add:

#### 51-60 Prime Minister's Prizes

(1) To the extent that the Prime Minister's Prize for Australian History would otherwise be assessable income, it is exempt from income tax.

(2) To the extent that the Prime Minister's Prize for Science would otherwise be assessable income, it is exempt from income tax.

### 3 Application

The amendments made by this Schedule apply to assessments for the 2006-07 income year and later income years.

# Schedule 6—Removal of the same business test cap

## Part 1—Main amendments

### *Income Tax Assessment Act 1997*

#### 1 Sections 165-212A, 165-212B and 165-212C

Repeal the sections.

#### 2 Section 716-805

Repeal the section.

# Part 2—Consequential amendments

## *Income Tax Assessment Act 1997*

### 3 Section 165-5

Omit:

> (Companies whose total income for the income year is more than $100 million cannot satisfy the same business test for that year.)

### 4 Section 165-10 (note 1)

Omit “Note 1”, substitute “Note”.

### 5 Section 165-10 (note 2)

Repeal the note.

### 6 Subsection 165-13(1)

Omit “(other than a company covered by section 165-212A)”.

### 7 Subsection 165-13(1) (note 1)

Omit “Note 1”, substitute “Note”.

### 8 Subsection 165-13(1) (note 2)

Repeal the note.

### 9 Subsection 165-15(2) (note)

Repeal the note.

### 10 Subsection 165-23

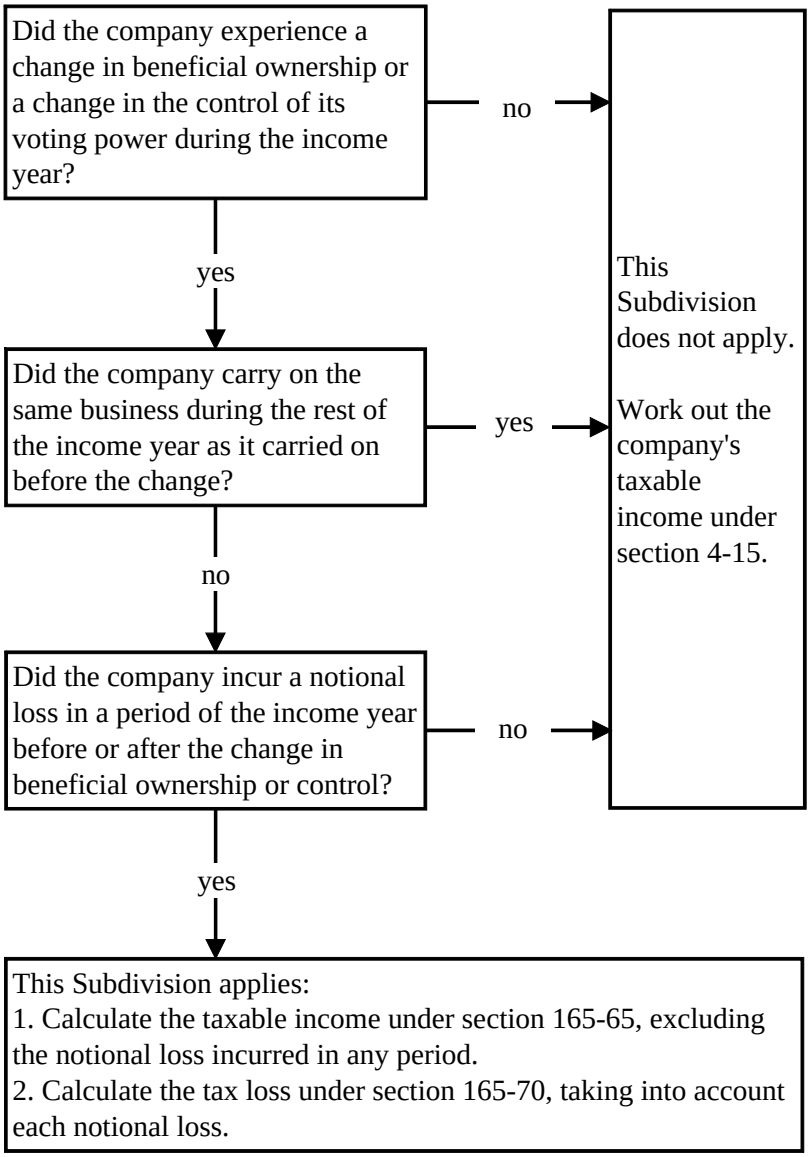
Omit:

> (Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for that year.)

### 11 Section 165-30

Repeal the section, substitute:

### 165-30 Flow chart showing the application of this Subdivision




Note: If the company was a partner during the income year, special rules apply to calculating a notional loss or notional taxable income.

## 12 Section 165-35 (note 3)

Repeal the note.

## 13 Subsection 165-40(2) (note)

Repeal the note.

## 14 Subsection 165-45(4) (note 3)

Repeal the note.

## 15 Section 165-93

Omit:

> (Companies whose total income for the income year is more than $100 million cannot satisfy the same business test for that year.)

## 16 Section 165-99

Omit:

> (Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for that year.)

## 17 Section 165-115

Omit:

> (Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for that year.)

## 18 Subsection 165-115B(4) (note)

Repeal the note.

## 19 Subsection 165-115BA(4) (note)

Repeal the note.

## 20 Section 165-117

Omit:

(Companies whose total income for the income year is more than $100 million cannot satisfy the same business test for the second continuity period.)

### 21 Subsection 165-120(1) (note 4)

Repeal the note.

### 22 Subsection 165-126(1)

Omit "(other than a company covered by section 165-212A)".

### 23 Subsection 165-126(1) (note 1)

Omit "Note 1", substitute "Note:".

### 24 Subsection 165-126(1) (note 2)

Repeal the note.

### 25 Subsection 165-129(2) (note)

Repeal the note.

### 26 Subsection 165-132(1) (note)

Repeal the note.

### 27 Subsection 165-210(1)

Omit "(other than a company covered by section 165-212A)".

### 28 Subsection 165-210(1) (note)

Repeal the note.

### 29 Subsection 166-5(5) (note 2)

Repeal the note.

### 30 Subsection 166-5(5) (note 3)

Omit "Note 3", substitute "Note 2".

### 31 Subsection 166-20(4) (note 2)

Repeal the note.

### 32 Subsection 166-20(4) (note 3)

Omit “Note 3”, substitute “Note 2”.

### 33 Subsection 166-40(5) (note 2)

Repeal the note.

### 34 Subsection 166-40(5) (note 3)

Omit “Note 3”, substitute “Note 2”.

### 35 Subsection 175-5(2) (note)

Repeal the note.

### 36 Subsection 175-40(2) (note 1)

Omit “Note 1”, substitute “Note”.

### 37 Subsection 175-40(2) (note 2)

Repeal the note.

### 38 Subsection 175-80(2) (note)

Repeal the note.

### 39 Subsection 701-30(3A) (note 1)

Omit “Note 1”, substitute “Note:”.

### 40 Subsection 701-30(3A) (note 2)

Repeal the note.

### 41 Subsection 707-120(3) (note)

Repeal the note.

### 42 Subsection 707-125(2) (note)

Repeal the note.

### 43 Subsection 707-125(3) (note)

Repeal the note.

### 44 Subsection 707-125(4) (note 1)

Omit “Note 1”, substitute “Note”.

### 45 Subsection 707-125(4) (note 2)

Repeal the note.

### 46 Subsection 707-135(2) (note)

Repeal the note.

### 47 Subsection 707-210(6) (note)

Repeal the note.

### 48 Subsection 715-15(1) (note 1)

Omit “Note 1”, substitute “Note”.

### 49 Subsection 715-15(1) (note 2)

Repeal the note.

### 50 Subsection 715-50(1) (note)

Repeal the note.

### 51 Subsection 715-55(1) (note 1)

Omit “Note 1”, substitute “Note”.

### 52 Subsection 715-55(1) (note 2)

Repeal the note.

### 53 Subsection 715-60(1) (note 1)

Omit “Note 1”, substitute “Note”.

### 54 Subsection 715-60(1) (note 2)

Repeal the note.

### 55 Subsection 715-70(2) (note 1)

Omit “Note 1”, substitute “Note”.

### 56 Subsection 715-70(2) (note 2)

Repeal the note.

### 57 Subsection 715-95(3) (note 1)

Omit “Note 1”, substitute “Note”.

### 58 Subsection 715-95(3) (note 2)

Repeal the note.

### 59 Subsection 715-355(3) (note 1)

Omit “Note 1”, substitute “Note”.

### 60 Subsection 715-355(3) (note 2)

Repeal the note.

### 61 Subsection 715-360(3) (note 3)

Repeal the note.

### 62 Subsection 716-850(1) (note 1)

Omit “Note 1”, substitute “Note”.

### 63 Subsection 716-850(1) (note 2)

Repeal the note.

### 64 Subsection 719-260(2) (note)

Omit “(However, companies whose total income for the claim year is more than $100 million cannot satisfy the same business test for that year: see section 165-212A.)”.

### 65 Subsection 719-260(3) (note)

Repeal the note.

### 66 Section 719-285 (note 1)

Omit “(Companies whose total income for an income year is more than $100 million cannot satisfy the same business test for the same business test period: see section 165-212A.)”.

### 67 Subsection 995-1(1) (definition of *total income*)

Repeal the definition.

# Part 3—Application

## 68 Application

The amendments made by this Schedule apply to:

(a) any tax loss that is incurred in an income year commencing on or after 1 July 2005; and

(b) any net capital loss that is made in an income year commencing on or after 1 July 2005; and

(c) any deduction in respect of a bad debt that is incurred in an income year commencing on or after 1 July 2005.

# Schedule 7—Statutory licences

## Part 1—Main amendments

### *Income Tax Assessment Act 1997*

#### 1 Section 124-140 (heading)

Repeal the heading, substitute:

**124-140 New statutory licences**

#### 2 Subsection 124-140(1)

Repeal the subsection, substitute:

(1) There is a roll-over if:

(a) your ownership of one or more *statutory licences (each of which is an ***original licence***) ends, resulting in *CGT event C2 happening to the licence (or to each of the licences as part of an *arrangement); and

(b) as a result of the CGT event or events, you are issued one or more new licences (each of which is a ***new licence***) for the original licence (or original licences); and

(c) the new licence authorises (or the new licences taken together authorise) substantially similar activity as that authorised by the original licence (or by the original licences taken together).

Note: If there has been a capital improvement to the original licence: see section 108-75.

(1A) If:

(a) you are a foreign resident just before the *CGT event happens (or just before one or more of the CGT events happens); or

(b) you are the trustee of a trust that is a *foreign trust for CGT purposes for the income year in which the event happens (or for an income year in which one or more of those events happens);

there is no roll-over under this section unless the conditions in subsection (1B) are satisfied.

(1B) The conditions are that:

(a) if there was only one original licence—the licence must be *taxable Australian property just before the *CGT event happens; and

(b) if there was more than one original licence—each original licence must be taxable Australian property just before the CGT event in relation to it happens; and

(c) if there is only one new licence—the licence must be taxable Australian property just after you *acquire it; and

(d) if there is more than one new licence—each new licence must be taxable Australian property just after you acquire it.

## 3 At the end of Subdivision 124-C

Add:

### 124-145 Rollover consequences—capital gain or loss disregarded

A *capital gain or *capital loss you make from the original licence (or from each of the original licences) is disregarded.

### 124-150 Rollover consequences—partial roll-over

(1) You can obtain only a partial roll-over in relation to an original licence if the *capital proceeds for that licence includes something (the ***ineligible proceeds***) other than a new licence or new licences. There is no roll-over for that part (the ***ineligible part***) of the licence for which you received the ineligible proceeds.

Note: If there is more than one original licence, some or all of those original licences may each have an ineligible part.

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

(3) The *reduced cost base of the ineligible part is that part of the reduced cost base of the original licence as is reasonably attributable to the ineligible part.

(4) For the purposes of sections 124-155 and 124-165, for each original licence that has an ineligible part:

(a) reduce the *cost base of that licence (just before the *CGT event that happened in relation to it) by so much of that cost base as is attributable to that ineligible part; and

(b) reduce the *reduced cost base of that licence (just before the CGT event that happened in relation to it) by so much of that reduced cost base as is attributable to that ineligible part.

### 124-155 Roll-over consequences—all original licences were post-CGT

(1) This section applies if you *acquired the original licence (or all of the original licences) on or after 20 September 1985.

(2) The first element of the *cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:

(a) the total of the cost bases of all the original licences; and

(b) the number, *market value and character of the original licences; and

(c) the number, market value and character of the new licences.

(3) The first element of the *reduced cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:

(a) the total of the reduced cost bases of all the original licences; and

(b) the number, *market value and character of the original licences; and

(c) the number, market value and character of the new licences.

### 124-160 Roll-over consequences—all original licences were pre-CGT

If you *acquired the original licence (or all of the original licences) before 20 September 1985, you are taken to have acquired the new licence (or all of the new licences) before that day.

### 124-165 Roll-over consequences—some original licences were pre-CGT, others were post-CGT

(1) This section applies if:

(a) there was more than one original licence; and

(b) you *acquired one or more of the original licences before 20 September 1985; and

(c) you acquired one or more of the original licences on or after that day.

(2) Each new licence is taken to be 2 separate *CGT assets that are both *statutory licences:

(a) one (which you are taken to have *acquired on or after 20 September 1985) representing the extent to which you acquired the original licences on or after that day; and

(b) another (which you are taken to have acquired before that day) representing the extent to which you acquired the original licences before that day.

(3) The first element of the *cost base and *reduced cost base of the *CGT asset mentioned in paragraph (2)(a) in relation to a new licence is worked out under the formula:

$$\text{Total post-CGT cost base} \times \frac{\text{Market value of new licence}}{\text{Market value of all new licences}}$$

where:

***market value of all new licences*** is the total of the *market values of all of the new licences.

***market value of new licence*** is the *market value of the new licence to which the *CGT asset mentioned in paragraph (2)(a) relates.

***total post-CGT cost base*** is the total of the *cost bases of all the original licences that you *acquired on or after 20 September 1985.

## *Income Tax (Transitional Provisions) Act 1997*

### 4 Before Division 126

Insert:

# Division 124—Replacement-asset roll-overs

## Subdivision 124-C—Statutory licences

### 124-140 New statutory licence—ASGE licence etc.

(1) Sections 124-141 and 124-142 apply if:

(a) there are one or more roll-overs under section 124-140 of the *Income Tax Assessment Act 1997* where:

(i) your ownership of one or more statutory licences (each of which is an ***original licence***) ends, resulting in CGT event C2 happening to the licence (or to each of the licences as part of an arrangement); and

(ii) you are issued one or more new licences (each of which is a ***new licence***) for the original licence (or original licences); and

(b) if there was only one original licence—that licence is covered under subsection (2); and

(c) if there was more than one original licence—at least one of the original licences was covered under subsection (2); and

(d) if there is only one new licence—that licence is covered under subsection (3); and

(e) if there is more than one new licence—only one of the new licences is covered under subsection (3); and

(f) the original licence (or at least one of the original licences) has an ineligible part (as described in section 124-150 of the *Income Tax Assessment Act 1997*).

(2) A licence is covered under this subsection if it is:

(a) a bore licence issued under the *Water Act 1912* of New South Wales; or

(b) a licence of a kind specified in the regulations.

(3) A licence is covered under this subsection if it is:

(a) an aquifer access licence under the *Water Management Act 2000* of New South Wales issued in accordance with the New South Wales Achieving Sustainable Groundwater Entitlements program (the ***ASGE program***); or

(b) a licence of a kind specified in the regulations.

## 124-141 ASGE licence etc.—cost base of ineligible part

(1) For an original licence that has an ineligible part, the cost base of the ineligible part is the cost base of the original licence multiplied by the amount worked out under the formula:

$$\frac{\text{Total ineligible proceeds}}{\text{Total ineligible proceeds} + \text{Value of new licence}}$$

where:

***total ineligible proceeds*** is the total of the ineligible proceeds (as described in section 124-150 of the *Income Tax Assessment Act 1997*) in relation to all of the original licences that have an ineligible part.

***value of new licence*** is:

(a) if the new licence is an aquifer access licence mentioned in paragraph 124-40(3)(a)—the 2002 value assigned under the ASGE program to the new licence; or

(b) otherwise—the value of the new licence worked out in accordance with the regulations.

(2) The regulations may specify one or more ways of working out the value of a licence (other than an aquifer access licence mentioned in paragraph 124-40(3)(a)) for the purposes of this section.

(3) For an original licence that has an ineligible part, the reduced cost base of the ineligible part is the reduced cost base of the original licence multiplied by the amount worked under the formula set out in subsection (1).

## 124-142 ASGE licence etc.—cost base of aquifer access licence etc.

(1) The first element of the cost base and reduced cost base of the new licence that is covered under subsection 124-140(3) is the total of the cost bases of the original licences.

Note: For the purposes of this section, the cost base of each original licence that has an ineligible part is reduced in accordance with subsection 124-150(4) of the *Income Tax Assessment Act 1997*.

(2) The cost base and reduced cost base of any new licence that is *not* covered under subsection 124-140(3) is nil.

(3) Subsections (4) and (5) apply if:

(a) there was more than one original licence; and

(b) some of the original licences were acquired before 20 September 1985; and

(c) subsection 124-165(2) of the *Income Tax Assessment Act 1997* applies in relation to the new licence that is covered under subsection 124-140(3) (splitting that licence into 2 separate CGT assets).

(4) For the purposes of subsection (2), treat the asset that is taken under paragraph 124-165(2)(a) of that Act to have been acquired on or after 20 September 1985 as a new licence that is covered under subsection 124-140(3) of this Act.

(5) Work out the first element of the cost base and reduced cost base of that asset in accordance with subsection 124-165(3) of that Act.

# Part 2—Consequential and other amendments

## *Income Tax Assessment Act 1997*

### 5 After section 112-53

Insert:

#### 112-53AA Statutory licences

| New statutory licence | | | |
|---|---|---|---|
| **Item** | **In this situation:** | **Element affected:** | **See section:** |
| 1 | New statutory licences | First element of cost base and reduced cost base | 124-150, 124-155 and 124-160 |

### 6 Section 112-115 (table item 5)

Omit "Renewal or extension of a statutory licence", substitute "New statutory licences".

### 7 After subsection 116-30(2)

Insert:

(2A) Subsection (2) does not apply if there is a partial roll-over for the *CGT event because of section 124-150.

### 8 Subsection 124-5(2) (note)

After "The consequences of a scrip for scrip roll-over are set out in Subdivision 124-M.", insert "The consequences of replacing a statutory licence by a new statutory licence are set out in Subdivision 124-C.".

### 9 Subsection 124-10(1) (example)

Repeal the example.

### 10 Subsection 124-10(3) (example)

Repeal the example.

### 11 Subsection 124-10(3) (note 1)

Omit “Subdivisions 124-C (about statutory licences),”.

### 12 Subsection 124-140(2) (note)

Repeal the note.

## *Income Tax (Transitional Provisions) Act 1997*

### 13 After Chapter 4

Insert:

# Chapter 5—Administration

## Part 5-35—Miscellaneous

## Division 909—Regulations

### 909-1 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

# Part 3—Application

## 14 Application

The amendments made by this Schedule apply to CGT events that happen in the 2006-2007 income year and later income years.

# Schedule 8—Australian property trusts and stapled securities

## Part 1—Main amendments

### *Income Tax Assessment Act 1936*

#### 1 At the end of section 102F

Add:

(4) Ownership interests in a unit trust or a company that is part of a scheme for reorganising the affairs of stapled entities referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* is not property for the purposes of applying subsections (1) and (2).

#### 2 Section 102N

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

#### 3 At the end of section 102N

Add:

(2) Despite paragraph (1)(b), a unit trust is not a trading trust only because it has acquired ownership interests (including a controlling interest) in, or controls:

(a) a foreign entity whose business, when considered together with the businesses of entities that the foreign entity controls or is able to control, directly or indirectly, consists primarily of investing in land outside Australia for the purpose, or primarily for the purpose, of deriving rent; or

(b) a foreign entity controlled, or able to be controlled, directly or indirectly, by an entity covered by paragraph (a).

