





# **Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009**

**No. 15, 2009**

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

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



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**No. 15, 2009**

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

[Assented to 26 March 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Taxation of  
Financial Arrangements) Act 2009*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009
2. Schedule 1, Parts 1, 2 and 3	The day on which this Act receives the Royal Assent.	26 March 2009
3. Schedule 1, Part 4	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Main amendments**

#### *Income Tax Assessment Act 1997*

#### **1 Before Division 240**

Insert:

### **Division 230—Taxation of financial arrangements**

#### **Table of Subdivisions**

	Guide to Division 230
230-A	Core rules
230-B	The accruals/realisation methods
230-C	Fair value method
230-D	Foreign exchange retranslation method
230-E	Hedging financial arrangements method
230-F	Reliance on financial reports
230-G	Balancing adjustment on ceasing to have a financial arrangement
230-H	Exceptions
230-I	Other provisions
230-J	Additional operation of Division

#### **Guide to Division 230**

##### **230-1 What this Division is about**

This Division is about the tax treatment of gains and losses from your financial arrangements.

You recognise the gains and losses, as appropriate, over the life of a financial arrangement and ignore distinctions between income and capital unless specific rules apply.

If it is sufficiently certain that you will make a gain or loss, you use a compounding accruals method to recognise the gain or loss. Otherwise you use a realisation method. Instead of either, you may be able to choose to use a fair value or hedging method or to rely on your financial reports. You may also be able to choose to recognise foreign exchange gains and losses using a retranslation method.

### **230-5 Scope of this Division**

- (1) You have a financial arrangement if you have one or more cash settleable legal or equitable rights and/or obligations to receive or provide a financial benefit.
- (2) This Division does not apply to all financial arrangements. The main exceptions are if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity, managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
    - (iii) an ADI, securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
    - (iv) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million;and either:
    - (iv) the arrangement is to end not more than 12 months after you start to have it; or
    - (v) the arrangement is not a qualifying security; or
  - (b) the arrangement is a financial arrangement under section 230-50 (equity interests etc.) and neither a fair value election, a hedging financial arrangement election nor an election to rely on financial reports applies to the arrangement.

Note: Section 230-455 provides for the exceptions referred to in paragraph (a).

## **Subdivision 230-A—Core rules**

### **Table of sections**

#### **Objects**

230-10 Objects of this Division

#### **Tax treatment of gains and losses from financial arrangements**

230-15 Gains are assessable and losses deductible

230-20 Gain or loss to be taken into account only once under this Act

230-25 Associated financial benefits to be taken into account only once under this Act

230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income

230-35 Treatment of gains and losses of private or domestic nature

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

230-40 Methods for taking gain or loss into account

#### **Financial arrangement concept**

230-45 Financial arrangement

230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)

230-55 Rights, obligations and arrangements (grouping and disaggregation rules)

#### **General rules**

230-60 When financial benefit provided or received under financial arrangement

230-65 Amount of financial benefit relating to more than one financial arrangement etc.

230-70 Apportionment when financial benefit received or right ceases

230-75 Apportionment when financial benefit provided or obligation ceases

230-80 Consistency in working out gains or losses (integrity measure)

230-85 Rights and obligations include contingent rights and obligations

### **Objects**

#### **230-10 Objects of this Division**

The objects of this Division are:

- (a) to minimise the extent to which the tax treatment of gains and losses from your \*financial arrangements distorts, by providing inappropriate impediments and stimulation, your trading, financing and investment decisions and your risk taking and risk management; and
- (b) to do so by aligning more closely the tax and commercial recognition of gains and losses from your financial arrangements in the following ways:
  - (i) by allocating the gains and losses to income years throughout the life of your financial arrangements on a reasonable basis;
  - (ii) by generally recognising gains and losses on revenue rather than capital account; and
- (c) to appropriately take account of, and minimise, your compliance costs.