(3) In this section:

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

#### 4 After section 102N

Insert:

## 102NA Certain interposed trusts not trading trusts

(1) A unit trust is not a trading trust for the purposes of this Division in relation to a year of income if:

(a) the trust is an interposed trust in relation to a scheme for reorganising the affairs of stapled entities referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* in relation to the year of income or an earlier year of income; and

(b) a roll-over was obtained by any entity under that Subdivision of that Act in relation to the scheme for the year of income or that earlier year of income; and

(c) the condition in subsection (2) is satisfied.

(2) The trustee of the trust must not, at any time during the year of income:

(a) carry on a trading business; or

(b) control, or be able to control, directly or indirectly, the affairs or operations of another entity that carries on a trading business, other than:

(i) a company that was, before the scheme was completed, one of the stapled entities referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997*; or

(ii) a subsidiary of one of those stapled entities that is a company, or an entity that is controlled or able to be controlled, directly or indirectly, by that company; or

(iii) a trust whose trustee was, before the scheme was completed, assessed and liable to pay tax under Division 6B or this Division and that was, before the scheme was completed, one of those stapled entities; or

(iv) an entity that is controlled or able to be controlled, directly or indirectly, by the trust referred to in subparagraph (iii);

in relation to the year of income or an earlier year of income.

(3) In this section:

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

### 5 Subsection 102P(10)

After "a unit trust", insert "(except a foreign entity to which subsection 102N(2) applies)".

## *Income Tax Assessment Act 1997*

### 6 At the end of Division 124

Add:

## Subdivision 124-Q—Exchange of stapled ownership interests for ownership interests in a unit trust

## Guide to Subdivision 124-Q

### 124-1040 What this Subdivision is about

> There is a roll-over if you own ownership interests that are stapled and, as a result of a reorganisation, you stop owning those interests and you acquire or own ownership interests in an interposed unit trust.

## Table of sections

**Operative provisions**

124-1045 Exchange of stapled securities
124-1050 Conditions
124-1055 Consequences of the roll-over for exchanging members
124-1060 Consequences of the roll-over for interposed trust
124-1065 Certain foreign holders disregarded

## Operative provisions

### 124-1045 Exchange of stapled securities

(1) There is a roll-over if:

(a) you own *ownership interests in 2 or more trusts, or in one or more companies and one or more trusts, and those interests are stapled together to form stapled securities; and

(b) at least one of the trusts is a trust whose trustee is not assessed and liable to pay tax under Division 6B or 6C of Part III of the *Income Tax Assessment Act 1936*; and

(c) if no company is involved—at least one of the trusts is a trust whose trustee is assessed and liable to pay tax under Division 6B or 6C of Part III of that Act; and

(d) under a *scheme for reorganising the affairs of the relevant *stapled entities, you and the other entities that own the ownership interests in the stapled entities (together the ***exchanging members***):

(i) stop being the owner of those ownership interests and acquire ownership interests in a new unit trust (the ***interposed trust***) and nothing else (a ***new trust case***); or

(ii) retain their ownership interests in one of those trusts (also the ***interposed trust***), stop being the owner of the remaining ownership interests that form the stapled securities and receive nothing other than ownership interests in the interposed trust, or an increase in value of their existing ownership interests in the interposed trust, or both (an ***existing trust case***); and

(e) under the scheme, the interposed trust becomes the owner of:

(i) for a new trust case—all of the ownership interests in the stapled entities; or

(ii) for an existing trust case—all of the ownership interests in the other stapled entities; and

(f) the conditions in section 124-1050 are satisfied.

Note: Division 6B of Part III of the *Income Tax Assessment Act 1936* deals with taxing corporate unit trusts in the same way as companies. Division 6C has the same effect in relation to public trading trusts.

(2) An entity is a ***stapled entity*** in relation to stapled securities if *ownership interests in the entity form part of the stapled securities.

(3) Ignore for the purposes of subsection (1) *ownership interests held by one *stapled entity in another stapled entity as at the start of the day on which the Bill for this Act was introduced into the Parliament.

## 124-1050 Conditions

(1) Just after the *scheme is completed (the ***completion time***), each exchanging member must own a percentage of the *ownership interests in the interposed trust that reasonably equates to the percentage of the ownership interests that the member owned in the *stapled entities.

Example: Public Company A, Unit Trust No. 1 and Unit Trust No. 2 are stapled entities. Each stapled entity has 4,000 ownership interests on issue. There are no ownership interests in any of the stapled entities other than shares in the company and units in the trusts.

Under a scheme for reorganising the stapled entities, Unit Trust No. 3 is interposed between the stapled entities and the owners of the interests in those entities. Unit Trust No. 3 (the interposed trust) becomes the owner of all of the interests in each of the three stapled entities. Exchanging members receive one unit in the interposed trust for each stapled security they owned. All units in the interposed trust are of the same class.

Naomi owned 200 shares in Public Company A, 200 units in Unit Trust No. 1 and 200 units in Unit Trust No. 2. Naomi therefore owned 5% of the ownership interests in each of the stapled entities. Under the scheme, Naomi receives 100 units in Unit Trust No. 3 (out of a total of 2,000 units) in exchange for her ownership interests in the stapled entities. Naomi now owns 5% of the ownership interests in the interposed trust and meets the condition in subsection (1).

(2) Just after the completion time, each exchanging member must have the same, or as nearly as practicable the same, proportionate *market value of *ownership interests in the interposed trust as the member had in the *stapled entities just before that time.

(3) In working out whether an exchanging member complies with subsection (2), an anticipated reasonable approximation of the *market value of *ownership interests just after the completion time is sufficient.

Note: An anticipated reasonable approximation of market values of ownership interests may include valuations provided to exchanging members in scheme documents.

(4) You must be an Australian resident at the completion time or, if you are a foreign resident at that time:

(a) some or all of your *ownership interests in the *stapled entities must have been *taxable Australian property just before that time; and

(b) your ownership interests in the interposed trust must be taxable Australian property just after that time.

### 124-1055 Consequences of the roll-over for exchanging members

(1) A *capital gain or *capital loss you make as a result of the *scheme from each of your *ownership interests is disregarded.

(2) If you *acquired all of your *ownership interests in the *stapled entities on or after 20 September 1985, the first element of the *cost base and *reduced cost base of each of your ownership interests in the interposed trust is such amount as is reasonable having regard to:

(a) the total of the *cost bases of all of your ownership interests in the *stapled entities; and

(b) the number, *market value and character of your ownership interests in the interposed trust.

Example: Naomi had a cost base of $2.00 for each of her 200 Public Company A shares, $1.50 for each of her 200 Unit Trust No. 1 units and $0.50 for each of her 200 Unit Trust No. 2 units. The total of the cost bases of all of her membership interests is $800.00.

It is reasonable to allocate $8.00 to each of the 100 units in the interposed trust that she receives under the reorganisation.

(3) If you *acquired all of your *ownership interests in the *stapled entities before 20 September 1985, you are taken to have acquired all of your ownership interests in the interposed trust before that day.

(4) If you *acquired some of your *ownership interests in the *stapled entities before 20 September 1985, you are taken to have acquired so many of your ownership interests in the interposed trust as is reasonable before that day having regard to:

(a) the number, *market value and character of your ownership interests in the stapled entities; and

(b) the number, market value and character of your ownership interests in the interposed trust.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.

(5) The first element of the *cost base and *reduced cost base of each of your *ownership interests in the interposed trust that is not taken by subsection (4) to have been *acquired before 20 September

1985 (your ***post-CGT interests***) is such amount as is reasonable having regard to:

(a) the total of the cost bases of your ownership interests in the *stapled entities that you acquired on or after 20 September 1985; and

(b) the number, *market value and character of your post-CGT interests.

## 124-1060 Consequences of the roll-over for interposed trust

(1) Apply this section separately for the interposed trust in relation to the *ownership interests in each *stapled entity that the trustee of the interposed trust *acquires under the *scheme.

(2) A whole number of *ownership interests in a *stapled entity that the trustee *acquires under the *scheme are taken to have been acquired before 20 September 1985 if any of the stapled entity's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.

(3) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the *ownership interests in the *stapled entity *acquired by the trustee) does not exceed:

(a) the *market value of the stapled entity's assets that it acquired before 20 September 1985; less

(b) its liabilities (if any) in respect of those assets;

expressed as a percentage of the market value of all the stapled entity's assets less all of its liabilities. The amounts in paragraphs (a) and (b) are to be worked out as at the completion time.

(4) The first element of the *cost base and *reduced cost base of each of the trustee's *ownership interests in that *stapled entity that are not taken by subsection (3) to have been *acquired before 20 September 1985 is such proportion as is reasonable of the total of the cost bases (as at the completion time) of that stapled entity's assets that it acquired on or after that day less its liabilities (if any) in respect of those assets.

(5) In applying this section:
  (a) a liability of a *stapled entity that is not a liability in respect of a specific asset or assets of the stapled entity is a liability in respect of all the assets of the stapled entity; and
  (b) if a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is such amount as is reasonable having regard to the *market values of each of those assets.

## 124-1065 Certain foreign holders disregarded

(1) This section has effect if:
  (a) *ownership interests are owned by a foreign holder within the meaning of the *Corporations Act 2001*; and
  (b) an agent or nominee is appointed by (or on behalf of) the foreign holder; and
  (c) the interests are *disposed of to the interposed trust, or are cancelled; and
  (d) as a result, the agent or nominee acquires new units or new options, rights or similar interests, or both, in the interposed trust; and
  (e) the agent or nominee disposes of those ownership interests in the interposed trust (whether separately or together with other ownership interests covered by paragraph (d)); and
  (f) the agent or nominee:
    (i) gives the foreign holder an amount equivalent to the *capital proceeds of the disposal (less expenses); or
    (ii) if the ownership interests are disposed of together with other ownership interests covered by paragraph (d)—gives the foreign holder an amount equivalent to the foreign holder's proportion of the capital proceeds of the disposal (less expenses).

(2) This Subdivision has effect as if the foreign holder were not an exchanging member.

# Part 2—Consequential amendments

## *Income Tax Assessment Act 1997*

### 7 After section 112-53A

Insert:

#### 112-53B Exchange of stapled ownership interests for units in a unit trust

| Exchange of stapled ownership interests for units in a unit trust | | | |
|---|---|---|---|
| **Item** | **In this situation:** | **Element affected:** | **See section:** |
| 1 | Exchange of stapled ownership interests | First element of cost base and reduced cost base | 124-1055 and 124-1060 |

### 8 Section 112-115 (after table item 14BB)

Insert:

| | | |
|---|---|---|
| 14BC | Exchange of stapled ownership interests | Subdivision 124-Q |

### 9 After paragraph 115-285(3)(b)

Insert:

(ba) Subdivision 124-Q (exchange of stapled ownership interests);

### 10 Subsection 124-5(1)

Omit “124-P”, substitute “124-Q”.

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

Add “The consequences of an exchange of stapled ownership interests are set out in Subdivision 124-Q.”.

### 12 Subsection 995-1(1)

Insert:

***stapled entity*** has the meaning given by section 124-1045.

# Part 3—Application

## 13 Application

(1) The amendments made by items 1 to 5 of this Schedule apply to the 2006-07 year of income and later years of income.

(2) The amendments made by items 6 to 12 of this Schedule apply to CGT events happening on or after 1 July 2006.

# Schedule 9—Deductible gift recipients

## *Income Tax Assessment Act 1997*

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

Add:

| | | |
|---|---|---|
| 4.2.32 | Kidsafe ACT (Inc.) | the gift must be made after 2 August 2007 |
| 4.2.33 | Kidsafe New South Wales (Inc.) | the gift must be made after 2 August 2007 |
| 4.2.34 | Kidsafe NT (Inc.) | the gift must be made after 2 August 2007 |
| 4.2.35 | Kidsafe Qld (Inc.) | the gift must be made after 2 August 2007 |
| 4.2.36 | Kidsafe SA Incorporated | the gift must be made after 2 August 2007 |
| 4.2.37 | Kidsafe Tasmania (Inc) | the gift must be made after 2 August 2007 |
| 4.2.38 | Kidsafe Vic (Inc.) | the gift must be made after 2 August 2007 |
| 4.2.39 | Kidsafe Western Australia (Inc) | the gift must be made after 2 August 2007 |

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

Omit “2007”, substitute “2009”.

### 3 Application

The amendment of table item 5.2.1 in subsection 30-50(2) of the *Income Tax Assessment Act 1997* made by this Schedule applies to gifts made on or after 1 July 2007.

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

Add:

| | | |
|---|---|---|
| 5.2.28 | The Bathurst War Memorial Carillon Public Fund Trust | the gift must be made after 2 August 2007 and |

| | | |
|---|---|---|
| | | before 3 August 2009 |

## 5 Subsection 30-315(2) (after table item 27)

Insert:

| | | |
|---|---|---|
| 27AA | Bathurst War Memorial Carillon Public Fund Trust | item 5.2.28 |

## 6 Subsection 30-315(2) (after table item 64)

Insert:

| | | |
|---|---|---|
| 64A | Kidsafe | items 4.2.32 to 4.2.39 (inclusive) |

# Schedule 10—Streamlining concessions for Australian films and Australian film production

## Part 1—Main amendments

### *Income Tax Assessment Act 1997*

#### 1 Division 376

Repeal the Division, substitute:

## Division 376—Films generally (tax offsets for Australian production expenditure)

### Table of Subdivisions

376-A Guide to Division 376
376-B Tax offsets for Australian expenditure in making a film
376-C Production expenditure and qualifying Australian production expenditure
376-D Certificates for films and other matters

## Subdivision 376-A—Guide to Division 376

### 376-1 What this Division is about

Companies may be entitled to 1 of 3 refundable tax offsets in relation to Australian expenditure incurred in making films. The offsets are designed to support and develop the Australian screen media industry by providing concessional tax treatment for Australian expenditure.

### Table of sections

376-2 Key features of the tax offsets for Australian production expenditure on films
376-5 Structure of this Division

## 376-2 Key features of the tax offsets for Australian production expenditure on films

(1) The 3 tax offsets are:
  (a) a refundable tax offset for Australian expenditure in making an Australian film (the producer offset); and
  (b) a refundable tax offset for Australian expenditure in making any film (the location offset); and
  (c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).

(2) A company is only entitled to one of these offsets in relation to a film.

(3) The amount of the offset is determined as a percentage of certain Australian expenditure incurred by a company in producing the film:
  (a) the amount of the producer offset is 40% of the company's qualifying Australian production expenditure on the film if the film is a feature film, and 20% of such expenditure if the film is not a feature film; and
  (b) the amount of the location offset is 15% of the company's qualifying Australian production expenditure on the film; and
  (c) the amount of the PDV offset is 15% of the company's qualifying Australian production expenditure on the film that relates to post, digital and visual effects production for the film.

(4) One of the requirements for entitlement to these offsets is that a company must be issued with a certificate for the film. The certificate will state the amount of Australian expenditure on which the offset will be determined.

(5) The offset is claimed by a company in its income tax return.

## 376-5 Structure of this Division

(1) Subdivision 376-B tells you about the different tax offsets available for films, who can get each offset and what conditions must be met to get each offset. It also tells you how to work out the amount of each offset.

(2) Subdivision 376-C explains what is meant by:
  (a) production expenditure on a film; and
  (b) qualifying Australian production expenditure on a film.

It also contains some rules for quantifying expenditure.

(3) Subdivision 376-D deals with a number of administrative matters:
  (a) applying for a certificate for a film; and
  (b) the issue and revocation of a certificate for a film; and
  (c) the making of rules by the Arts Minister (including rules for the establishment of the Film Certification Advisory Board) and the film authority; and
  (d) review of decisions of the Arts Minister and the film authority; and
  (e) amendment of assessments following the revocation of a certificate for a film.

## Subdivision 376-B—Tax offsets for Australian expenditure in making a film

### Table of sections

**Refundable tax offset for Australian expenditure in making a film (location offset)**

376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)
376-15 Amount of the location offset
376-20 Minister must issue certificate for a film for the location offset
376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset
376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

**Refundable tax offset for post, digital and visual effects production for a film (PDV offset)**

376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)
376-40 Amount of the PDV offset
376-45 Minister must issue certificate for a film for the PDV offset
376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

**Refundable tax offset for Australian expenditure in making an Australian film (producer offset)**

376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)
376-60 Amount of the producer offset
376-65 Film authority must issue certificate for an Australian film for the producer offset
376-70 Determination of content of film
376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

## Refundable tax offset for Australian expenditure in making a film (location offset)

### 376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)

(1) A company is entitled to a *tax offset under this section (the ***location offset***) for an income year in respect of a *film if:

(a) if the total of the company's *qualifying Australian production expenditure on the film (as determined by the *Arts Minister under section 376-30) is less than $50 million—the company's *production expenditure on the film ceased being incurred in the income year; and

(b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the *Arts Minister under section 376-30) is at least $50 million—the company's qualifying Australian production expenditure on the film ceased being incurred in the income year; and

(c) the *Arts Minister has issued a certificate to the company for the film under section 376-20 (certificate for the location offset); and

(d) the company claims the offset in its *income tax return for the income year; and

(e) the company:

(i) is an Australian resident; or

(ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (d) is irrevocable.

Note: The location offset is a refundable tax offset: see subsection 67-25(2A).

(2) The company is not entitled to the location offset if:

(a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or

(b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or

(c) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or

(d) a certificate for the film has been issued at any time under section376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

## 376-15 Amount of the location offset

The amount of the location offset is 15% of the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30).

## 376-20 Minister must issue certificate for a film for the location offset

(1) The *Arts Minister must issue a certificate to a company for a *film in relation to the location offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

(2) The conditions in this subsection are that:

(a) the *film was produced for:

(i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way

of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or

(ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and

(b) the film is:

(i) a *feature film or a film of a like nature; or

(ii) a mini-series of television drama; or

(iii) a television series that is not covered by subparagraph (i) or (ii); and

(c) the film is not, or is not to a substantial extent:

(i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or

(ii) a film for exhibition as an advertising program or a commercial; or

(iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or

(iv) a film of a public event; or

(v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or

(vi) a training film; or

(vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

*Television series*

(3) The conditions in this subsection are that:

(a) if the *film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:

(i) are produced wholly or principally for exhibition to the public on television under a single title; and

(ii) contain a common theme or themes; and

(iii) contain dramatic elements that form a narrative structure; and

(iv) are produced wholly or principally for exhibition together, for a national market or national markets; and

Note: A documentary can be a television series.

(b) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii):

(i) for a television series that is predominantly a digital animation or other animation—the *making of the television series (other than a pilot episode, if any, or activities mentioned in paragraph 376-125(3)(a)) takes place within a period of not longer than 36 months; or

(ii) otherwise—all principal photography for the television series (other than a pilot episode, if any) takes place within a period of not longer than 12 months; and

(c) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii)—the amount worked out for the film under subsection (6) is at least $1 million.

(4) To avoid doubt, and without limiting subparagraph (3)(a)(iii), a *film satisfies the requirement in that subparagraph if:

(a) the sole or dominant purpose of the film is to depict actual events, people or situations; and

(b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

*Conditions relating to expenditure thresholds*

(5) The conditions in this subsection are that:

(a) the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30) is at least $15 million; and

(b) if the total of the company's qualifying Australian production expenditure on the film is less than $50 million:

(i) the total of the company's qualifying Australian production expenditure on the film is at least 70% of the total of all the company's *production expenditure on the film; and

(ii) the company either carried out, or made the *arrangements for the carrying out of, all the activities that were necessary for the *making of the film; and

(c) if the total of the company's qualifying Australian production expenditure on the film is at least $50 million, the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film.

Note: The operation of subparagraph (b)(ii) and paragraph (c) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

(6) For the purposes of paragraph (3)(c), the amount for a *film is worked out by using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

***duration of film in hours*** means the total length of the *film, measured in hours.

***total QAPE*** means the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30).

## 376-25 Company may nominate one individual whose remuneration is to be disregarded for the location offset

(1) In its application for the certificate under section 376-230, the company may nominate one individual as an individual to whom this section applies.

(2) If the company nominates an individual under subsection (1), disregard the following for the purposes of this Division, to the extent that it relates to the location offset:

(a) the remuneration and other benefits provided to the individual for the individual's services in relation to the *making of the *film;

(b) travel and other costs associated with the services the individual provides in relation to the making of the film.

Note: This means that, for the purposes of the location offset, the individual's remuneration and benefits, and associated costs, are disregarded both in working out the total of the company's qualifying Australian production expenditure on the film and in working out the company's total production expenditure on the film.

### 376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

(1) If a company applies to the *Arts Minister for the issue of a certificate to the company for a *film under section 376-20 (certificate for the location offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure on the film for the purposes of the location offset.

(2) In making a determination under subsection (1), the *Arts Minister must have regard to the matters in Subdivision 376-C.

(3) The *Arts Minister must give the company written notice of the determination.

(4) A determination made under subsection (1) is not a legislative instrument.

## Refundable tax offset for post, digital and visual effects production for a film (PDV offset)

### 376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)

(1) A company is entitled to a *tax offset under this section (the ***PDV offset***) for an income year in respect of a *film if:
  (a) the company's *qualifying Australian production expenditure on the film, to the extent that it relates to *post, digital and visual effects production for the film, ceased being incurred in the income year; and
  (b) the *Arts Minister has issued a certificate to the company for the post, digital and visual effects production for the film under section 376-45 (certificate for the PDV offset); and
  (c) the company claims the offset in its *income tax return for the income year; and
  (d) the company:
    (i) is an Australian resident; or
    (ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The PDV offset is a refundable tax offset: see subsection 67-25(2A).

(2) ***Post, digital and visual effects production*** for a *film means:

(a) the creation of audio or visual elements (other than principal photography, pick ups or the creation of physical elements such as sets, props or costumes) for the film; and

(b) the manipulation of audio or visual elements (other than pick ups or physical elements such as sets, props or costumes) for the film; and

(c) activities that are necessarily related to the activities mentioned in paragraph (a) or (b).

Note: 3D animation, digital compositing and music composition and recording are examples of post, digital and visual effects production.

(3) The company is not entitled to the PDV offset if:

(a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or

(b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or

(c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or

(d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

## 376-40 Amount of the PDV offset

The amount of the PDV offset is 15% of the total of the company's *qualifying Australian production expenditure (as determined by the *Arts Minister under section 376-50) on a *film, to the extent that it relates to *post, digital and visual effects production for the film.

## 376-45 Minister must issue certificate for a film for the PDV offset

(1) The *Arts Minister must issue a certificate to a company for the *post, digital and visual effects production for a *film in relation to the PDV offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

*Type of film*

(2) The conditions in this subsection are that:
- (a) the *film was produced for:
  - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
  - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (b) the film is:
  - (i) a *feature film or a film of a like nature; or
  - (ii) a mini-series of television drama; or
  - (iii) a television series that is not covered by subparagraph (i) or (ii); and
- (c) the film is not, or is not to a substantial extent:
  - (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
  - (ii) a film for exhibition as an advertising program or a commercial; or
  - (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
  - (iv) a film of a public event; or
  - (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
  - (vi) a training film; or
  - (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

*Television series*

(3) The condition in this subsection is that, if the *film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:

(a) are produced wholly or principally for exhibition to the public on television under a single title; and

(b) contain a common theme or themes; and

(c) contain dramatic elements that form a narrative structure; and

(d) are produced wholly or principally for exhibition together, for a national market or national markets.

Note: A documentary can be a television series.

(4) To avoid doubt, and without limiting paragraph (3)(c), a *film satisfies the requirement in that paragraph if:

(a) the sole or dominant purpose of the film is to depict actual events, people or situations; and

(b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

*Conditions relating to expenditure thresholds*

(5) The conditions of this subsection are that:

(a) the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-50), to the extent that it relates to *post, digital and visual effects production for the film, is at least $5 million; and

(b) the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the post, digital and visual effects production for the film.

Note: The operation of paragraph (b) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

### 376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

(1) If a company applies to the *Arts Minister for the issue of a certificate to the company for the *post, digital and visual effects production for a *film under section 376-45 (certificate for the PDV offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for the film, for the purposes of the PDV offset.

(2) In making a determination under subsection (1), the *Arts Minister must have regard to the matters in Subdivision 376-C.

(3) The *Arts Minister must give the company written notice of the determination.

(4) A determination made under subsection (1) is not a legislative instrument.

## Refundable tax offset for Australian expenditure in making an Australian film (producer offset)

### 376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)

(1) A company is entitled to a *tax offset under this section (the ***producer offset***) for an income year in respect of a *film if:
  (a) the film was *completed in the income year; and
  (b) the *film authority has issued a certificate to the company under section 376-65 (certificate for the producer offset) for the film; and
  (c) the company claims the offset in its *income tax return for the income year; and
  (d) the company:
    (i) is an Australian resident; or
    (ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN;

when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The producer offset is a refundable tax offset: see subsection 67-25(2A).

(2) A *film is ***completed***:

(a) for a film that is not a series or a season of a series—when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; or

(b) for a series—at the earlier of:

(i) the time when the 65th episode is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and

(ii) the time when the series is first in such a state; and

(c) for a season of a series—at the earlier of:

(i) the time when the 65th episode of the series is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and

(ii) the time when the season is first in such a state.

(3) ***Film authority*** means the Film Finance Corporation Australia Limited (incorporated under the *Companies Act 1981* on 12 July 1988).

(4) The company is not entitled to the producer offset if:

(a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or

(b) a final certificate for the film has been issued at any time under Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or

(c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or

(d) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or

(e) the company or someone else has deducted money paid for *shares in a *film licensed investment company under Subdivision 375-H and the film licensed investment company has invested in the film; or

(f) production assistance (other than *development assistance) for the film has been received by the company or anyone else before 1 July 2007 from any of the following bodies:

(i) the Film Finance Corporation Australia Limited;

(ii) Film Australia Limited;

(iii) the Australian Film Commission;

(iv) the Australian Film, Television and Radio School.

(5) ***Development assistance*** for a *film means financial assistance provided to assist with meeting the development costs for the film, and includes assistance to the extent to which it is provided in relation to any of the following:

(a) location surveys and other activities undertaken to assess locations for possible use in the film;

(b) storyboarding for the film;

(c) scriptwriting for the film;

(d) research for the film;

(e) casting actors for the film;

(f) developing a budget for the film;

(g) developing a shooting schedule for the film.

## 376-60 Amount of the producer offset

The amount of the producer offset is:

(a) if the *film is a *feature film—40%; or

(b) if the film is not a feature film—20%;

of the total of the company's *qualifying Australian production expenditure on the film (as determined by the *film authority under section 376-75).

## 376-65 Film authority must issue certificate for an Australian film for the producer offset

(1) The *film authority must issue a certificate to a company for a *film in relation to the producer offset if the film authority is satisfied that:

(a) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the *making of the film; and

(b) the conditions in subsections (2) to (6) are met.

Note: The operation of paragraph (a) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

*Type of film*

(2) The conditions in this subsection are that:

(a) the *film:

(i) has a significant Australian content (see section 376-70); or

(ii) has been made under an *arrangement entered into between the Commonwealth or an authority of the Commonwealth and a foreign country or an authority of the foreign country; and

(b) the film was produced for:

(i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or

(ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and

(c) the film is:

(i) a *feature film; or

(ii) a single episode program; or

(iii) a series; or

(iv) a season of a series; or

(v) a short form animated drama that is not covered by subparagraph (i), (ii), (iii) or (iv); and

(d) the film is not, or is not to a substantial extent:

(i) a film for exhibition as an advertising program or a commercial; or
(ii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
(iii) a film of a public event (other than a documentary); or
(iv) a training film; or
(v) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*); or
(vi) a news or current affairs program; or
(vii) a reality program (other than a documentary).

*Single episode programs*

(3) The conditions in this subsection are that, if the *film is a single episode program, it:
(a) is of a like nature to a *feature film; and
(b) is produced for:
(i) exhibition to the public by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
(ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
(c) if the program is a documentary—is of at least one half of a commercial hour in duration; and
(d) if the program is not a documentary—is of at least one commercial hour in duration.

*Short form animated drama*

(4) The conditions in this subsection are that, if the *film is a short form animated drama, it:
(a) is a drama program comprising one or more episodes which are produced wholly or principally for exhibition together, for a national market or national markets under a single title; and

(b) is predominantly made using cell, stop motion, digital or other animation; and

(c) contains a common theme or themes; and

(d) is of at least one quarter of a commercial hour in duration.

*Series and seasons of series*

(5) The conditions in this subsection are that:

(a) if the application for the certificate is for a *film that is a series and not for a film that is a season of that series:

(i) the series is made up of at least 2 episodes; and

(ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and

(iii) the series has a new creative concept (see section 376-70); and

(b) if the application for the certificate is for a film that is a season of a series:

(i) the season is made up of at least 2 episodes; and

(ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and

(iii) the series has a new creative concept (see section 376-70).

*Expenditure thresholds*

(6) The conditions in this subsection are as set out in the table.

| Expenditure thresholds | | | |
|---|---|---|---|
| **Item** | **For this type of film ...** | **The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...** | **and the amount for the film worked out under subsection (7) is at least ...** |
| 1 | A *feature film | $1 million | not applicable |
| 2 | A single episode program other than a documentary | $1 million | $800,000 |
| 3 | A single episode program that is a documentary | not applicable | $250,000 |
| 4 | A short form animated drama that is not a *feature film, a single episode program, a series or a season of a series | $250,000 | $1,000,000 |
| 5 | A *film where the application for the certificate is for a series and not for a season of that series, and the series is not a documentary | $1 million | $500,000 |
| 6 | A *film where the application for the certificate is for a series and not for a season of that series, and the series is a documentary | not applicable | $250,000 |
| 7 | A* film where the application for the certificate is for a season of a series, and the series is not a | $1 million | $500,000 |

| Expenditure thresholds | | | |
|---|---|---|---|
| **Item** | **For this type of film ...** | **The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...** | **and the amount for the film worked out under subsection (7) is at least ...** |
| | documentary | | |
| 8 | A *film where the application for the certificate is for a season of a series, and the series is a documentary | not applicable | $250,000 |

(7) The amount worked out for a *film under this subsection is the amount worked out using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

***duration of film in hours*** means the total length of the *film, measured in hours.

***total QAPE*** means the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *film authority under section 376-75).

## 376-70 Determination of content of film

(1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following:

(a) the subject matter of the film;

(b) the place where the film was made;

(c) the nationalities and places of residence of the persons who took part in the *making of the film;

(d) the details of the *production expenditure incurred in respect of the film;

(e) any other matters that the film authority considers to be relevant.

(2) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film that is a series has a new creative concept, the *film authority must have regard to the following:

(a) the title of the series;

(b) whether the series has substantially different characters, settings, production locations and individuals involved in the *making of the series than any other series;

(c) any other matters that the film authority considers to be relevant.

### 376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

(1) If a company applies to the *film authority for the issue of a certificate to the company for a *film under section 376-65 (certificate for the producer offset), the film authority must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure on the film for the purposes of the producer offset.

(2) In making a determination under subsection (1), the *film authority must have regard to the matters in Subdivision 376-C.

(3) The *film authority must give the company written notice of the determination.

(4) A determination made under subsection (1) is not a legislative instrument.

## Subdivision 376-C—Production expenditure and qualifying Australian production expenditure

### Table of sections

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## Production expenditure—common rules

### 376-125 Production expenditure—general test

(1) A company's ***production expenditure*** on a *film is expenditure that the company incurs to the extent to which it:

(a) is incurred in, or in relation to, the *making of the film; or

(b) is reasonably attributable to:

(i) the use of equipment or other facilities for; or

(ii) activities undertaken in;

the making of the film.

(2) The ***making*** of a *film means the doing of the things necessary for the production of the first copy of the film.

(3) The ***making*** of a *film includes:
  (a) pre-production activities in relation to the film; and
  (b) post-production activities in relation to the film; and
  (c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.

(4) The ***making*** of a *film does not include:
  (a) developing the proposal for the *making of the film; or
  (b) arranging or obtaining finance for the film; or
  (c) distributing the film; or
  (d) promoting the film.

(5) Without limiting subsection (1), a company's ***production expenditure*** on a *film:
  (a) may be expenditure that is incurred in the income year for which the *tax offset is sought or in an earlier income year; and
  (b) may be expenditure of either a capital or a revenue nature; and
  (c) may be expenditure that gives rise to a deduction.

  Paragraph (c) has effect subject to item 10 of the table in section 376-135 (which deals with capital allowances).

(6) If:
  (a) a company:
    (i) *holds a *depreciating asset; and
    (ii) uses the asset, while held, in the *making of a *film; and
  (b) deductions in relation to the asset are available under Division 40 (which deals with capital allowances);

  the ***production expenditure*** of the company on the film includes an amount equal to the decline in the value of the asset to the extent to which that decline is reasonably attributable to the use of the asset in the making of the film (the ***film proportion***). The decline in value of the asset is to be worked out using Division 40.

  Note: Under item 10 of the table in section 376-135, expenditure that sets or increases the cost of the asset does not count as production expenditure.

(7) If a *balancing adjustment event occurs for the asset before the film is *completed:

(a) if the asset's *termination value is more than its *adjustable value just before the event occurred—the ***production expenditure*** of the company on the film is reduced by the film proportion of the difference; or

(b) if the asset's termination value is less than its adjustable value just before the event occurred—the ***production expenditure*** of the company on the film includes the film proportion of the difference.

## 376-130 Production expenditure—special qualifying Australian production expenditure

Expenditure of a company is also ***production expenditure*** of the company on a *film if it is *qualifying Australian production expenditure of the company on the film under section 376-150 or 376-165.

Note: This means that the special qualifying Australian production expenditure in sections 376-150 and 376-165 is taken into account both in working out the total amount of the company's qualifying Australian production expenditure and in working out the total amount of all the company's production expenditure on the film. The total amount of all production expenditure is relevant to a company's eligibility for the location offset: see the test in paragraph 376-20(5)(b).

## 376-135 Production expenditure—specific exclusions

Despite sections 376-125 and 376-130, the following expenditure of a company is not ***production expenditure*** of the company on a *film, except to the extent, if any, as mentioned in column 3 of the table:

| Expenditure that does not count as production expenditure on a film | | |
|---|---|---|
| **Item** | **This kind of expenditure by the company is not production expenditure ...** | **except to the extent to which the expenditure is ...** |
| 1 | *Financing expenditure*<br>expenditure incurred by way of, or in relation to, the financing of the *film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film) | |
| 2 | *Development expenditure*<br>*development expenditure on the *film | *qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1) |
| 3 | *Copyright acquisition expenditure*<br>expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film | *qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1) |
| 4 | *General business overheads*<br>expenditure incurred to meet the general business overheads of the company that:<br>(a) are not incurred in, or in relation to, the *making of the *film; and<br>(b) are not reasonably attributable to:<br>(i) the use of equipment or other facilities for; or<br>(ii) activities undertaken in;<br>the making of the film | *qualifying Australian production expenditure under item 1 of the table in subsection 376-165(1) or item 1 of the table in subsection 376-170(2) |
| 5 | *Publicity and promotion expenditure*<br>expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses) | *qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1) |

| **Expenditure that does not count as production expenditure on a film** | | |
|---|---|---|
| **Item** | **This kind of expenditure by the company is not production expenditure ...** | **except to the extent to which the expenditure is ...** |
| 6 | *Deferments*<br>amounts that are payable only out of the receipts, earnings or profits from the *film | |
| 7 | *Profit participation*<br>amounts that:<br>(a) depend on the receipts, earnings or profits from the *film; or<br>(b) are otherwise dependent on the commercial performance of the film | |
| 8 | *Residuals*<br>amounts payable in satisfaction of the residual rights of a person who is a member of the cast | paid out by the company before the *film is *completed |
| 9 | *Advances*<br>amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid | |
| 10 | *Acquisition of depreciating asset*<br>expenditure to the extent to which it sets, or increases, the *cost of a *depreciating asset<br>This item has effect subject to subsections 376-125(6) and (7). | *qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1) |
| 11 | *Regulations*<br>expenditure specified in regulations | |

## Production expenditure—special rules for the location offset

### 376-140 Production expenditure—special rules for the location offset

Despite sections 376-125 and 376-130, the expenditure of a company is not ***production expenditure*** of the company on a *film in relation to the location offset if:

(a) the film is a television series that is not a *feature film or a mini-series of television drama; and

(b) the expenditure is reasonably attributable to the production of a pilot episode to the television series; and

(c) the expenditure, apart from this subsection, would be production expenditure that was not *qualifying Australian production expenditure.

Note: The total amount of all production expenditure is relevant to the test in paragraph 376-20(5)(b).

## Qualifying Australian production expenditure—common rules

### 376-145 Qualifying Australian production expenditure—general test

A company's ***qualifying Australian production expenditure*** on a *film is the company's *production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to:

(a) goods and services provided in Australia; or

(b) the use of land located in Australia; or

(c) the use of goods that are located in Australia at the time they are used in the *making of the film.

### 376-150 Qualifying Australian production expenditure—specific inclusions

(1) The following expenditure of a company is also ***qualifying Australian production expenditure*** of the company on a *film:

| **Special Australian expenditure** | |
|---|---|
| **Item** | **Type of expenditure** |
| 1 | *Australian development expenditure* |

| Special Australian expenditure | |
|---|---|
| **Item** | **Type of expenditure** |
| | *development expenditure on the *film to the extent to which it is incurred for, or is reasonably attributable to:<br>(a) goods and services provided in Australia; or<br>(b) the use of land located in Australia; or<br>(c) the use of goods that are located in Australia at the time they are used in the *making of the film<br>[see subsection (2)] |
| 2 | *Expenditure incurred in acquiring Australian copyright*<br>expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film if the copyright is held by an individual or a company that is an Australian resident |
| 3 | *Expenditure incurred in producing Australian copyrighted promotional material*<br>expenditure incurred in producing material for use in publicising or otherwise promoting the *film if the copyright in the material is held by an individual or a company that is an Australian resident |
| 4 | *Expenditure incurred in producing additional content*<br>expenditure incurred in producing audio or visual content for the *film otherwise than for use in the first copy of the film, to the extent that the expenditure is incurred in Australia prior to the *completion of the film |
| 5 | *Regulations*<br>expenditure prescribed by the regulations |

(2) Legal costs are covered by item 1 of the table in subsection (1) only if they relate to:
  (a) writers' contracts; or
  (b) chain of title and other copyright issues.

## 376-155 Qualifying Australian production expenditure—specific exclusions

Despite sections 376-145, 376-150, 376-165 and 376-170, the following expenditure of a company is not ***qualifying Australian production expenditure*** of a company on a *film:
  (a) expenditure that is incurred when:
    (i) the company is a foreign resident; and

(ii) the company does not have both a *permanent establishment in Australia and an *ABN;

(b) expenditure in relation to:

(i) remuneration and other benefits provided to an individual for the individual's services in relation to the *making of the film; or

(ii) travel and other costs associated with the services an individual provides in relation to the making of the film;

if the individual:

(iii) is not a member of the cast; and

(iv) enters Australia to work on the film for less than 2 consecutive calendar weeks;

(c) expenditure prescribed by the regulations.

### 376-160 Qualifying Australian production expenditure—treatment of services embodied in goods

If:

(a) a company incurs expenditure for the provision of what is essentially a service; and

(b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and

(c) the service that is embodied in the goods was predominantly performed outside Australia;

the service is not provided to the company in Australia merely because the goods are delivered to the company in Australia.

Note: Paragraph (b)—a document, for example, might set out legal or other professional advice or a computer disk might contain a program that has been made or data that has been compiled.

## Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

### 376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

(1) For the purposes of the location offset and the PDV offset, the following expenditure of a company is also ***qualifying Australian production expenditure*** of the company on a *film:

| **Special Australian expenditure—location offset and PDV offset** | |
|---|---|
| **Item** | **Type of expenditure** |
| 1 | *Australian business overheads*<br>general business overheads of the company that:<br>(a) are not incurred in, or in relation to, the *making of the *film; and<br>(b) are not reasonably attributable to:<br>(i) the use of equipment or other facilities for; or<br>(ii) activities undertaken in;<br>the making of the film;<br>to the extent to which they:<br>(c) are incurred for, or are reasonably attributable to:<br>(i) goods and services provided in Australia; or<br>(ii) the use of land located in Australia; or<br>(iii) the use of goods that are located in Australia at the time they are used in the making of the film; and<br>(d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company<br>This item has effect subject to subsection (2). |
| 2 | *Travel to Australia*<br>expenditure of the company in relation to an individual's travel to Australia to undertake activities in Australia in relation to the *making of the *film, if the remuneration paid to the individual for those activities is *qualifying Australian production expenditure of the company |
| 3 | *Expenditure incurred in freighting goods to Australia*<br>expenditure incurred in freighting goods to Australia, to the extent that the goods will be used in the *making of the *film |

(2) General business overheads of the company are covered by item 1 of the table in subsection (1) only to the extent to which they do not exceed the lesser of:

(a) 2% of the total of all the company's *production expenditure on the *film; and

(b) $500,000.

## Qualifying Australian production expenditure—special rules for the producer offset

### 376-170 Qualifying Australian production expenditure—special rules for the producer offset

*Expenditure that is qualifying Australian production expenditure*

(1) For the purposes of subsections 376-65(6) and (7), expenditure on a *film incurred in a foreign country is ***qualifying Australian production expenditure*** of a company on the film if:

(a) the expenditure is incurred by the company claiming the offset, or by another entity that is involved in the *making of the film; and

(b) the expenditure would be qualifying Australian production expenditure if it had been incurred for, or reasonably attributable to:

(i) goods and services provided in Australia; or

(ii) the use of land located in Australia; or

(iii) the use of goods that are located in Australia at the time they are used in the *making of the film; and

(c) the film is made under an *arrangement entered into between the Commonwealth or an authority of the Commonwealth and the foreign country or an authority of the foreign country.

Note: This means that such expenditure is taken into account for the purposes of determining whether to issue a certificate for the producer offset to the company under section 376-65. It is not taken into account in working out the amount of the producer offset to which the company is entitled.

(2) For the purposes of the producer offset, the following expenditure of a company is also ***qualifying Australian production expenditure*** of the company on a *film:

| **Special Australian expenditure—producer offset** | |
|---|---|
| **Item** | **Type of expenditure** |
| 1 | *Australian business overheads*<br>general business overheads of the company that:<br>(a) are not incurred in, or in relation to, the *making of the *film; and<br>(b) are not reasonably attributable to: |

| **Special Australian expenditure—producer offset** | |
|---|---|
| **Item** | **Type of expenditure** |
| | (i) the use of equipment or other facilities for; or<br>(ii) activities undertaken in;<br>the making of the film;<br>to the extent to which they:<br>(c) are incurred for, or are reasonably attributable to:<br>(i) goods and services provided in Australia; or<br>(ii) the use of land located in Australia; or<br>(iii) the use of goods that are located in Australia at the time they are used in the making of the film; and<br>(d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company<br>This item has effect subject to subsection (3). |
| 2 | *Travel to Australia and other countries*<br>expenditure of the company in relation to an individual's travel:<br>(a) to Australia, to undertake activities in relation to the *making of the *film; and<br>(b) to or within any other country, to undertake activities in relation to the making of the film, if the remuneration paid to the individual for those activities would be *qualifying Australian production expenditure of the company under item 4 of this table. |
| 3 | *Expenditure incurred in freighting goods within and between countries*<br>expenditure incurred in freighting goods within and between countries, to the extent that the goods will be used in the *making of the *film. |
| 4 | *Expenditure incurred in other countries*<br>expenditure incurred outside Australia:<br>(a) for the remuneration of an Australian resident, or the purchase of goods or services from companies or *permanent establishments that have an *ABN; and<br>(b) during the period in which principal photography for the film takes place outside Australia<br>if the subject matter of the film reasonably requires the location in which the expenditure is incurred to be used for principal photography. |

(3) General business overheads of the company are covered by item 1 of the table in subsection (2) only to the extent to which they do not exceed the lesser of:

(a) 5% of the total of all the company's *total film expenditure on the *film; and

(b) $500,000.

*Expenditure that is not qualifying Australian production expenditure*

(4) For the purposes of the producer offset, the following expenditure of a company is not ***qualifying Australian production expenditure*** of a company on a *film:

(a) expenditure on the film that is paid for with *development assistance received from any of the following bodies:

(i) the Film Finance Corporation Australia Limited;

(ii) Film Australia Limited;

(iii) the Australian Film Commission;

(iv) the Australian Film, Television and Radio School;

unless the amount or value of the assistance has been repaid;

(b) the following expenditure:

(i) *development expenditure on the film;

(ii) remuneration provided to the principal director, producers and principal cast associated with the film;

to the extent that such expenditure comprises greater than 20% of the company's *total film expenditure on the film;

(c) for a series or a season of a series—expenditure on an episode beyond the 65th episode of the series.

(5) In applying paragraph (4)(c), episodes completed before 1 July 2007 count towards the limit in that paragraph.

(6) ***Total film expenditure*** on a film means:

(a) expenditure covered by sections 376-125, 376-130, 376-150 and 376-170; and

(b) expenditure mentioned in column 2 of the table in section 376-135, to the extent that it is not covered by paragraph (a).

## Expenditure generally—common rules

### 376-175 Expenditure to be worked out on an arm's length basis

For the purposes of this Division, if any 2 or more parties to:

(a) an *arrangement under which a company incurs expenditure in relation to a *film; or

(b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film;

do not deal with each other at *arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

## 376-180 Expenditure incurred by prior production companies

(1) For the purposes of this Division, if a company (the ***incoming company***) takes over the *making of a *film from another company (the ***outgoing company***):

(a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and

(b) for the purposes of determining the extent to which that expenditure is *qualifying Australian production expenditure of the incoming company, the incoming company is taken:

(i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and

(ii) to have had a *permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and

(iii) to have had an *ABN at any time when the outgoing company had an ABN; and

(c) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Division; and

(d) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of subparagraph 376-20(5)(b)(ii) and paragraphs 376-20(5)(c), 376-45(5)(b) and 376-65(1)(a), to have been carried out or made by the incoming company in relation to the film.

(2) For the purposes of subsection (1):

(a) expenditure incurred on the *film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subsection (1); and

(b) the outgoing company is taken:

(i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1); and

(ii) to have had a *permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1); and

(iii) to have had an *ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1); and

(c) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subsection (1); and

(d) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subsection (1).

Example: If Uncle Carty Ltd starts out making a film and then Mr Grouble Ltd takes over the making of the film, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the film. If Lousie Ltd subsequently takes over the making of the film from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the film (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

## Subdivision 376-D—Certificates for films and other matters

### Table of sections

376-230 Production company may apply for certificate
376-235 Notice of refusal to issue certificate
376-240 Issue of certificate
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376-260 Minister may make rules about the location offset and the PDV offset
376-265 Film authority may make rules about the producer offset

376-270 Amendment of assessments

## 376-230 Production company may apply for certificate

*Application for location offset certificate*

(1) A company may apply to the *Arts Minister for the issue of a certificate to the company for a *film under section 376-20 (certificate for the location offset):

(a) if the total of the company's *qualifying Australian production expenditure on the film (as determined by the *Arts Minister under section 376-30) is less than $50 million—when all of the company's *production expenditure has been incurred; and

(b) if the total of the company's qualifying Australian production expenditure on the film (as determined by the *Arts Minister under section 376-30) is at least $50 million—when all of the company's qualifying Australian production expenditure has been incurred.

*Application for PDV offset certificate*

(2) Once all of a company's *qualifying Australian production expenditure on a *film, to the extent that it relates to *post, digital and visual effects production for the film, has been incurred, the company may apply to the *Arts Minister for the issue of a certificate to the company for the film under section 376-45 (certificate for the PDV offset).

*Application for producer offset certificate*

(3) Once a *film is *completed, a company may apply to the *film authority for the issue of a certificate to the company for the film under section 376-65 (certificate for the producer offset).

*Form of application*

(4) An application under subsection (1) or (2) must be made in accordance with the rules determined by the *Arts Minister under section 376-260 so far as they relate to the requirements for applications.

(5) An application under subsection (3) must be made in accordance with the rules determined by the *film authority under section 376-265 so far as they relate to the requirements for applications.

## 376-235 Notice of refusal to issue certificate

(1) If the *Arts Minister decides not to issue a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) for a *film, the Minister must give the applicant written notice of the decision (including reasons for the decision).

(2) If the *film authority decides not to issue a certificate under section 376-65 (certificate for the producer offset) for a *film, the authority must give the applicant written notice of the decision (including reasons for the decision).

## 376-240 Issue of certificate

(1) A certificate issued to a company under section 376-20 (certificate for the location offset), 376-45 (certificate for the PDV offset) or 376-65 (certificate for the producer offset) must:
   (a) be in writing; and
   (b) specify the company's *ABN; and
   (c) specify the date of issue of the certificate; and
   (d) if the certificate is issued under section 376-20—specify the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *Arts Minister under section 376-30; and
   (e) if the certificate is issued under section 376-45—specify the total of the company's qualifying Australian production expenditure on the film, to the extent that it relates to *post, digital and visual effects production for the film, as determined by the Arts Minister under section 376-50; and
   (f) if the certificate is issued under section 376-65—specify the total of the company's qualifying Australian production expenditure on the film, as determined by the *film authority under section 376-75.

(2) If the certificate is issued under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset), the *Arts Minister must give the Commissioner notice of the issue of a certificate for a *film within 30 days after issuing the certificate.

(3) The notice under subsection (2) must specify:
  (a) the company's name; and
  (b) the company's address; and
  (c) the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *Arts Minister under section 376-30 or 376-50, as the case may be; and
  (d) other matters agreed to between the *Arts Minister and the Commissioner.

The notice must be accompanied by a copy of the certificate.

(4) If the certificate is issued under section 376-65 (certificate for the producer offset), the *film authority must give the Commissioner notice of the issue of a certificate for a *film within 30 days after issuing the certificate.

(5) The notice under subsection (4) must specify:
  (a) the company's name; and
  (b) the company's address; and
  (c) the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *film authority under section 376-75; and
  (d) other matters agreed to between the film authority and the Commissioner.

The notice must be accompanied by a copy of the certificate.

## 376-245 Revocation of certificate

(1) The *Arts Minister may revoke a certificate issued to a company for a *film under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) if:
  (a) the Minister is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation; or
  (b) the company does not provide a copy of the film to the Minister within 30 days of when the film is *completed.

(2) If the *Arts Minister revokes a certificate under subsection (1), the Minister must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).

(3) The *film authority may revoke a certificate issued to a company for a *film under section 376-65 (certificate for the producer offset) if the authority is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.

(4) If the *film authority revokes a certificate under subsection (3), the authority must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).

(5) If a certificate is revoked under subsection (1) or (3), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company's income tax is issued on the basis that the company is entitled to a tax offset for a film and the certificate for the film is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the tax offset: see section 376-270.

(6) Subsection (5) does not apply for the purposes of:
  (a) the operation of this section or section 376-250; or
  (b) a review by a court or the *AAT of the decision to revoke the certificate.

## 376-250 Notice of decision or determination

(1) This section applies to a notice of a decision given under section 376-235 (refusal to issue a certificate) or 376-245 (revocation of a certificate), and to a notice of a determination given under section 376-30 (determination of qualifying Australian production expenditure for location offset), 376-50 (determination of qualifying Australian production expenditure for PDV offset) or 376-75 (determination of qualifying Australian production expenditure for producer offset).

(2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).

(3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be

made to the *AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

(4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
   (a) setting out the findings on material questions of fact; and
   (b) referring to the evidence or other material on which those findings were based; and
   (c) giving the reasons for the decision or determination;

   except where subsection 28(4) of that Act applies.

(5) If the *Arts Minister or the *film authority fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

### 376-255 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:
   (a) a decision made by the *Arts Minister to refuse an application for a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); or
   (b) a decision made by the Arts Minister under section 376-245 to revoke a certificate; or
   (c) a decision made by the *film authority to refuse an application for a certificate under section 376-65 (certificate for the producer offset); or
   (d) a decision made by the film authority under section 376-245 to revoke a certificate; or
   (e) a determination by the Arts Minister in relation to the total of a company's *qualifying Australian production expenditure under section 376-30 or 376-50; or
   (f) a determination by the film authority in relation to the total of a company's *qualifying Australian production expenditure under section 376-75.

## 376-260 Minister may make rules about the location offset and the PDV offset

*Rules establishing the Film Certification Advisory Board*

(1) The *Arts Minister may, by legislative instrument, make rules:
  (a) establishing a Film Certification Advisory Board to:
    (i) consider applications under subsection 376-230(1) (application for a certificate for the location offset) or (2) (application for a certificate for the PDV offset) and advise the Minister on whether to issue certificates under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); and
    (ii) perform such other functions in relation to the operation of this Division as are specified in the rules; and
  (b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and
  (c) specifying procedures to be followed by the Board in performing its functions.

*Rules providing for provisional certificates in relation to location offset and the PDV offset*

(2) The *Arts Minister may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the location offset or the PDV offset.

*Rules about applications for certificates in relation to the location offset and the PDV offset*

(3) The *Arts Minister may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the location offset or the PDV offset are to be made, including:
  (a) the form in which applications are to be made; and
  (b) the information to be provided in applications; and
  (c) methods for verifying such information; and
  (d) procedures for providing, at the Minister's request, additional information in support of an application.

(4) Rules under paragraph (3)(c) can include rules requiring reports by auditors or independent line producers.

## 376-265 Film authority may make rules about the producer offset

*Rules providing for provisional certificates in relation to the producer offset*

(1) The *film authority may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the producer offset.

*Rules about applications for certificates in relation to the producer offset*

(2) The *film authority may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the producer offset are to be made, including:

(a) the form in which applications are to be made; and

(b) the information to be provided in applications; and

(c) methods for verifying such information; and

(d) procedures for providing, at the authority's request, additional information in support of an application.

(3) Rules under paragraph (2)(c) can include rules requiring reports by auditors or independent line producers.

## 376-270 Amendment of assessments

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

(a) a certificate issued to a company for a *film is revoked under section 376-245 after the time the company lodged its *income tax return for an income year; and

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

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

## 376-275 Review in relation to certain production levels

The Minister must, before the end of 12 months after the commencement of this Division, initiate a review of the effect of this Division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.

# Part 2—Consequential and other amendments

## *Income Tax Assessment Act 1936*

### 2 Paragraph 124L(1A)(b) (note)

Repeal the note, substitute:

; and (c) an application for a certificate of the kind referred to in the definition of ***Australian film*** in subsection 124K(1) in respect of the film is made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent; and

(d) the owner claims a deduction in respect of the film under this Division in relation to the 2008-09 year of income or an earlier year of income.

Note 1: For other kinds of intellectual property, see Division 40 of the *Income Tax Assessment Act 1997*.

Note 2: Paragraph (d) means that, if a taxpayer claims a deduction in respect of a film under this Division in relation to the 2008-09 year of income, the taxpayer can claim a deduction in respect of the film in relation to the 2009-10 year of income as well.

### 3 After subsection 124ZAB(2)

Insert:

(2A) An application under subsection (1) must be made before the day on which the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* receives the Royal Assent.

### 4 Subsection 124ZAB(6A) (note)

Omit “the tax offset”, substitute “a tax offset”.

### 5 After subsection 124ZAC(1)

Insert:

(1A) The applicant cannot apply for a certificate in respect of a film under subsection (1) unless a certificate has been issued to the applicant in respect of the film under section 124ZAB.

### 6 After subsection 124ZAFA(1)

Insert:

(1A) A deduction under subsection (1) is not allowable in relation to the 2009-10 year of income or a later year of income.

## *Income Tax Assessment Act 1997*

### 7 Subsection 36-17(5) (example)

Omit "subject to the refundable tax offset rules in Division 67", substitute "stated in Division 67 to be subject to the refundable tax offset rules".

### 8 Subsection 36-55(1) (note)

After "Division 67 sets out", insert "which tax offsets are subject to".

### 9 Subsection 36-55(1) (example)

Omit "subject to the refundable tax offset rules in Division 67", substitute "stated in Division 67 to be subject to the refundable tax offset rules".

### 10 At the end of section 40-45

Add:

(6) This Division applies to a *depreciating asset that is copyright in a *film where a company is entitled to a *tax offset under section 376-55 in respect of the film as if the asset's *cost were reduced by the amount of that offset.

### 11 Subsection 63-10(1) (table item 40, column headed "Tax offset")

Omit "in Division 67", substitute "(see Division 67)".

### 12 Section 67-10

Repeal the section, substitute:

#### 67-10 What this Division is about

If your total tax offsets exceed your basic income tax liability, and some of those offsets are subject to the refundable tax offset rules,

you may get a refund instead of paying income tax (see section 63-10). This Division tells you which tax offsets are subject to the refundable tax offset rules.

## 13 Subsection 67-25(2A)

Omit "The *tax offset available under Division 376 is", substitute "The *tax offsets available under Division 376 are".

## 14 Subsection 219-15(2) (table item 5, column headed "If:")

Omit "in Division 67", substitute "(see Division 67)".

## 15 Subsection 219-15(2) (table item 6, column headed "If:")

Omit "in Division 67", substitute "(see Division 67)".

## 16 Subsection 960-50(6) (table item 9)

Repeal the table item, substitute:

| | | |
|---|---|---|
| 9 | an amount that is relevant for the purposes of quantifying:<br>(a) the total of all of a company's *production expenditure on a *film; or<br>(b) the total of the company's *qualifying Australian production expenditure on a film; or<br>(c) the company's *total film expenditure on a film;<br>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-20 or 376-65 | the amount is to be translated to Australian currency at the exchange rate applicable at the time when principal photography commences or production of the animated image commences. |

| | | |
|---|---|---|
| 9A | an amount that is relevant for the purposes of quantifying:<br>(a) the total of all of a company's *production expenditure on a *film; or<br>(b) the total of the company's *qualifying Australian production expenditure on a film;<br>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-45 | the amount is to be translated to Australian currency at the exchange rate applicable when *post, digital and visual effects production for the film commences. |
| 9B | an amount that is relevant for the purposes of quantifying:<br>(a) the total of all of a company's *production expenditure on a *film; or<br>(b) the total of the company's *qualifying Australian production expenditure on a film; or<br>(c) the company's *total film expenditure on a film;<br>to the extent to which the amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-15, 376-40 or 376-60 | the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that qualifying Australian production expenditure is incurred on the film. |

## 17 Subsection 995-1(1) (definition of *completed*)

Omit "376-15(2)", substitute "376-55(2)".

## 18 Subsection 995-1(1)

Insert:

> ***development assistance*** for a *film has the meaning given by section 376-55.

## 19 Subsection 995-1(1)

Insert:

***film authority*** has the meaning given by section 376-55.

## 20 Subsection 995-1(1) (definition of *make*)

Omit "subsections 376-25(2), (3) and (4)", substitute "section 376-125".

## 21 Subsection 995-1(1)

Insert:

***post, digital and visual effects production*** for a *film has the meaning given by section 376-35.

## 22 Subsection 995-1(1) (definition of *production expenditure*)

Omit "sections 376-25 to 376-35", substitute "Subdivision 376-C".

## 23 Subsection 995-1(1) (definition of *qualifying Australian production expenditure*)

Omit "sections 376-40 to 376-55", substitute "Subdivision 376-C".

## 24 Subsection 995-1(1) (definition of *television series*)

Repeal the definition.

## 25 Subsection 995-1(1)

Insert:

***total film expenditure*** has the meaning given by section 376-170.

# Part 3—Repeal of Divisions 10B and 10BA

## *Income Tax Assessment Act 1936*

### 26 Paragraph 26AG(1)(a)

Before “section”, insert “former”.

### 27 Paragraph 26AG(1)(c)

Omit “under section”.