## **Tax treatment of gains and losses from financial arrangements**

### **230-15 Gains are assessable and losses deductible**

#### *Gains*

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

Note: This Division does not apply to gains that are subject to exceptions under Subdivision 230-H.

#### *Losses*

- (2) You can deduct a loss you make from a \*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.

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (3) You can also deduct a loss you make from a \*financial arrangement if:
  - (a) you are an \*Australian entity; and

- (b) you make the loss in deriving income from a foreign source;  
and
- (c) the income is \*non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*; and
- (d) the loss is, in whole or in part, a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

You can deduct the loss only to the extent to which it is a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (4) If the \*financial arrangement is a \*debt interest, the loss is not prevented from being deductible for an income year under subsection (2) merely because of either or both of the following:
  - (a) one or more of the \*financial benefits that are taken into account in working out the amount of the loss are \*contingent on the economic performance (whether past, current or future) of:
    - (i) you or a part of your activities; or
    - (ii) a \*connected entity of yours or a part of the activities of a connected entity of yours;
  - (b) one or more of the financial benefits that are taken into account in working out the amount of the loss secure a permanent or enduring benefit for you or a connected entity of yours.
- (5) Subject to subsection (6), subsection (4) does not apply to the loss to the extent to which the annually compounded internal rate of return on the \*debt interest exceeds the \*benchmark rate of return for the debt interest increased by 150 basis points.
- (6) If:
  - (a) regulations made for the purposes of subsection 25-85(6) provide that a specified number of basis points is to apply for the purposes of applying subsection 25-85(5) in particular circumstances; and
  - (b) those circumstances exist in relation to the \*debt interest;

subsection (5) applies as if the reference in that subsection to 150 basis points were a reference to the number of basis points specified in the regulations.

*Division does not affect foreign residence rules*

- (7) Nothing in this Division affects the operation of the provisions of Division 6 that provide for the significance of foreign residence for the assessability of ordinary and statutory income.

Note 1: Gains that you make under this Division may be ordinary or statutory income for the purposes of Division 6.

Note 2: For the effect of a change of residence during an income year, see sections 230-485 and 230-490.

### **230-20 Gain or loss to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to the following:
- (a) a gain that is included in your assessable income for an income year under this Division;
  - (b) a loss that is allowable as a deduction to you for an income year under this Division;
  - (c) a gain or a loss that is dealt with in accordance with subsection 230-310(4) in relation to an income year.

*Purpose of this section*

- (2) The purpose of this section is to ensure that your gains and losses, and \*financial benefits, to which this section applies are taken into account only once under this Act in working out your taxable income.

*Gain or loss to be taken into account only once*

- (3) A gain or loss to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you; or
  - (c) dealt with in accordance with subsection 230-310(4);
- again under this Division for the same or any other income year.

- (4) A gain or loss to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any provisions of this Act outside this Division for the same or any other income year.

*Section does not give rise to exempt income*

- (5) A gain is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

### **230-25 Associated financial benefits to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to a \*financial benefit whose amount or value is taken into account in working out whether you make, or the amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or (c) applies.

*Associated financial benefit to be taken into account only once*

- (2) A \*financial benefit to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any provision of this Act outside this Division for the same or any other income year.

*Exception for certain bad debts*

- (3) If:
- (a) a \*financial benefit has been included in your assessable income under a provision of this Act outside this Division; and
  - (b) a bad debt deduction would have been allowed under section 25-35 in relation to the financial benefit;

subsection (2) does not prevent that bad debt deduction from being allowed under section 25-35 in relation to the financial benefit as if the debt were still outstanding.