### 28 Paragraph 26AG(12)(b)

Repeal the paragraph, substitute:

(b) by reason of that disposal, an amount would, but for former subsection 124T(3), be included in the assessable income of the taxpayer of a year of income under former section 124P or would be applied, under former section 124N or 124S, in reducing the residual value, for the purposes of former Division 10B, of a unit of industrial property owned by the taxpayer; and

### 29 Subsection 26AG(12)

After “applied under”, insert “former”.

### 30 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)

Before “subsections 124R(2)”, insert “former”.

### 31 Subsection 82KH(1) (paragraph (h) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

### 32 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)

Before “subsection 124R(3)”, insert “former”.

### 33 Subsection 82KH(1) (paragraph (n) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

### 34 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)

Before “subsections 124R(2)”, insert “former”.

### 35 Subsection 82KH(1) (paragraph (v) of the definition of *relevant expenditure*)

Before “section 124M”, insert “former”.

### 36 Subsection 82KH(1) (definition of *unit of industrial property*)

Before “Division”, insert “former”.

### 37 Paragraph 82KH(1AD)(a)

Before “section 124M”, insert “former”.

### 38 Subsection 82KH(1BA)

Before “Subdivision 375-G”, insert “former”.

### 39 Subsection 82KH(1S)

Before “section 124KA”, insert “former”.

### 40 Paragraph 82KH(1T)(b)

Before “subsection 124KA(2)”, insert “former”.

### 41 Divisions 10B and 10BA of Part III

Repeal the Divisions.

### 42 Subsection 170(10) (table item 23, column headed “Provision”)

Before “Division 10BA”, insert “Former”.

### 43 Subsection 170(10AA) (table item 185, column headed “Provision”)

Before “Subdivision 375-H”, insert “Former”.

### 44 Subsection 262A(4AA)

Omit "or 124AO or under section 124W", substitute ", 124AO or 124W".

## 45 Subsection 262A(4AC)

Omit ", former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) or subsection 124PA(1)", substitute "or former subsection 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1), 124JD(1) or 124PA(1)".

## 46 Paragraph 262A(4AC)(a)

Omit ", former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA or 124JD or section 124PA", substitute "or former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA, 124JD or 124PA".

## 47 Subparagraph 570(1)(a)(ii)

After "meaning of", insert "former".

## 48 Paragraph 57-25(4)(e) in Schedule 2D

Before "Division 10B", insert "former".

## 49 Paragraph 57-25(4)(f) in Schedule 2D

Before "Division 10BA", insert "former".

## 50 Subsection 57-85(3) in Schedule 2D (table item 5, column 3)

Before "**Division 10BA**", insert "**Former**".

## 51 Subsection 57-85(3) in Schedule 2D (table item 7, column 3)

Before "**Division 10B**", insert "**Former**".

## 52 Paragraph 57-100(b) in Schedule 2D

Before "subsection 124ZADA(1)", insert "former".

## 53 Subsection 57-110(2) in Schedule 2D (table item 5, column headed "Balancing adjustment provision")

Omit "**Sections**", substitute "**Former sections**".

### 54 Subsection 57-110(2) in Schedule 2D (table item 5, column headed "Deduction rule to which the balancing adjustment provision relates")

Before "**Division 10B**", insert "**Former**".

### 55 Paragraph 268-35(2)(d) in Schedule 2F (note)

Before "section 124ZAFA", insert "former".

### 56 Paragraph 272-140 in Schedule 2F (note to the definition of *tax loss*)

Repeal the note.

## *Income Tax Assessment Act 1997*

### 57 Section 10-5 (table item headed "industrial property")

Repeal the item, substitute:

**industrial property**

see *intellectual property* and *research and development*

### 58 Section 12-5 (table item headed "film income")

Repeal the item.

### 59 Section 12-5 (table item headed "industrial property")

Repeal the item, substitute:

**industrial property**

see *intellectual property* and *research and development*

### 60 Section 12-5 (table item headed "shares")

Omit:

film licensed investment companies, deduction for subscription for shares in ..... Subdivision 375-H

### 61 Section 12-5 (table item headed "tax losses")

Omit:

film losses ..... Subdivision 375-G

## 62 Section 36-25 (column 3 of table item 3 in the table headed "Tax losses of entities generally)

Before "Subdivision", insert "Former".

## 63 At the end of section 36-40

Add:

(3) A ***film loss*** is the *film component (if any) of a *tax loss.

(4) Your *tax loss for an income year has a ***film component*** if your *film deductions for the year exceed the sum of:

(a) your *assessable film income for the year; and

(b) your *net exempt film income for the year.

The amount of the ***film component*** is the excess or the tax loss, whichever is lesser.

(5) However, if your *tax loss worked out under a provision listed in the table, the ***film component*** is what that tax loss would have been if:

(a) your *film deductions for the *loss year had been your only deductions; and

(b) your *assessable film income for the loss year had been your only assessable income; and

(c) your *net exempt film income for the loss year had been your only *net exempt income.

However, the ***film component*** cannot exceed the actual tax loss.

**Working out film component of tax loss**

| Item | Provision | Type of entity |
|---|---|---|
| 1 | 165-70 | Company—income year when ownership or control changed |
| 2 | 175-35 | Company—deductions that have been used to obtain a tax benefit disallowed |
| 3 | 268-60 in Schedule 2F to the *Income Tax Assessment Act 1936* | Trust—income year when ownership or control changed |

## 64 Paragraph 40-45(5)(a)

Before “Division”, insert “former”.

### 65 Paragraph 40-45(5)(b)

Before “Division” (first occurring), insert “former”.

### 66 Paragraph 165-55(2)(d) (note)

Before “section 124ZAFA”, insert “former”.

### 67 Subsection 170-5(6) (note)

Repeal the note.

### 68 Subsection 175-10(1)

Before “Subdivision”, insert “former”.

### 69 Paragraph 175-15(1)(b)

Before “Subdivision”, insert “former”.

### 70 Subsection 170-105(7) (note)

Repeal the note.

### 71 Division 375

Repeal the Division.

### 72 Paragraphs 376-10(2)(a) and (b)

Before “Division”, insert “former”.

### 73 Paragraphs 376-35(3)(a) and (b)

Before “Division”, insert “former”.

### 74 Paragraphs 376-55(4)(a) and (b)

Before “Division”, insert “former”.

### 75 Paragraph 376-55(4)(e)

Before “Subdivision”, insert “former”.

### 76 Subsection 995-1(1) (definition of *assessable film income*)

Repeal the definition, substitute:

***assessable film income*** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is assessable income.

## 77 Subsection 995-1(1) (subparagraphs (d) and (e) of the definition of *capital allowance*)

Before "Division", insert "former".

## 78 Subsection 995-1(1) (definition of *dividend*)

Omit "and section 375-872 of this Act".

## 79 Subsection 995-1(1) (definition of *exempt film income*)

Repeal the definition, substitute:

***exempt film income*** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is *exempt income.

## 80 Subsection 995-1(1) (definition of *film component*)

Repeal the definition, substitute:

***film component*** has the meaning given by section 36-40.

## 81 Subsection 995-1(1) (definition of *film deductions*)

Repeal the definition, substitute:

***film deductions*** for an income year are the following:

(a) amounts you could deduct for the income year under former section 124ZAFA of the *Income Tax Assessment Act 1936*;

(b) amounts that you could deduct for the income year and to which former section 124ZAO of that Act applied in relation to you for the income year.

## 82 Subsection 995-1(1) (definition of *film licensed investment company*)

Repeal the definition, substitute:

***film licensed investment company*** means a company that has been granted a licence to raise concessional capital under the Film

Licensed Investment Company Act 2005 (whether or not the licence has ceased to be in force).

### 83 Subsection 995-1(1) (definition of *film loss*)

Repeal the definition, substitute:

***film loss*** has the meaning given by section 36-40.

Note: Section 701-30 (rules about where an entity is not a subsidiary member for the whole of an income year) may affect a film loss.

### 84 Subsection 995-1(1) (definition of *FLIC concessional capital*)

Repeal the definition.

### 85 Subsection 995-1(1) (definition of *FLIC*)

Repeal the definition.

### 86 Subsection 995-1(1) (definition of *net assessable film income*)

Repeal the definition, substitute:

***net assessable film income*** for an income year is your *assessable film income for that year reduced by your *film deductions for that year.

### 87 Subsection 995-1(1) (definition of *net exempt film income*)

Repeal the definition, substitute:

***net exempt film income*** for an income year is your *exempt film income for that year reduced by:

(a) any taxes payable in respect of that income in a country or place outside Australia; and

(b) any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.

### 88 Subsection 995-1(1) (note to the definition of *tax loss*)

Repeal the note.

## *Income Tax (Transitional Provisions) Act 1997*

## 89 Section 375-100

Before “section 375-805”, insert “former”.

## 90 Subsection 375-110(1)

Before “section 375-810”, insert “former”.

# Part 4—Application and saving provisions

## 91 Application

(1) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-10 of the *Income Tax Assessment Act 1997*, apply to films commencing principal photography or production of the animated image on or after 8 May 2007.

(2) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-35 of the *Income Tax Assessment Act 1997*, apply to post, digital and visual effects production for a film that commences on or after 1 July 2007.

(3) The amendments made by this Schedule, to the extent that they relate to a tax offset under section 376-55 of the *Income Tax Assessment Act 1997*, apply to qualifying Australian production expenditure incurred:

(a) on or after 1 July 2007; and

(b) before 1 July 2007, to the extent that such expenditure is attributable to goods or services provided on or after 1 July 2007.

## 92 Saving provisions relating to amendment at item 1

(1) Despite the repeal and substitution of Division 376 of the *Income Tax Assessment Act 1997* by this Schedule, that Division continues to apply, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if that repeal and substitution had not happened.

(2) Despite the amendment made by item 1 of this Schedule, legislative instruments that:

(a) were made under section 376-105 of the *Income Tax Assessment Act 1997*; and

(b) were in force immediately before the commencement of that item;

continue to have effect, and may be dealt with, in relation to films that commenced principal photography or production of the animated image before 8 May 2007, as if the amendment had not happened.

# Schedule 11—Research and development

## Part 1—Amendment of the Income Tax Assessment Act 1936

### 1 Subsection 73B(1AAA)

After "deduction, to", insert "encourage research and development activities in Australia and".

Note 1: The following heading to subsection 73B(1AAA) is inserted "*Object of this section*".

Note 2: The following heading to subsection 73B(1AA) is inserted "*Relationship with sections 73C and 73CA*".

Note 3: The following heading to subsection 73B(1AB) is inserted "*What is core technology*".

### 2 Subsection 73B(1)

Insert:

***Australian-centred research and development activities*** means:

(a) Australian research and development activities that are covered by paragraph (a) of the definition of ***research and development activities***; or

(b) Australian research and development activities covered by all of the following:

(i) the activities are not covered by paragraph (a) of the definition of ***research and development activities***;

(ii) the activities are carried on for a purpose directly related to the carrying on of other Australian research and development activities that are of the kind referred to in paragraph (a) of that definition;

(iii) that purpose is the sole or dominant purpose for which the activities are carried on.

Note: The following heading to subsection 73B(1) is inserted "*Definitions*".

### 3 Subsection 73B(1)

Insert:

***expenditure on foreign owned R&D*** by an eligible company for a year of income has the meaning given by subsections (14C) and (14D).

## 4 Subsection 73B(1)

Insert:

***foreign company*** means a body corporate that:

(a) is incorporated under a law of a foreign country; and

(b) is a resident of a foreign country for the purposes of a double tax agreement (as defined in Part X) that relates to that foreign country.

Note 1: The following heading to subsection 73B(1A) is inserted "*What is eligible feedstock expenditure*".

Note 2: The following heading to subsection 73B(1B) is inserted "*Limit on what is contracted expenditure*".

## 5 After subsection 73B(1B)

Insert:

(1BA) Subsection (1B) does not apply to expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)).

Note 1: The following heading to subsection 73B(1C) is inserted "*What use of plant counts for definition of **plant expenditure***".

Note 2: The following heading to subsection 73B(2) is inserted "*Disregarding transfer of property connected with security*".

Note 3: The following heading to subsection 73B(2A) is inserted "*Limits on what are research and development activities*".

Note 4: The following heading to subsection 73B(3) is inserted "*Expenditure by eligible company as trustee not counted*".

Note 5: The following heading to subsection 73B(3A) is inserted "*Partnerships*".

Note 6: The following heading to subsection 73B(4) is inserted "*Definition of **qualifying plant expenditure***".

Note 7: The following heading to subsection 73B(4A) is inserted "*Definitions of **written-down value***".

Note 8: The following heading to subsection 73B(4C) is inserted "*Definition of **qualifying pilot plant expenditure***".

Note 9: The following heading to subsection 73B(4D) is inserted "*Deductible amount of qualifying expenditure on post-23 July 1996 pilot plant*".

Note 10: The following heading to subsection 73B(5) is inserted "*Limit on qualifying plant expenditure*".

Note 11: The following heading to subsection 73B(5A) is inserted "*Expenditure on building does not count for this section*".

Note 12: The following heading to subsection 73B(6) is inserted "*Cost of plant before 19 August 1992*".

## 6 Subsection 73B(9)

After "this section" (first occurring), insert "(except subsection (14C))".

Note: The following heading to subsection 73B(9) is inserted "*No deduction for expenditure on activities for another person*".

## 7 Subsection 73B(9)

After "this section" (last occurring), insert "(except subsections (14C) and (14D))".

Note 1: The following heading to subsection 73B(10) is inserted "*No deduction for unregistered company*".

Note 2: The following heading to subsection 73B(11) is inserted "*Advance R and D expenditure*".

Note 3: The following heading to subsection 73B(12) is inserted "*Deductions for core technology expenditure*".

Note 4: The following heading to subsection 73B(13) is inserted "*Deduction for contracted expenditure*".

Note 5: The following heading to subsection 73B(14) is inserted "*Deduction for research and development expenditure*".

Note 6: The following heading to subsection 73B(14AA) is inserted "*Reduced rate of deduction under subsection (13) or (14)*".

Note 7: The following heading to subsection 73B(14A) is inserted "*Deduction for interest expenditure*".

Note 8: The following heading to subsection 73B(14B) is inserted "*Deduction for residual feedstock expenditure*".

## 8 After subsection 73B(14B)

Insert:

*Deduction for expenditure on foreign owned R&D*

(14C) An eligible company may deduct for a year of income the amount (the ***expenditure on foreign owned R&D*** by the eligible company for the year of income) worked out under subsection (14D) if:

(a) the eligible company incurs expenditure in the year of income at a time when the eligible company is grouped under section 73L with a foreign company; and

(b) the expenditure is for the purpose of the carrying on of Australian-centred research and development activities; and

(c) the activities are, are to be or were carried on wholly or primarily on behalf of the foreign company; and

(d) the activities are, are to be or were carried on directly or indirectly under a written agreement between the eligible company and the foreign company and no other parties for the activities to be performed:

(i) by the eligible company; or

(ii) by another person directly or indirectly under another agreement to which the eligible company is, or will become, a party; and

(e) the expenditure is not incurred in connection with an agreement that:

(i) is between the eligible company and another eligible company that is grouped under section 73L with the eligible company when the expenditure is incurred; and

(ii) is an agreement for the activities to be performed either by the eligible company or by a person who is not a party to the agreement and is to perform the activities directly or indirectly under another agreement to which the eligible company is, or will become, a party; and

(f) the expenditure on foreign owned R&D by the eligible company for the year of income is greater than $20,000; and

(g) the eligible company, and each other eligible company (if any) that is grouped under section 73L with that company at any time in the year of income, is registered under section 39J of the *Industry Research and Development Act 1986* in relation to the year of income and all activities that meet both the following conditions:

(i) the activities are ones that, if subsection (2BA) had not been enacted, would be Australian-centred research and development activities carried on wholly or primarily on behalf of a foreign company (whether or not the activities would be such Australian-centred research and development activities taking account of that subsection);

(ii) the activities are ones in relation to which the eligible company or the other eligible company (as appropriate) incurred expenditure during the year of income.

Note 1: An example of the carrying on or performance of activities indirectly under an agreement that is a contract is the carrying on or performance of the activities under a subcontract, or one of a chain of subcontracts, under the agreement.

Note 2: One effect of paragraph (14C)(e) is that, even if the eligible company has an agreement with the foreign company for the carrying on of Australian-centred research and development activities wholly or primarily on behalf of the foreign company, the eligible company cannot deduct its expenditure:

(a) for performing the activities as a subcontractor under a subcontract with another eligible company grouped under section 73L with the eligible company; or

(b) if the eligible company is a subcontractor to another eligible company grouped under section 73L with the eligible company, for further subcontracting the performance of the activities.

Note 3: The eligible company may get an extra deduction under section 73QB if its expenditure on foreign owned R&D for the year of income is greater than the average of the amounts that would be the expenditure on foreign owned R&D by the eligible company for the 3 previous years of income if subsection (2BA) of this section had not been enacted.

(14D) The ***expenditure on foreign owned R&D*** by the eligible company for the year of income is the amount that would be the eligible company's incremental expenditure under section 73P for the year of income if:

(a) the Australian-centred research and development activities covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)) of this section were carried on on behalf of the eligible company (and not on behalf of the foreign company mentioned in paragraph (14C)(c)); and

(b) the only expenditure incurred by the eligible company in the year of income in relation to research and development activities had been the expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)) of this section; and

(c) the total group markup (if any) of the eligible company for the year of income were the amount (if any) that would be worked out under subsection (14AC) of this section if the company were working out the amount of a deduction under subsection (13) or (14) of this section on the basis described in paragraphs (a) and (b) of this subsection.

Note 1: Paragraphs (14D)(a) and (b) affect what would be the eligible company's incremental expenditure by affecting expenditure described in definitions of terms (e.g. ***contracted expenditure*** and ***salary expenditure***) used in the definition of ***research and development expenditure***, on which incremental expenditure is based.

Note 2: Subsection 73P(5) excludes a company's total group markup (worked out under subsection (14AC) of this section) from the company's incremental expenditure. The markup is worked out to affect a deduction by the company under subsection (13) or (14) of this section for an amount of research and development expenditure to which subsection (14AB) of this section applies.

Note 1: The following heading to subsection 73B(15) is inserted "*Deduction for qualifying plant expenditure*".

Note 2: The following heading to subsection 73B(15AA) is inserted "*Deduction for qualifying expenditure on post-23 July 1996 pilot plant*".

Note 3: The following heading to subsection 73B(15A) is inserted "*Reduction of deduction under subsection (15)*".

Note 4: The following heading to subsection 73B(17A) is inserted "*Limit on deduction for expenditure on overseas research and development activities*".

Note 5: The following heading to subsection 73B(18) is inserted "*Choice that this section not apply to plant*".

Note 6: The following heading to subsection 73B(20) is inserted "*Limit on double deductions*".

Note 7: The following heading to subsection 73B(23) is inserted "*Balancing adjustments*".

Note 8: The following heading to subsection 73B(27) is inserted "*Amounts included in assessable income*".

## 9 Paragraph 73B(31)(a)

Repeal the paragraph, substitute:

(a) an eligible company has:

(i) incurred an amount of research and development expenditure; or

(ii) incurred an amount of core technology expenditure; or

(iii) incurred an amount of expenditure covered by subsection (14C) (ignoring paragraphs (14C)(f) and (g)); or

(iv) incurred an amount of expenditure in the acquisition or construction of plant for use by the company exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and

Note 1: The following heading to subsection 73B(31) is inserted "*Amounts worked out on arm's length basis*".

Note 2: The following heading to subsection 73B(33) is inserted "*Deductions denied if Board gives certificates*".

## 10 Subsection 73B(34)

Repeal the subsection, substitute:

*Certificates from Board bind Commissioner*

(34) If the Board gives to the Commissioner:

(a) a certificate that:

(i) is given under section 39L of the *Industry Research and Development Act 1986*; and

(ii) states whether particular activities were research and development activities; and

(iii) relates to activities that were carried on by or on behalf of an eligible company; or

(b) a certificate that:

(i) is given under section 39LAAA of the *Industry Research and Development Act 1986*; and

(ii) states whether particular activities were Australian-centred research and development activities; and

(iii) relates to activities in relation to which an eligible company incurred expenditure;

the certificate is binding on the Commissioner for the purpose of making an assessment of the eligible company's taxable income of any year of income in which those activities were carried on.

(34AA) If the Board gives to the Commissioner a certificate that:

(a) is given under section 39LAAB of the *Industry Research and Development Act 1986*; and

(b) states whether particular activities were activities that would have been Australian-centred research and development activities if subsection (2BA) of this section had not been enacted; and

(c) relates to activities in relation to which an eligible company incurred expenditure;

the certificate is binding on the Commissioner for the purpose of making an assessment of the eligible company's taxable income of any year of income in which those activities were carried on and any later year of income.

Note: The following heading to subsection 73B(36) is inserted "*Apportioning insurance receipts etc.*".

## 11 Paragraph 73BAC(1)(a)

Omit "incremental expenditure (see section 73P)", substitute "expenditure".

## 12 At the end of subsection 73BAC(1)

Add:

; and (c) the head company of the group had received any recoupments of, or grants in respect of, that expenditure that the joining company or a person grouped with it under section 73L received, or became entitled to receive, before the joining company became a member of the group.

## 13 Section 73BAC (note)

Omit "the incremental expenditure provisions", substitute "sections 73P to 73Z (inclusive) of this Act".

## 14 Paragraph 73BAD(1)(a)

Omit "incremental expenditure (see section 73P)", substitute "expenditure".

## 15 Section 73BAD (note)

Omit "the incremental expenditure provisions", substitute "sections 73P to 73Z (inclusive) of this Act".

## 16 Subsection 73I(1)

After "73B", insert "(except subsection 73B(14C))".

## 17 Subsection 73I(1)

Omit "73Y", substitute "73QA".

Note: The heading to section 73I is altered by omitting "**73Y**" and substituting "**73QA**".

## 18 Subsection 73I(3)

After "73B", insert "(except subsection 73B(14C))".

## 19 Subsection 73I(3)

Omit "73Y", substitute "73QA".

## 20 Subsection 73I(4)

After "73B", insert "(except subsection 73B(14C))".

## 21 Subsection 73I(4)

Omit “73Y”, substitute “73QA”.

## 22 Paragraph 73J(1)(a)

After “73B”, insert “(except subsection 73B(14C))”.

## 23 Paragraph 73J(1)(a)

Omit “73Y”, substitute “73QA”.

## 24 Subsection 73P(1)

Omit “73Q”, substitute “73QA”.

## 25 After subsection 73P(1)

Insert:

(1A) Subsection (1) of this section and subsection 73B(9) do not prevent a deduction under section 73QA or 73QB merely because those sections require account to be taken of expenditure incurred by an eligible company in relation to activities carried on wholly or primarily on behalf of a foreign company.

(1B) Subsection (1) of this section does not cause any of section 73CA to apply in relation to expenditure in respect of which deductions are available under both subsection 73B(14C) and section 73QB.

## 26 Subsection 73P(2)

Omit “73Q”, substitute “73QA”.

## 27 Subsection 73P(2) (definition of *incremental expenditure*)

Repeal the definition, substitute:

***incremental expenditure*** means expenditure that:

(a) is research and development expenditure except:

(i) expenditure to lease or hire plant; and

(ii) expenditure under a contract to the extent that it is, in substance, for the acquisition of plant and not for the receipt of services; and

(b) can be taken into account in working out the amount of a deduction under subsection 73B(13) or (14) or could be taken

into account in working out the amount of a deduction under subsection 73B(14) apart from paragraph 73B(14)(b).

Note: The effects of paragraph (b) of the definition of ***incremental expenditure*** include preventing a company from counting as incremental expenditure:

(a) expenditure that the company is required by subsection 73B(9) to disregard because it was incurred by the company for the purpose of carrying on research and development activities on behalf of another person; and

(b) expenditure on overseas research and development activities that is not certified expenditure and so is expenditure for which subsection 73B(17A) denies a deduction under subsection 73B(13) or (14).

## 28 Subsection 73P(2) (definition of *premium amount*)

Repeal the definition.

## 29 Subsection 73P(2) (definition of *R&D spend*)

Repeal the definition, substitute:

***R&D spend*** of an eligible company and its group members for a year of income means the sum of:

(a) the amounts worked out for the year of income under steps 1, 2 and 3 of the method statement in subsection 73RA(1) as the reduced expenditure on Australian owned R&D by each eligible company in its group membership period for the year of income; and

(b) the amounts worked out for the year of income under steps 4, 5 and 6 of the method statement in subsection 73RB(1) as the reduced notional expenditure on foreign owned R&D by each eligible company in its group membership period for the year of income.

## 30 Subsection 73P(2) (definition of $RA_0$)

Repeal the definition.

## 31 Subsection 73P(2) (definition of $RA_{-1}$)

Repeal the definition, substitute:

***$RA_{-1}$*** (short for Running Average for the $Y_{-1}$ year of income) means half the sum of the R&D spend of the eligible company and its group members for the $Y_{-2}$ and $Y_{-3}$ years of income.

## 32 Subsection 73P(2) (definition of *running average*)

Repeal the definition.

## 33 Subsection 73P(6)

Omit "73Q, 73R, 73S, 73T, 73U, 73V, 73W, 73X and 73Y", substitute "73QA, 73QB, 73R, 73RA, 73RB, 73T and 73V".

## 34 Section 73Q

Repeal the section, substitute:

### 73QA Extra deduction for increase in expenditure on Australian owned research and development

*Prerequisites for deduction*

(1) An eligible company may deduct an amount for the $Y_0$ year of income if:

(a) the company can deduct an amount for that year under subsection 73B(13) or (14) for incremental expenditure incurred in the company's group membership period; and

(b) for each of the $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, any of the following conditions is met:

(i) the eligible company could deduct for the year of income an amount under subsection 73B(13) or (14) for expenditure incurred in its group membership period;

(ii) one of the eligible company's other group members could deduct for the year of income an amount under subsection 73B(13) or (14) for expenditure incurred in its group membership period;

(iii) the eligible company received a start grant or commercial ready grant in respect of the year of income;

(iv) one of the eligible company's other group members received a start grant or commercial ready grant in respect of the year of income;

(whether or not the same condition is met for 2 or more of those years, and whether or not a condition is met by the same company for 2 or more of those years); and

(c) the amount (the ***eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D***

***by the group***) worked out under subsection (3) is more than zero.

*Amount of deduction*

(2) The amount of the eligible company's deduction for the $Y_0$ year of income is 50% of the eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D by the group.

(3) The ***eligible company's share of the Australian owned part of the adjusted increase in expenditure on R&D by the group*** is the amount worked out using the formula:

$$\frac{\text{Increase in expenditure on Australian owned R\&D by the eligible company}}{\text{Total increase in expenditure on Australian owned R\&D by the eligible companies in the group}} \times \frac{\text{Net increase in expenditure on Australian owned R\&D by the group}}{\text{Net increase in expenditure on Australian owned R\&D by the group} + \text{Net increase in expenditure on foreign owned R\&D by the group}} \times \text{Adjusted increase in expenditure on R\&D by the group}$$

where:

***adjusted increase in expenditure on R&D by the group*** means the amount worked out under section 73RE.

***increase in expenditure on Australian owned R&D by the eligible company*** means the amount worked out under subsection 73RA(1).

***net increase in expenditure on Australian owned R&D by the group*** means the amount worked out under section 73RC.

***net increase in expenditure on foreign owned R&D by the group*** means the amount worked out under section 73RD.

***total increase in expenditure on Australian owned R&D by the eligible companies in the group*** means the amount worked out under subsection 73RA(2).

Note: The amount worked out using the formula will not be more than zero if at least one of the following is zero:

(a) the increase in expenditure on Australian owned R&D by the eligible company;

(b) the net increase in expenditure on Australian owned R&D by the group;

(c) the adjusted increase in expenditure on R&D by the group.

*Solitary company may be able to deduct under subsection (1)*

(4) To avoid doubt, an eligible company for which there are no other group members may be able to deduct an amount under subsection (1).

Note: For an eligible company for which there are no other group members, the values of the following components of the formula in subsection (3) will all be the same:

(a) the increase in expenditure on Australian owned R&D by the eligible company;

(b) the total increase in expenditure on Australian owned R&D by the eligible companies in the group;

(c) the net increase in expenditure on Australian owned R&D by the group.

## 73QB Extra deduction for increase in expenditure on foreign owned research and development

*Prerequisites for deduction*

(1) An eligible company may deduct an amount for the $Y_0$ year of income if:

(a) the company can deduct an amount for that year under subsection 73B(14C) for expenditure incurred in the company's group membership period; and

(b) for each of the $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, any of the following conditions is met:

(i) the eligible company could deduct for the year of income an amount under subsection 73B(14C) for expenditure in its group membership period;

(ii) one of the eligible company's other group members could deduct for the year of income an amount under subsection 73B(14C) for expenditure in its group membership period;

(iii) the year of income is one (a ***nil expenditure year***) for which both the conditions in subsection (2) are met;

(whether or not the same condition in this paragraph is met for 2 or more of those years, and whether or not such a condition is met by the same company for 2 or more of those years); and

(c) the amount (the ***eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group***) worked out under subsection (4) is more than zero.

(2) For the purposes of subparagraph (1)(b)(iii), the conditions for a nil expenditure year are as follows:

(a) neither the eligible company nor any other group member (determined under section 73R) of the eligible company existed at any time in the nil expenditure year or the 10 immediately preceding years of income;

(b) at no time in the nil expenditure year or the 10 immediately preceding years of income did any of the following carry on business in Australia:

(i) a foreign company that was grouped under section 73L with the eligible company at any time in the $Y_0$, $Y_{-1}$, $Y_{-2}$ or $Y_{-3}$ year of income;

(ii) a foreign company that was grouped under section 73L with another group member (under section 73R) of the eligible company at any time during the other group member's group membership period (under section 73R);

(iii) a person who was grouped under section 73L with a foreign company described in subparagraph (i) or (ii) at any time in the nil expenditure year or the 10 immediately preceding years of income.

Note: Section 73R provides for:

(a) primary group members to be determined on the basis of the relationship between companies at the end of the $Y_0$ year of income; and

(b) secondary group members to be determined on the basis of the relationship between a company and a primary group member during the primary group member's group membership period (which ends at the end of the $Y_0$ year of income and starts at or after the start of the $Y_{-3}$ year of income).

*Amount of deduction*

(3) The eligible company may deduct an amount for the $Y_0$ year of income equal to 75% of the eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group.

(4) The ***eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group*** is the amount worked out using the formula:

$$\frac{\text{Increase in expenditure on foreign owned R\&D by the eligible company}}{\text{Total increase in expenditure on foreign owned R\&D by the eligible companies in the group}} \times \frac{\text{Net increase in expenditure on foreign owned R\&D by the group}}{\text{Net increase in expenditure on Australian owned R\&D by the group} + \text{Net increase in expenditure on foreign owned R\&D by the group}} \times \text{Adjusted increase in expenditure on R\&D by the group}$$

where:

***adjusted increase in expenditure on R&D by the group*** means the amount worked out under section 73RE.

***increase in expenditure on foreign owned R&D by the eligible company*** means the amount worked out under subsection 73RB(1).

***net increase in expenditure on Australian owned R&D by the group*** means the amount worked out under section 73RC.

***net increase in expenditure on foreign owned R&D by the group*** means the amount worked out under section 73RD.

***total increase in expenditure on foreign owned R&D by the eligible companies in the group*** means the amount worked out under subsection 73RB(2).

Note: The amount worked out using the formula will not be more than zero if at least one of the following is zero:

(a) the increase in expenditure on foreign owned R&D by the eligible company;

(b) the net increase in expenditure on foreign owned R&D by the group;

(c) the adjusted increase in expenditure on R&D by the group.

*Solitary company may be able to deduct under subsection (1)*

(5) To avoid doubt, an eligible company for which there are no other group members may be able to deduct an amount under subsection (1).

Note: For an eligible company for which there are no other group members, the values of the following components of the formula in subsection (4) will all be the same:

(a) the increase in expenditure on foreign owned R&D by the eligible company;

(b) the total increase in expenditure on foreign owned R&D by the eligible companies in the group;

(c) the net increase in expenditure on foreign owned R&D by the group.

## 35 Subsection 73R(1) (first sentence)

Repeal the sentence, substitute:

This section sets out rules for determining which eligible companies that have deducted or can deduct an amount under subsection 73B(13), (14) or (14C), or that received a start grant or commercial ready grant, are group members.

## 36 Paragraph 73R(5)(c)

Repeal the paragraph, substitute:

(c) the person or persons that disposed of control of the company provide written details of the following needed to enable the making of calculations required by sections 73QA, 73QB, 73RA, 73RB, 73RC, 73RD, 73RE, 73T and 73V:

(i) expenditure incurred by the company during the period (its ***history period***) it was a group member of its former group;

(ii) receipts of grants and recoupments relating to that expenditure;

(iii) entitlements to receive grants and recoupments relating to that expenditure.

## 37 After section 73R

Insert:

## 73RA Increases in expenditure on Australian owned R&D by eligible companies

(1) For the purposes of section 73QA, work out the ***increase in expenditure on Australian owned R&D by the eligible company*** as follows:

*Method statement*

*Step 1.* For each of the $Y_0$, $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, work out the eligible company's incremental expenditure incurred in its group membership period.

*Step 2.* For each of the $Y_0$, $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, work out how much (if any) of the initial clawback amount (if any) under section 73C relating to expenditure incurred by the eligible company is attributable to incremental expenditure incurred in the eligible company's group membership period.

*Step 3.* For each of those years of income, reduce (but not below zero) the result of step 1 for the year of income by the result of step 2 for the year of income. The result is the ***reduced expenditure on Australian owned R&D*** by the eligible company in its group membership period for the year of income.

*Step 4.* Add up:

(a) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the $Y_{-1}$ year of income; and

(b) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the $Y_{-2}$ year of income; and

(c) the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the $Y_{-3}$ year of income.

*Step 5.* Divide the result of step 4 by 3.

*Step 6.* Subtract the result of step 5 from the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the $Y_0$ year of income (see step 3). The result is the ***change in expenditure on Australian owned R&D by the eligible company***.

Note: The change in expenditure on Australian owned R&D by the eligible company may be a positive or negative number or zero.

*Step 7.* The ***increase in expenditure on Australian owned R&D by the eligible company*** is:

(a) the change in expenditure on Australian owned R&D by the eligible company; or

(b) zero, if the change in expenditure on Australian owned R&D by the eligible company is a negative number.

(2) For the purposes of section 73QA, work out the ***total increase in expenditure on Australian owned R&D by the eligible companies in the group*** as follows:

*Method statement*

*Step 1.* For each group member that is an eligible company, work out the increase in expenditure on Australian owned R&D by the eligible company under subsection (1) of this section.

*Step 2.* Total the results of step 1.

## 73RB Increases in expenditure on foreign owned R&D by eligible companies

(1) For the purposes of section 73QB, work out the ***increase in expenditure on foreign owned R&D by the eligible company*** as follows:

*Method statement*

*Step 1.* For the $Y_0$ year of income, work out the amount of the expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) that was incurred by the company in its group membership period. The result is the ***expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income.

*Step 2.* For the $Y_0$ year of income, work out how much (if any) of the initial clawback amount (if any) under section 73C relating to expenditure incurred by the eligible company is attributable to the expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income.

*Step 3.* Reduce (but not below zero) the result of step 1 for the year of income by the result of step 2 for the year of income. The result is the ***reduced expenditure on foreign owned R&D*** by the eligible company in its group membership period for the $Y_0$ year of income.

*Step 4.* For each of the $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, work out the amount (the ***notional expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income) of expenditure that:

(a) was incurred by the company in its group membership period; and

(b) would have been expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) if subsection 73B(2BA) had not been enacted.

Note 1: This requires counting of expenditure relating to all activities that would have been research and development activities had they been carried on in accordance with a plan described in subsection 73B(2BA) (whether or not they were carried on in that way).

Note 2: If all relevant activities were carried on in accordance with such a plan, and the eligible company's group membership period includes the whole of the year of

income, the notional expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income is the same as the expenditure on foreign owned R&D by the company for the year of income.

*Step 5.* For each of the $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, work out what would have been the amount of the eligible company's initial clawback amount (if any) under section 73C attributable to the notional expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income if subsection 73B(2BA) had not been enacted.

Note: This requires counting of grants and recoupments described in section 73C relating to expenditure on projects involving activities that would have been research and development activities had they been carried on in accordance with a plan described in subsection 73B(2BA) (whether or not they were carried on in that way).

*Step 6.* For each of the $Y_{-1}$, $Y_{-2}$ and $Y_{-3}$ years of income, reduce (but not below zero) the result of step 4 for the year of income by the result of step 5 for the year of income. The result is the ***reduced notional expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income.

*Step 7.* Add up:

(a) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the $Y_{-1}$ year of income; and

(b) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the $Y_{-2}$ year of income; and

(c) the reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for the $Y_{-3}$ year of income.

*Step 8.* Divide the result of step 7 by 3.

*Step 9.* Subtract the result of step 8 from the reduced expenditure on foreign owned R&D by the eligible company for the $Y_0$ year of income (see step 3). The result is the ***change in expenditure on foreign owned R&D by the eligible company***.

Note: The change in expenditure on foreign owned R&D by the eligible company may be a positive or negative number or zero.

*Step 10.* The ***increase in expenditure on foreign owned R&D by the eligible company*** is:

(a) the change in expenditure on foreign owned R&D by the eligible company; or

(b) zero, if the change in expenditure on foreign owned R&D by the eligible company is a negative number.

(2) For the purposes of section 73QB, work out the ***total increase in expenditure on foreign owned R&D by the eligible companies in the group*** as follows:

*Method statement*

*Step 1.* For each group member that is an eligible company, work out the increase in expenditure on foreign owned R&D by the eligible company under subsection (1) of this section.

*Step 2.* Total the results of step 1.

## 73RC Net increase in expenditure on Australian owned R&D by the group

For the purposes of sections 73QA and 73QB, work out the ***net increase in expenditure on Australian owned R&D by the group*** as follows:

*Method statement*

*Step 1.* For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in expenditure on Australian owned R&D by the eligible company.

*Step 2.* Total the results of step 1. If the result is a negative number, the ***net increase in expenditure on Australian owned R&D by the group*** is zero instead.

## 73RD Net increase in expenditure on foreign owned R&D by the group

For the purposes of sections 73QA and 73QB, work out the ***net increase in expenditure on foreign owned R&D by the group*** as follows:

*Method statement*

*Step 1.* For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

*Step 2.* Total the results of step 1. If the result is a negative number, the ***net increase in expenditure on foreign owned R&D by the group*** is zero instead.

## 73RE Adjusted increase in expenditure on R&D by the group

Work out the ***adjusted increase in expenditure on R&D by the group*** as follows:

*Method statement*

*Step 1.* For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in

expenditure on Australian owned R&D by the eligible company.

*Step 2.* For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

*Step 3.* Add up all the results of steps 1 and 2.

Note: If the sum is a negative number, the adjusted increase in expenditure on R&D by the group will be zero.

*Step 4.* Subtract the adjustment balance worked out under section 73V from the result of step 3. If the result is a negative number, the ***adjusted increase in expenditure on R&D by the group*** is zero instead.

## 38 Section 73S

Omit “, 73V or 73W”, substitute “or 73V”.

## 39 Paragraphs 73T(3)(a) and (4)(a)

Omit “was eligible to claim an additional deduction under section 73Y”, substitute “could deduct an amount under section 73QA or 73QB”.

## 40 Section 73U

Repeal the section.

## 41 Paragraph 73V(3)(a)

Omit “was eligible to claim an additional deduction under section 73Y”, substitute “met the conditions either in paragraphs 73QA(1)(a) and (b) or in paragraphs 73QB(1)(a) and (b)”.

## 42 Sections 73W, 73X and 73Y

Repeal the sections.

## 43 Paragraph 73Z(1)(b)

Omit “73Y”, substitute “73QA or 73QB”.