*Section does not give rise to exempt income*

- (4) A \*financial benefit is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

### **230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income**

- (1) Despite section 230-15, a gain that you make from a \*financial arrangement:
- (a) to the extent that it reflects an amount that would be treated, or would reasonably be expected to be treated, as \*exempt income under a provision of this Act if this Division were disregarded—is exempt income; and
  - (b) to the extent that it reflects an amount that would be treated or would reasonably be expected to be treated, as \*non-assessable non-exempt income under a provision of this Act if this Division were disregarded—is not assessable income and is not exempt income.
- (2) Despite section 230-15, a gain that you make from a \*financial arrangement:
- (a) to the extent that, if it had been a loss, you would have made it in gaining or producing \*exempt income—is exempt income; and
  - (b) to the extent to which, if it had been a loss, you would have made it in gaining or producing \*non-assessable non-exempt income—is not assessable income and is not exempt income.
- (3) A loss you make from a \*financial arrangement is *not* allowable as a deduction to you under any provision of this Act (other than subsection 230-15(3)) to the extent that you make it in gaining or producing your:
- (a) \*exempt income; or
  - (b) \*non-assessable non-exempt income.

## **230-35 Treatment of gains and losses of private or domestic nature**

### *Borrowings etc. used for private or domestic purpose*

- (1) Subsections (2) and (3) apply if:
  - (a) a \*borrowing is made by you, or credit is provided to you, under a \*financial arrangement; and
  - (b) you use some or all of the funds borrowed or the credit provided for a private or domestic purpose.
- (2) This Division does not apply to a gain you make from the arrangement to the extent that you use the funds raised or the credit provided for a private or domestic purpose.
- (3) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

### *Derivative financial arrangement held for private or domestic purpose*

- (4) Subsections (5) and (6) apply if:
  - (a) you are an individual; and
  - (b) you make a gain or loss from a \*derivative financial arrangement; and
  - (c) the arrangement is held, wholly or in part, for a private or domestic purpose.
- (5) This Division does not apply to a gain you make from the arrangement to the extent that the arrangement is held or used for a private or domestic purpose.
- (6) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that the arrangement is held or used for a private or domestic purpose.

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

### 230-40 Methods for taking gain or loss into account

#### *Methods available*

- (1) The methods that can be applied to take account of a gain or loss you make from a \*financial arrangement are:
  - (a) the accruals and realisation methods provided for in Subdivision 230-B; or
  - (b) the fair value method provided for in Subdivision 230-C; or
  - (c) the foreign exchange retranslation method provided for in Subdivision 230-D; or
  - (d) the hedging financial arrangement method provided for in Subdivision 230-E; or
  - (e) the method of relying on your financial reports provided for in Subdivision 230-F; or
  - (f) a balancing adjustment provided for in Subdivision 230-G.

Note: The methods referred to in paragraphs (b) to (e) only apply if you make an election under the relevant Subdivision and you must meet certain requirements before you can make such an election.

- (2) A gain or loss is not taken into account under any of the methods referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to which it is taken into account under the method referred to in paragraph (1)(f) (balancing adjustment).
- (3) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

Note: The hedging financial arrangement method may take some account of the gain or loss by reference to the balancing adjustment method (see subsection 230-300(5)).

#### *Elections override accruals and realisation methods*

- (4) Subdivision 230-B (accruals and realisation method) does not apply to a gain or loss you make from a \*financial arrangement:
  - (a) if Subdivision 230-C (fair value method) applies to the arrangement; or

- (b) to the extent that Subdivision 230-D (foreign exchange retranslation method) applies to the gain or loss; or
- (c) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
- (d) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement; or
- (e) if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

*Priorities among election methods*

- (5) Subdivision 230-C (fair value method) does not apply to a gain or loss you make from a \*financial arrangement:
  - (a) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (b) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (6) Subdivision 230-D (foreign exchange retranslation method) does not apply to a gain or loss you make from a \*financial arrangement:
  - (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
  - (b) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (c) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (7) Subdivision 230-F (method of relying on financial reports) does not apply to a gain or loss you make from a \*financial arrangement to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

## **Financial arrangement concept**

### **230-45 Financial arrangement**

- (1) You have a ***financial arrangement*** if you have, under an \*arrangement:
  - (a) a \*cash settleable legal or equitable right to receive a \*financial benefit; or

- (b) a cash settleable 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 settleable; 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.