## 44 At the end of subsection 73Z(2)

Add "or the notional expenditure on foreign owned R&D by the eligible company in its group membership period for any year of income (see step 4 of the method statement in subsection 73RB(1))".

### 45 Paragraphs 82KZM(1)(c), 82KZMA(1)(a), 82KZME(1)(a) and 82KZMF(2)(a)

Omit "or 73Y", substitute ", 73QA, 73QB or former section 73Y".

### 46 Subsection 170(10A)

Omit "or 73Y", substitute ", 73QA or 73QB".

### 47 Subsection 245-140(1) in Schedule 2C (definition of *table of deductible expenditure*, table item 8, column 2)

Omit "and 73Y", substitute ", 73QA and 73QB".

### 48 Subsection 57-85(3) in Schedule 2D (table item 13, column 3)

Omit "**and 73Y**", substitute "**, 73QA and 73QB**".

# Part 2—Amendment of the Industry Research and Development Act 1986

## 49 Subsections 39AA(1) and (2)

Omit “and 73Y”, substitute “, 73QA and 73QB”.

## 50 Subsection 39AA(2)

After “deduction, to”, insert “encourage research and development activities in Australia and”.

## 51 Section 39D

Repeal the section, substitute:

### 39D Research and development activities for the benefit of the Australian economy

(1) Australian research and development activities are taken to be for the benefit of the Australian economy.

(2) Overseas research and development activities are taken to be for the benefit of the Australian economy if the Board has given a provisional certificate in respect of the activities.

## 52 Subparagraph 39EB(3)(c)(ii)

Omit “73Y”, substitute “73QA”.

## 53 Subsection 39EC(1)

Omit “73Y”, substitute “73QA”.

## 54 Subparagraph 39EC(2)(d)(iii)

Omit “73Y”, substitute “73QA”.

## 55 Paragraphs 39EE(1)(c) and (2)(b) and 39EF(2)(b)

Omit “73Y”, substitute “73QA”.

## 56 At the end of subsection 39F(1)

Add “or foreign companies”.

## 57 Subsection 39HG(1)

Omit "its".

## 58 Paragraph 39HG(2)(c)

Omit "its", substitute "the".

## 59 At the end of subsection 39HG(2)

Add:

; and (g) specify each company on behalf of which the activities will be undertaken.

Note: A company on behalf of which the activities will be undertaken may be the applicant or a foreign company with which the applicant is grouped under section 73L of the *Income Tax Assessment Act 1936*.

## 60 Paragraph 39HH(1)(b)

Omit "its proposed research and development activities", substitute "the research and development activities proposed in the application".

## 61 Section 39HH (note)

Omit "or 73Y", substitute ", 73QA or 73QB".

## 62 Paragraph 39J(1)(a)

Repeal the paragraph, substitute:

(a) an eligible company applies to the Board for registration in relation to activities of either or both of the following kinds in respect of a year of income:

(i) the eligible company's research and development activities;

(ii) activities described in paragraph 73B(14C)(g) of the *Income Tax Assessment Act 1936* in relation to the eligible company; and

## 63 Paragraph 39J(1)(b)

Omit "its research and development activities", substitute "the activities covered by the application".

## 64 Subsection 39J(1A)

Omit "the company's research and development".

## 65 Paragraph 39JD(1)(b)

Omit "research and development".

## 66 Paragraph 39JD(1)(ba)

Omit "carrying on the activities, maintained records that substantiate the company's carrying on of the activities", substitute "the activities were carried on, maintained records that substantiate the carrying on of the activities".

## 67 After paragraph 39JD(1)(ba)

Insert:

(bb) specify each company on behalf of which each of the activities was undertaken; and

## 68 Subsection 39JD(1) (note)

Omit "Note", substitute "Note 1".

## 69 At the end of subsection 39JD(1)

Add:

Note 2: A company on behalf of which an activity was undertaken might be the eligible company applying for registration or a foreign company with which the applicant is grouped under section 73L of the *Income Tax Assessment Act 1936*.

## 70 After subsection 39K(1A)

Insert:

(1B) The Board is entitled to refuse to register an eligible company, in relation to activities described in paragraph 73B(14C)(g) of the *Income Tax Assessment Act 1936* in relation to the company in respect of a year of income, on the ground that the activities are not activities that would be Australian-centred research and development activities if subsection 73B(2BA) of that Act had not been enacted.

## 71 At the end of section 39L

Add:

(3) If the activities were or are carried on on behalf of a foreign company grouped under section 73L of the *Income Tax Assessment Act 1936* with an eligible company that was or is incurring

expenditure in relation to the carrying on of the activities, the Board must give a copy of the notice to the eligible company.

## 72 After section 39L

Insert:

### 39LAAA Certificate as to Australian-centred research and development activities

(1) The Board may give to the Commissioner a certificate stating whether particular activities were Australian-centred research and development activities.

(2) The Board must give to the Commissioner a certificate described in subsection (1) if the Commissioner gives the Board a written request to do so.

(3) If:

(a) the activities covered by a certificate given under this section were or are carried on on behalf of a foreign company grouped under section 73L of the *Income Tax Assessment Act 1936* with an eligible company that incurred expenditure in relation to the carrying on of the activities; and

(b) the certificate states that the activities were not Australian-centred research and development activities;

the Board must give notice in writing to the eligible company, stating the reasons for giving the certificate.

### 39LAAB Certificate as to activities that would be Australian-centred research and development activities apart from need for plan

(1) The Board may give to the Commissioner a certificate stating whether particular activities were activities that would have been Australian-centred research and development activities if subsection 73B(2BA) of the *Income Tax Assessment Act 1936* had not been enacted.

Note 1: Subsection 73B(2BA) of the *Income Tax Assessment Act 1936* says activities are not research and development activities unless they are carried on in accordance with a plan that complies with any guidelines formulated by the Board under section 39KA of this Act that are in force at the time.

Note 2: Activities may be ones that would have been Australian-centred research and development activities if subsection 73B(2BA) of the *Income Tax Assessment Act 1936* had not been enacted, whether or not the activities were carried on in accordance with such a plan.

(2) The Board must give to the Commissioner a certificate described in subsection (1) if the Commissioner gives the Board a written request to do so.

(3) If:

(a) the activities covered by a certificate given under this section were or are carried on on behalf of a foreign company grouped under section 73L of the *Income Tax Assessment Act 1936* with an eligible company that incurred expenditure in relation to the carrying on of the activities; and

(b) the certificate states that the activities were activities that would have been Australian-centred research and development activities if subsection 73B(2BA) of the *Income Tax Assessment Act 1936* had not been enacted;

the Board must give notice in writing to the eligible company, stating the reasons for giving the certificate.

## 73 Subparagraph 39M(1)(b)(i)

Repeal the subparagraph, substitute:

(i) any of the results of those research and development activities have been exploited otherwise than on normal commercial terms; or

(ia) those research and development activities are not for the benefit of the Australian economy; or

## 74 Paragraph 39N(1)(a)

Omit “registered”.

## 75 Paragraph 39N(1)(a)

After “on behalf of the company,”, insert “or activities in relation to which the company incurred expenditure,”.

## 76 At the end of section 39N

Add:

(4) To avoid doubt, a notice under subsection (1) has effect whether the particular information that is the subject of the notice and the

Board's request is identified in the notice or request wholly or partly:

(a) by reference to the functions to be performed or the powers to be exercised; or

(b) by another means.

## 77 Subsection 39S(1)

After "39L,", insert "39LAAA, 39LAAB,".

# Part 3—Application and transitional provisions

## 78 Application

(1) The amendments made by this Schedule apply in relation to:

(a) assessments for years of income starting after 30 June 2007; and

(b) registrations under section 39J of the *Industry Research and Development Act 1986* for those years of income.

(2) A term that is used in this item and has a meaning given by the *Income Tax Assessment Act 1936* has the same meaning in this item.

## 79 Transitional provisions—deductions under former section 73Y of the *Income Tax Assessment Act 1936*

(1) This item modifies paragraphs 73T(3)(a) and (4)(a) and 73V(3)(a) of the *Income Tax Assessment Act 1936* as amended by this Schedule for the $Y_0$ year of income that is the first year of income starting after 30 June 2007.

(2) Those paragraphs have effect for that year of income as if an eligible company or one of its group members could deduct an amount under section 73QA for the $Y_{-1}$ year of income if the company or group member had been eligible to claim an additional deduction under section 73Y of that Act (as in force before the commencement of this Schedule) for that $Y_{-1}$ year of income.

(3) A term that is used in this item and had a meaning given by any of sections 73P to 73Z of the *Income Tax Assessment Act 1936* immediately before the commencement of this Schedule has the same meaning in this item.

## 80 Transitional provisions—reduced notional expenditure on foreign owned R&D

(1) This item has effect for the purposes of the application of sections 73P to 73Z (inclusive) of the *Income Tax Assessment Act 1936* as amended by this Schedule, if:

(a) in its group membership period including all or part of the year of income (the ***initial year***) starting after 30 June 2007

and before 1 July 2008, an eligible company has incurred an amount of expenditure that is expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income; and

(b) any of the 3 immediately preceding years of income were not nil expenditure years.

(2) For the purposes of paragraph 73QB(1)(b) of the *Income Tax Assessment Act 1936*, the eligible company is taken to have been able to deduct an amount under subsection 73B(14C) of that Act for each of the following years of income:

(a) the year of income before the initial year;

(b) the year of income 2 years before the initial year;

(c) the year of income 3 years before the initial year.

(3) The reduced notional expenditure on foreign owned R&D by the eligible company in its group membership period for an earlier year of income described in the second column of an item of the table is taken to be the amount set out in the third column of that item.

**Reduced notional expenditure on foreign owned R&D**

| Item | Earlier year of income | Amount of reduced notional expenditure on foreign owned R&D |
|---|---|---|
| 1 | The year of income before the initial year | 90% of the amount described in paragraph (1)(a) |
| 2 | The year of income 2 years before the initial year | 80% of the amount described in paragraph (1)(a) |
| 3 | The year of income 3 years before the initial year | 70% of the amount described in paragraph (1)(a) |

(4) To avoid doubt, this item has effect for the purposes of the application of sections 73P to 73Z (inclusive) of the *Income Tax Assessment Act 1936* as amended by this Schedule not only for the initial year but also for the next 2 years of income.

Note: This item will be relevant only to years of income assessments for which can be affected by the amount of reduced notional expenditure on foreign owned R&D for years of income before the initial year.

(5) A term that is used in this item and has a meaning given by section 73B, or any of sections 73P to 73Z (inclusive), of the *Income Tax Assessment*

*Act 1936* as amended by this Schedule has the same meaning in this item.

# Schedule 12—Innovation Australia

## Part 1—Main amendments

### *Industry Research and Development Act 1986*

#### 1 Section 3

Omit "and innovation activities", substitute ", innovation activities and venture capital activities".

#### 2 Subsection 4(1) (definition of *acting chairperson*)

Repeal the definition.

#### 3 Subsection 4(1) (definition of *acting member*)

Repeal the definition.

#### 4 Subsection 4(1) (definition of *Board*)

Repeal the definition, substitute:

> ***Board*** means Innovation Australia, established by section 6.

#### 5 Subsection 4(1) (definition of *chairperson*)

Omit ", but does not include an acting Chairperson".

#### 6 Subsection 4(1) (definition of *member*)

Omit ", but does not include an acting member".

#### 7 Subsection 4(1)

Insert:

> ***PDF*** has the same meaning as in the *Pooled Development Funds Act 1992*.

#### 8 At the end of paragraph 4(7)(a)

Add "and".

#### 9 Paragraph 4(7)(b)

Repeal the paragraph.

## 10 At the end of section 4

Add:

(8) For the purposes of this Act, the *Pooled Development Funds Act 1992*, the *Venture Capital Act 2002* and any other Act, a person gives information, or produces a document, to the Board if the person gives the information, or produces the document, to:

(a) the Board; or

(b) a member of the Board; or

(c) a committee; or

(d) a member of a committee; or

(e) a member of the staff assisting the Board or a committee (see section 25); or

(f) a consultant assisting the Board or a committee (see section 25).

## 11 Section 6

Repeal the section, substitute:

### 6 Establishment of Innovation Australia

There is established by this section a board by the name of Innovation Australia.

## 12 After paragraph 7(aa)

Insert:

(b) to evaluate, and to advise the Minister about, the operation of this Act, the *Pooled Development Funds Act 1992* and the *Venture Capital Act 2002*, and the Commonwealth's income tax laws as they operate in relation to those Acts; and

## 13 Paragraph 7(c)

After "by", insert "the *Pooled Development Funds Act 1992*, the *Venture Capital Act 2002* or".

## 14 After paragraph 7(c)

Insert:

(ca) to give information it obtains under Part 2, 3 or 4 of the *Venture Capital Act 2002* to the Commissioner of Taxation

for the purposes of implementing and administering the taxation law (within the meaning of the *Taxation Administration Act 1953*); and

## 15 Subsection 11(1)

Omit “, or an acting Chairperson,”.

## 16 Subsection 11(1)

Omit “or an acting Chairperson” (last occurring).

## 17 Paragraph 11(1)(a)

Repeal the paragraph, substitute:

(a) must make, or cause to be made, such inquiries as the Chairperson thinks necessary into:

(i) applications made under this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or

(ii) any other matter relevant to the operation of this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; and

## 18 Paragraph 11(1)(b)

Before “applications”, insert “those”.

## 19 Subsection 16(4)

Repeal the subsection.

## 20 Subsection 17(8)

Repeal the subsection.

## 21 Subsection 18(8)

Repeal the subsection.

## 22 Subsection 19(1)

Omit “(1)”.

## 23 Subsection 19(1)

After “this Act”, insert “, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*”.

## 24 After section 19A

Insert:

### 19B Minister may require provision of advice

(1) The Minister may, by writing given to the Board, require the Board to advise the Minister about a matter connected with the operation of:

(a) this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*; or

(b) the Commonwealth's income tax laws as they operate in relation to this Act, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*.

(2) The Board must comply with such a requirement.

(3) A requirement made under subsection (1) is not a legislative instrument.

## 25 Subsection 20(1)

Omit ", and the exercise of its powers, under this Act", substitute "and the exercise of its powers".

## 26 Subsection 20(4)

Repeal the subsection, substitute:

(4) Subsection (1) does not empower the Minister to direct that the Board perform any of its functions, or exercise any of its powers, in a particular way in a particular case.

## 27 Subsections 20(5) and (6)

Repeal the subsections.

## 28 Subsections 21(1) and (2)

Repeal the subsections, substitute:

(1) The Board may, by resolution, delegate to the Chairperson, another member or a member of the staff assisting the Board, all or any of its functions and powers, other than its functions or powers:

(a) for PDFs—to make or revoke registration declarations under the *Pooled Development Funds Act 1992*; and

(b) to register entities or revoke registration under Part 7A of the *Pooled Development Funds Act 1992*; and

(c) to register limited partnerships as VCLPs, ESVCLPs or AFOFs or revoke registration under Part 2 of the *Venture Capital Act 2002*; and

(d) to approve ESVCLPs' investment plans, and their replacement plans, under Part 2 of the *Venture Capital Act 2002*; and

(e) to register entities as eligible venture capital investors or revoke registration under Part 3 of the *Venture Capital Act 2002*; and

(f) to make determinations under Part 4 of the *Venture Capital Act 2002*.

(2) The Board may, by resolution, delegate to a committee all or any of its functions and powers (including those referred to in paragraphs (1)(a) to (f)).

## 29 Subsection 21(3)

After "delegation of a", insert "function or".

## 30 Paragraph 21(3)(a)

Omit "power was delegated);", substitute "function or power was delegated); and".

## 31 Paragraph 21(3)(b)

Repeal the paragraph.

## 32 Subsection 21(5)

After "delegation of a", insert "function or".

## 33 Subsections 21(7) and (8)

Repeal the subsections.

## 34 Subsection 22(1)

After "this Act", insert ", the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*".

## 35 Subsection 22(1A)

Omit “powers delegated to it by the Board under subsection 21(1)”, substitute “functions or powers delegated to it by the Board under subsection 21(2)”.

## 36 Subsection 22(2)

After “(2B)”, insert “, (2BA)”.

## 37 After subsection 22(2B)

Insert:

(2BA) Despite subsection (2B), a person may be appointed as a member of a committee for no more than 2 further consecutive terms if:

(a) during the previous 2 consecutive terms the person was not the Chairperson of the committee; and

(b) the person will be the Chairperson of the committee in those further terms.

## 38 Subsection 22(7)

After “this Act”, insert “, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*”.

## 39 Subsection 22A(1)

Repeal the subsection, substitute:

(1) A committee may, by resolution, delegate to a member of the committee or to a member of the staff assisting the committee all or any of its functions and powers (including a function or power delegated to the committee by the Board under subsection 21(2), despite paragraph 34AB(b) of the *Acts Interpretation Act 1901*).

(1A) However, a committee must not delegate a function or power that:

(a) is referred to in paragraph 21(1)(a), (b), (c), (d), (e) or (f); and

(b) was delegated to the committee by the Board under subsection 21(2).

## 40 Subsection 22A(2)

After “delegation of a”, insert “function or”.

## 41 Paragraph 22A(2)(a)

After “when the”, insert “function or”.

## 42 Subsection 22A(3)

After “delegation of a”, insert “function or”.

## 43 Subsection 22A(5)

Repeal the subsection.

## 44 Subsection 22A(6)

Repeal the subsection.

## 45 Subsection 46(1)

Omit “activities”, substitute “operations”.

## 46 Paragraph 46(2)(a)

Omit “during the year in achieving the object of this Act”, substitute “, the *Pooled Development Funds Act 1992* and the *Venture Capital Act 2002* during the year in achieving the objects of those Acts”.

## 47 After subsection 46(2)

Insert:

(2A) The report must also contain:

(a) a list of all PDFs in existence as at the end of the financial year; and

(b) a list of all companies that became PDFs during the financial year; and

(c) a list of all companies that ceased to be PDFs during the financial year; and

(d) a list of the entities registered under Part 7A of the *Pooled Development Funds Act 1992* as at the end of the financial year; and

(e) a list of the entities that became registered under Part 7A of the *Pooled Development Funds Act 1992* during the financial year; and

(f) a list of the entities whose registration under Part 7A of the *Pooled Development Funds Act 1992* was revoked during the financial year; and

(g) a list of the partnerships registered under Part 2 of the *Venture Capital Act 2002* as at the end of the financial year; and

(h) a list of the partnerships that became registered under Part 2 of the *Venture Capital Act 2002* during the financial year; and

(i) a list of the partnerships whose registration under Part 2 of the *Venture Capital Act 2002* was revoked during the financial year; and

(j) a list of the entities registered under Part 3 of the *Venture Capital Act 2002* as at the end of the financial year; and

(k) a list of the entities that became registered under Part 3 of the *Venture Capital Act 2002* during the financial year; and

(l) a list of the entities whose registration under Part 3 of the *Venture Capital Act 2002* was revoked during the financial year.

## 48 Subsection 47(1)

Omit "The Board, a committee, a member or an acting member of the Board, a member of a committee or a member of the staff assisting the Board or assisting a committee shall not", substitute "An official to whom this section applies must not".

## 49 Subsection 47(1)

Omit "information" (wherever occurring), substitute "protected information".

## 50 Subsection 47(2)

Omit "information" (first occurring), substitute "protected information".

## 51 Subsection 47(3)

Insert:

***official to whom this section applies*** means the following:

(a) the Board;

(b) a person who is or has been a member of the Board;

(c) a committee;

(d) a person who is or has been a member of a committee;

(e) a person who is or has been a member of the staff assisting the Board or a committee (see section 25);

(f) a person who is or has been a consultant assisting the Board or a committee (see section 25);

(g) a person who was a member, or an acting member, of the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*);

(h) a person who was a member of the staff assisting the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*);

(i) a person who was a consultant assisting the former Industry Research and Development Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*).

### 52 Subsection 47(3)

Insert:

***protected information*** means information that relates to a matter covered by this Act.

## *Pooled Development Funds Act 1992*

### 53 Subsection 4(1) (definition of *appointed member*)

Repeal the definition.