Note 1: Whether your rights and/or obligations under an arrangement constitute a financial arrangement can change over time depending on changes either to the terms of the arrangement or external circumstances (such as particular rights or obligations under the arrangement being satisfied by the parties). For example, a contract may provide for the transfer of a boat in 6 months time and payment of the contract price at the end of 2 years. Until the boat is delivered, there is no financial arrangement because of the operation of paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a financial arrangement because those paragraphs are no longer applicable.

Note 2: The operative provisions of this Division do not apply to all financial arrangements, and only apply partially to some: see the exceptions in Subdivision 230-H.

Note 3: There are some rules in this Division that tell you what happens if an arrangement ceases to be a financial arrangement (see Subdivision 230-G and section 230-505).

- (2) A right you have to receive, or an obligation you have to provide, a \*financial benefit is **cash settleable** 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 you satisfy subsection (3); 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.

A reference in paragraph (b) or (c) to a financial arrangement does not include a reference to something that is a financial arrangement under section 230-50.

Note: Examples of dealing of the kind covered by paragraph (e) are:

- (a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short-term basis or on a frequent and short-term basis; and
  - (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.
- (3) You satisfy this subsection if:
- (a) the \*financial benefit is readily convertible into money or a \*money equivalent; and
  - (b) there is a market for the financial benefit that has a high degree of liquidity; and
  - (c) either:
    - (i) the amount of the money or money equivalent referred to in paragraph (a) is not subject to a substantial risk of change in value; or

- (ii) your purpose, or one of your purposes, for entering into the arrangement under which you are to receive or provide the financial benefit, is to receive or deliver the financial benefit so that it may be converted or liquidated into money or a money equivalent (other than in the ordinary course of business).

**230-50 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, or form part of, a financial arrangement under subsection 230-45(1).

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

Note 1: Paragraph 230-40(4)(e) prevents the accruals method or the realisation method being applied to something that is a financial arrangement under this section.

Note 2: Subsection 230-270(1) prevents the retranslation method being applied to something that is a financial arrangement under this section.

Note 3: Subsection 230-330(1) prevents the hedging method being applied to something that is a financial arrangement under this section.

**230-55 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 constitute 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 entities 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 that forms a 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 constitute one arrangement.

Example 2: Your rights and obligations under a typical price-linked or index-linked bond would constitute 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 constitute 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 constitute one arrangement.

## **General rules**

### **230-60 When financial benefit provided or received under financial arrangement**

#### *Financial benefit provided under financial arrangement*

- (1) You are taken, for the purposes of this Division, to have (or to have had) an obligation to provide a \*financial benefit under a \*financial arrangement if:
- (a) you have (or had) an obligation to provide the financial benefit in relation to the arrangement; and
  - (b) the financial benefit would not otherwise be treated as one that you have (or had) an obligation to provide under the arrangement; and
  - (c) the financial benefit plays an integral role in determining:
    - (i) whether you make a gain or loss from the arrangement; or
    - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity to which you provide the financial benefit is not a party to the arrangement.

Note: This means that the financial benefits you provide to acquire the financial arrangement (whether to the issuer, a previous holder or a third party) are taken to be financial benefits you provide under the arrangement. The financial benefits you provide may include, for example, fees paid or the forgoing of rights to receive a financial benefit.

*Financial benefit received under financial arrangement*

- (2) You are taken, for the purposes of this Division, to have (or to have had) a right to receive a \*financial benefit under a \*financial arrangement if:
- (a) you have (or had) a right to receive the financial benefit in relation to the arrangement; and
  - (b) the financial benefit would not otherwise be treated as one that you have (or had) a right to receive under the arrangement; and
  - (c) the financial benefit plays an integral role in determining:
    - (i) whether you make a gain or loss from the arrangement; or
    - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity that provides the financial benefit is not a party to the arrangement.