### 54 Subsection 4(1) (definition of *Board*)

Repeal the definition, substitute:

***Board*** means Innovation Australia, established by section 6 of the *Industry Research and Development Act 1986*.

### 55 Subsection 4(1)

Insert:

***committee*** means a committee appointed under section 22 of the *Industry Research and Development Act 1986*.

## 56 Subsection 4(1) (definition of *give information to the Board*)

Omit "(5)", substitute "4(8) of the *Industry Research and Development Act 1986*".

## 57 Subsection 4(1) (definition of *produce a document to the Board*)

Omit "(5)", substitute "4(8) of the *Industry Research and Development Act 1986*".

## 58 Subsection 4(5)

Repeal the subsection.

## 59 Parts 2 and 9

Repeal the Parts.

## 60 Subsection 71(5) (paragraphs (a), (b) and (c) of the definition of *person to whom this section applies*)

Repeal the paragraphs, substitute:

(a) a member of the Board; or

(b) a member of a committee; or

(c) a member of the staff assisting the Board or a committee (see section 25 of the *Industry Research and Development Act 1986*); or

(d) a consultant assisting the Board or a committee (see section 25 of the *Industry Research and Development Act 1986*); or

(e) a member of the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

(f) a member of the staff assisting the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

(g) a consultant to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*), who was engaged under this Act before that commencement.

## 61 Subsection 71(5) (paragraph (a) of the definition of *protected document*)

Omit "to the Board in confidence", substitute "in confidence to the Board in relation to a matter covered by this Act or the *Venture Capital Act 2002*".

## 62 Subsection 71(5) (after paragraph (a) of the definition of *protected document*)

Insert:

(aa) a document supplied in confidence to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

## 63 Subsection 71(5) (paragraph (a) of the definition of *protected information*)

Omit "to the Board in confidence", substitute "in confidence to the Board in relation to a matter covered by this Act or the *Venture Capital Act 2002*".

## 64 Subsection 71(5) (after paragraph (a) of the definition of *protected information*)

Insert:

(aa) information supplied in confidence to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

## 65 Sections 72, 73, 74 and 75

Repeal the sections.

# Part 2—Consequential amendments

## *Income Tax Assessment Act 1936*

### 66 Paragraph 16(4)(m)

Omit "the PDF Registration Board established under section 5 of the *Pooled Development Funds Act 1992*", substitute "Innovation Australia, established by section 6 of the *Industry Research and Development Act 1986*,".

### 67 Subsection 73B(1) (definition of *Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

### 68 Subsection 73BD(12) (definition of *Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

### 69 Subsection 73BE(7) (definition of *Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

### 70 Subsection 73BK(12) (definition of *Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

### 71 Subsection 73BL(7) (definition of *Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

## *Income Tax Assessment Act 1997*

### 72 Section 43-100 (heading)

Repeal the heading, substitute:

### 43-100 Certificates by Innovation Australia

## 73 Section 43-100

Omit "the Industry Research and Development Board established under the *Industry Research and Development Act 1986*", substitute "*Innovation Australia"

## 74 Paragraph 118-425(2)(b)

Omit "the Venture Capital Registration Board", substitute "*Innovation Australia".

## 75 Subsection 118-425(2)

Omit "the Venture Capital Registration Board" (last occurring), substitute "Innovation Australia".

## 76 Subsection 118-425(3) (note 3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 77 Subsection 118-425(14) (heading)

Repeal the heading, substitute:

*Innovation Australia discretion*

## 78 Subsection 118-425(14)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 79 Paragraph 118-427(3)(c)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 80 Subsection 118-427(3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 81 Subsection 118-427(4) (note 3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 82 Subsection 118-427(15) (heading)

Repeal the heading, substitute:

*Innovation Australia discretion*

### 83 Subsection 118-427(15)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 84 Subsection 995-1(1)

Insert:

***form approved by Innovation Australia*** has the same meaning as in section 33-5 of the *Venture Capital Act 2002*.

### 85 Subsection 995-1(1) (definition of *form approved by the Venture Capital Registration Board*)

Repeal the definition.

### 86 Subsection 995-1(1)

Insert:

***Innovation Australia*** means the board established by section 6 of the *Industry Research and Development Act 1986*.

### 87 Subsection 995-1(1) (definition of *Venture Capital Registration Board*)

Repeal the definition.

## *Industrial Research and Development Incentives Act 1976*

### 88 Subsection 4(1) (definition of *acting Chairperson*)

Repeal the definition.

### 89 Subsection 4(1) (definition of *new Board*)

Omit "the Industry Research and Development Board", substitute "Innovation Australia,".

### 90 Subsection 4(1A)

Omit "(including an acting Chairperson of the new Board)".

## *Venture Capital Act 2002*

### 91 Subsection 1-15(2)

Omit "*Venture Capital Registration Board", substitute "*Innovation Australia".

### 92 Section 3-1 (note)

Repeal the note, substitute:

Note: Innovation Australia is responsible for the operation of these measures. The *Industry Research and Development Act 1986* provides for the establishment and operation of Innovation Australia.

### 93 Paragraph 3-5(c)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 94 Section 3-15 (heading)

Repeal the heading, substitute:

**3-15 Determinations by Innovation Australia concerning certain investments (Part 4)**

### 95 Section 3-15

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 96 Section 3-20

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

### 97 Section 7-1

Omit "The Venture Capital Registration Board" (first occurring), substitute "Innovation Australia".

### 98 Section 7-1

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

## 99 Section 7-1

Omit "The Venture Capital Registration Board" (second occurring), substitute "Innovation Australia".

## 100 Paragraph 9-3(4)(a)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 101 Subsection 9-4(1)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 102 Subsection 9-4(2)

Omit "*form approved by the *Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

## 103 Subsection 9-4(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 104 Subsection 9-4(4)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 105 Subsection 9-4(5)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 106 Subsection 9-4(5)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 107 Subsection 9-4(6)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 108 Subsection 9-4(6)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 109 Paragraph 9-10(1)(b)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 110 Subsection 9-10(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 111 Subsection 9-10(2)

Omit "*form approved by the Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

### 112 Subsection 9-10(2)

Omit "for the Venture Capital Registration Board", substitute "for Innovation Australia".

### 113 Subsection 9-10(3)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 114 Subsection 9-10(3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 115 Subsection 11-1(1)

Omit "*form approved by the Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

### 116 Subsection 11-1(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 117 Paragraph 11-1(2)(l)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 118 Subsection 11-5(1)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 119 Subsection 11-5(1)

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

## 120 Section 11-10

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 121 Subsection 11-15(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 122 Subsection 11-15(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 123 Subsection 11-15(2)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 124 Subsection 11-15(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 125 Subsection 11-15(4)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 126 Subsection 11-15(4)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 127 Subsection 13-1(1)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 128 Paragraph 13-1(1)(d)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 129 Subsection 13-1(1)

Omit "the Venture Capital Registration Board" (last occurring), substitute "Innovation Australia".

### 130 Subsection 13-1(1A)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 131 Paragraph 13-1(1A)(c)

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

### 132 Paragraphs 13-1(1A)(d) and (f)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 133 Subsection 13-1(1A)

Omit "the Venture Capital Registration Board" (last occurring), substitute "Innovation Australia".

### 134 Subsection 13-1(2)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 135 Paragraph 13-1(2)(d)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 136 Subsection 13-1(2)

Omit "the Venture Capital Registration Board" (last occurring), substitute "Innovation Australia".

### 137 Subsection 13-1(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 138 Subsection 13-1(3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 139 Subsection 13-1(4)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 140 Subsection 13-1(4)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

## 141 Subsection 13-1(5)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 142 Subsection 13-5(1)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 143 Subsection 13-5(1)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

## 144 Subsection 13-5(1A)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 145 Subsection 13-5(1A)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

## 146 Subsection 13-5(2)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 147 Subsection 13-5(2)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

## 148 Subsection 13-15(1)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

## 149 Subsection 13-15(1)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 150 Subsections 13-15(3), (5) and (6)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 151 Subsection 13-15(7)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 152 Subsection 13-15(7)

Omit "the Board", substitute "Innovation Australia".

## 153 Subsection 13-15(8)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 154 Subsection 13-15(9)

Omit "the *Venture Capital Registration Board's", substitute "*Innovation Australia's".

## 155 Subsection 13-20(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 156 Subsection 13-20(2)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 157 Subsection 13-20(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 158 Section 15-1

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 159 Paragraph 15-1(h)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 160 Subsection 15-5(1)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 161 Subsection 15-5(1)

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

## 162 Section 15-10

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 163 Section 15-15

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 164 Subsection 15-17(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 165 Subsections 15-17(2) and (3)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 166 Subsection 15-17(4)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 167 Subsection 15-17(4)

Omit "section 75 of the *Pooled Development Funds Act 1992*", substitute "section 46 of the *Industry Research and Development Act 1986*".

## 168 Section 15-20

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 169 Section 15-20

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

### 170 Subsection 17-1(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 171 Subsection 17-1(2)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 172 Paragraph 17-1(3)(a)

Omit "the Venture Capital Registration Board's", substitute "*Innovation Australia's".

### 173 Paragraphs 17-1(3)(b) and (c)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 174 Subsection 17-1(5)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 175 Subsection 17-3(1)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 176 Subsection 17-3(1)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 177 Subsection 17-3(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 178 Subsection 17-3(2)

Omit "*form approved by the Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

## 179 Subsection 17-3(3)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 180 Subsection 17-3(3)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 181 Subsection 17-3(4)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 182 Subsection 17-5(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 183 Paragraph 17-5(2)(a)

Omit "the *Venture Capital Registration Board's", substitute "*Innovation Australia's".

## 184 Paragraph 17-5(2)(c)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 185 Subsection 17-5(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 186 Subsection 17-5(3)

Omit "*form approved by the Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

## 187 Subsections 17-5(4) and (6)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 188 Section 17-10 (heading)

Repeal the heading, substitute:

### 17-10 Revocation at discretion of Innovation Australia

## 189 Subsection 17-10(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 190 Subsection 17-10(1)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 191 Subsection 17-10(2)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 192 Subsection 17-10(2)

Omit "the Venture Capital Registration Board" (first occurring), substitute "Innovation Australia".

## 193 Paragraph 17-10(2)(a)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 194 Paragraph 17-10(2)(a)

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

## 195 Section 17-15

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 196 Section 17-15

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

## 197 Section 17-20

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 198 Subsection 17-25(1)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 199 Subsection 17-25(2)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 200 Section 21-1

Omit “The Venture Capital Registration Board”, substitute “Innovation Australia”.

### 201 Subsection 21-5(1)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 202 Subsection 21-5(1)

Omit “*form approved by the Venture Capital Registration Board”, substitute “*form approved by Innovation Australia”.

### 203 Subsection 21-5(2)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 204 Subsection 21-5(4)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 205 Subsection 21-5(4)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 206 Subsection 21-5(5)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 207 Subsection 21-5(5)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 208 Subsection 21-5(6)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 209 Subsection 21-5(6)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 210 Subsection 21-10(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 211 Subsection 21-10(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 212 Subsection 21-10(2)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 213 Subsection 21-10(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 214 Subsection 21-10(4)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 215 Subsection 21-10(4)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 216 Subsection 21-20(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 217 Section 21-25 (heading)

Repeal the heading, substitute:

### 21-25 Revocation at discretion of Innovation Australia

## 218 Subsection 21-25(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 219 Subsection 21-25(1)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 220 Subsection 21-25(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 221 Subsection 21-25(2)

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

## 222 Subsection 21-25(3)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

## 223 Subsection 21-25(3)

Omit "the Venture Capital Registration Board" (first occurring), substitute "Innovation Australia".

## 224 Paragraph 21-25(3)(a)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 225 Paragraph 21-25(3)(a)

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

## 226 Subsection 21-30(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 227 Subsection 21-30(2)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 228 Part 4 (heading)

Repeal the heading, substitute:

## Part 4—Determinations by Innovation Australia concerning certain investments

### 229 Division 25 of Part 4 (heading)

Repeal the heading, substitute:

## Division 25—Determinations by Innovation Australia concerning certain investments

### 230 Section 25-1

Omit "The Venture Capital Registration Board", substitute "Innovation Australia".

### 231 Section 25-5 (heading)

Repeal the heading, substitute:

**25-5 Innovation Australia may determine a shorter period**

### 232 Subsections 25-5(1) and (1A)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 233 Subsection 25-5(2)

Omit "*form approved by the *Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

### 234 Subsection 25-5(3)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 235 Subsection 25-5(4)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 236 Subsection 25-5(5)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 237 Subsection 25-5(5)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 238 Subsection 25-5(6)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 239 Subsection 25-5(6)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 240 Section 25-10 (heading)

Repeal the heading, substitute:

**25-10 Innovation Australia may determine that a requirement does not apply**

### 241 Subsections 25-10(1) and (1A)

Omit "The *Venture Capital Registration Board", substitute "*Innovation Australia".

### 242 Subsection 25-10(2)

Omit "*form approved by the *Venture Capital Registration Board", substitute "*form approved by Innovation Australia".

### 243 Subsection 25-10(3)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 244 Subsection 25-10(4)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 245 Subsection 25-10(5)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 246 Subsection 25-10(5)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 247 Subsection 25-10(6)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 248 Subsection 25-10(6)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 249 Section 25-15 (heading)

Repeal the heading, substitute:

**25-15 Innovation Australia may determine that a requirement does not apply**

### 250 Subsections 25-15(1) and (1A)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 251 Subsection 25-15(2)

Omit “*form approved by the Venture Capital Registration Board”, substitute “*form approved by Innovation Australia”.

### 252 Subsection 25-15(3)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 253 Subsection 25-15(4)

Omit “The *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 254 Subsection 25-15(5)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 255 Subsection 25-15(5)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 256 Subsection 25-15(6)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 257 Subsection 25-15(6)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 258 Section 29-1

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 259 Subsections 29-5(1) and (2)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 260 Subsection 29-10(1)

Omit “the *Venture Capital Registration Board”, substitute “*Innovation Australia”.

### 261 Subsection 29-10(1)

Omit “the Venture Capital Registration Board”, substitute “Innovation Australia”.

### 262 Subsection 29-10(2)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 263 Subsection 29-10(2)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 264 Subsection 29-10(4)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 265 Subsection 29-10(4)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 266 Subsection 29-10(5)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 267 Subsection 29-10(5)

Omit "the Venture Capital Registration Board" (wherever occurring), substitute "Innovation Australia".

### 268 Subsection 29-10(6)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

### 269 Subsection 29-10(6)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

### 270 Paragraph 29-10(6)(b)

Omit "the Venture Capital Registration Board's", substitute "Innovation Australia's".

### 271 Subsection 29-10(8)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 272 Paragraph 29-10(8)(a)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

## 273 Subsection 29-15(1)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 274 Section 33-1

Repeal the section.

## 275 Section 33-5 (heading)

Repeal the heading, substitute:

### 33-5 Meaning of *form approved by Innovation Australia*

## 276 Section 33-5

Omit "***form approved by the Venture Capital Registration Board***", substitute "***form approved by Innovation Australia***".

## 277 Paragraph 33-5(a)

Omit "the *Venture Capital Registration Board", substitute "*Innovation Australia".

## 278 Paragraphs 33-5(c) and (d)

Omit "the Venture Capital Registration Board", substitute "Innovation Australia".

# Part 3—Transitional provisions

## 279 Interpretation

In this Part:

***new Board*** means Innovation Australia, established by section 6 of the *Industry Research and Development Act 1986* (as amended by this Schedule).

***former Board*** means:

(a) the Industry Research and Development Board that was established by the *Industry Research and Development Act 1986* (as in force before the commencement of this item); or

(b) the Venture Capital Registration Board that was established by the *Pooled Development Funds Act 1992* (as in force before the commencement of this item).

## 280 Things done to a former Board before commencement

(1) Any thing done to a former Board before the commencement of this item is taken, on and after that commencement, to have been done to the new Board.

(2) Without limiting subitem (1), examples of things done to a former Board include, but are not limited to, the following:

(a) the making of applications or requests to the former Board;

(b) the making of agreements with the former Board;

(c) the giving of notices, documents or other things to the former Board;

(d) the giving of directions by the Minister to the former Board.

## 281 Things done to the Chairperson or acting Chairperson of a former Board before commencement

(1) Any thing done to the Chairperson, or acting Chairperson, of a former Board before the commencement of this item is taken, on and after that commencement, to have been done to the Chairperson of the new Board.

(2) Without limiting subitem (1), examples of things done to the Chairperson of a former Board include, but are not limited to, the giving of notices or advice to the Chairperson.

## 282 Things done by a former Board before commencement

(1) Any thing done by a former Board before the commencement of this item is taken, on and after that commencement, to have been done by the new Board.

(2) Without limiting subitem (1), examples of things done by a former Board include, but are not limited to, the following:

(a) the making of determinations or decisions by the former Board;
(b) the granting or revoking of registrations, approvals, certificates or other things by the former Board;
(c) the making of requests by the former Board;
(d) the giving of directions by the former Board;
(e) the making of guidelines by the former Board;
(f) the formulation of criteria by the former Board;
(g) the approval of forms by the former Board;
(h) the making of requirements by the former Board;
(i) the making of agreements by the former Board;
(j) the giving of notices, documents or other things by the former Board.

(3) Without limiting subitem (1), if, after the commencement of this item, the new Board is required under section 46 of the *Industry Research and Development Act 1986* (as amended by this Schedule) to give a report in relation to a financial year that commenced before the commencement of this item, then the new Board must include in the report any matter that, had the amendments made by this Schedule not been made, a former Board would have been required to include in a report for that year under:

(a) section 46 of the *Industry Research and Development Act 1986* (as in force before the commencement of this item); or
(b) section 75 of the *Pooled Development Funds Act 1992* (as in force before the commencement of this item); or
(c) section 33-1 of the *Venture Capital Act 2002* (as in force before the commencement of this item).

## 283 Things done by the Chairperson or acting Chairperson of a former Board before commencement

(1) Any thing done by the Chairperson, or acting Chairperson, of a former Board before the commencement of this item is taken, on and after that commencement, to have been done by the Chairperson of the new Board.

(2) Without limiting subitem (1), examples of things done by the Chairperson of a former Board include, but are not limited to, the following:

(a) the making of inquiries or reports by the Chairperson;

(b) a determination, by the Chairperson, of the form of records;

(c) the signing of documents by the Chairperson.

## 284 Things done by a member or acting member of a former Board before commencement

(1) Any thing done by a member, or acting member, of a former Board before the commencement of this item is taken, on and after that commencement, to have been done by a member of the new Board.

(2) Without limiting subitem (1), examples of things done by a member of a former Board include, but are not limited to, the signing of a certificate by the member.

## 285 Things done by a person authorised by a former Board before commencement

(1) Any thing done by a person authorised by a former Board before the commencement of this item is taken, on and after that commencement, to have been done by a person authorised by the new Board.

(2) Without limiting subitem (1), examples of things done by a person authorised by a former Board include, but are not limited to, the signing of a certificate by the person.

## 286 References to a former Board in instruments etc.

A reference to a former Board in the following:

(a) a legislative instrument;

(b) guidelines made or criteria formulated under the *Industry Research and Development Act 1986* or the *Venture Capital Act 2002*;

(c) certificates, notices or other documents given to or by the former Board under the *Industry Research and Development Act 1986*, the *Pooled Development Funds Act 1992* or the *Venture Capital Act 2002*;

(d) directions given by the Minister to the former Board under the *Industry Research and Development Act 1986* or the *Pooled Development Funds Act 1992*;

(e) forms approved by the former Board under the *Industry Research and Development Act 1986*;

(f) agreements made with the former Board under the *Industry Research and Development Act 1986*;

is taken, after the commencement of this item, to be a reference to the new Board.

## 287 Committees

An appointment of a member of a committee under section 22 of the *Industry Research and Development Act 1986* that is in force immediately before the commencement of this item is taken, on that commencement, to be revoked.

[*Minister's second reading speech made in—*
*House of Representatives on 16 August 2007*
*Senate on 13 September 2007*]

(163/07)