Note: The financial benefits you receive may include, for example, the waiving of an obligation you have to provide a financial benefit.

**230-65 Amount of financial benefit relating to more than one financial arrangement etc.**

- (1) This section applies if:
- (a) a \*financial benefit plays the integral role mentioned in paragraph 230-60(1)(c) or (2)(c) in relation to a \*financial arrangement; and
  - (b) either or both of the following apply:
    - (i) the financial benefit plays that role in relation to one or more other financial arrangements;
    - (ii) the financial benefit is provided or received for one or more other things that are not financial arrangements.
- (2) For the purposes of this Division, determine the amount of the \*financial benefit that plays that role in relation to a particular \*financial arrangement by apportioning the actual amount of the financial benefit, on a reasonable basis, between:
- (a) that financial arrangement; and
  - (b) each other financial arrangement (if any) in relation to which the benefit plays that role; and

- (c) each other thing (if any) mentioned in subparagraph (1)(b)(ii).

**230-70 Apportionment when financial benefit received or right ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
- (a) you receive a particular \*financial benefit under a \*financial arrangement; or
  - (b) one of your rights under a financial arrangement \*ceases.
- The gain or loss is to be calculated in nominal (and not \*present value) terms.
- (2) You must have regard to the extent to which the \*financial benefits that you have provided, or are to provide, under the \*financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or right referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) 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.
- (4) Despite subsection (2), no \*financial benefit that you have provided, or are to provide, under the \*financial arrangement is to be attributed to the benefit or right referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
  - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and

- (c) the benefit or right referred to in paragraph (1)(a) or (b) is an amount that represents, or is a right to an amount that represents:
- (i) interest; or
  - (ii) a \*return paid or provided on a \*debt interest; or
  - (iii) something that is in the nature of interest; or
  - (iv) something that could reasonably be regarded as being a substitute for interest; or
  - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment received instead of payments of interest.

### **230-75 Apportionment when financial benefit provided or obligation ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
- (a) you provide a particular \*financial benefit under the \*financial arrangement; or
  - (b) one of your obligations under a financial arrangement \*ceases.

The gain or loss is to be calculated in nominal (and not \*present value) terms.

- (2) You must have regard to the extent to which the \*financial benefits that you have received, or are to receive, under the \*financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or obligation referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) 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.
- (4) Despite subsection (2), no \*financial benefit that you have received, or are to receive, under the \*financial arrangement is to be attributed to the benefit or obligation referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
  - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and
  - (c) the benefit or obligation referred to in paragraph (1)(a) or (b) is an amount that represents, or is an obligation to provide an amount that represents:
    - (i) interest; or
    - (ii) a \*return paid or provided on a \*debt interest; or
    - (iii) something that is in the nature of interest; or
    - (iv) something that could reasonably be regarded as being a substitute for interest; or
    - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment made instead of payments of interest.

### **230-80 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 Division provides that a particular method applies to gains or losses you make from a \*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 Division 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.

### **230-85 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 purposes of this Division even if it is subject to a contingency.

### **Subdivision 230-B—The accruals/realisation methods**

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**Guide to Subdivision 230-B**

**230-90 What this Subdivision is about**

This Subdivision applies the accruals method to determine the amount and timing of gains and losses from a financial arrangement if they are sufficiently certain for such accrual to be done.

This Subdivision applies the realisation method to determine the amount and timing of gains and losses if they are not sufficiently certain to be dealt with under the accruals method.

If the accruals method is applied to a gain or loss on the basis of an estimate of a financial benefit and the benefit when received or provided is more or less than the estimate, a balancing adjustment is made to correct for the underestimate or overestimate.

If the accruals method is being applied to gains and losses from the arrangement and there is a material change to the arrangement, or the circumstances in which it operates, a reassessment is made of whether the accruals method or the realisation method should apply to gains and losses from the arrangement.

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

## **Objects of Subdivision**

### **230-95 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from \*financial arrangements by allocating them to appropriate periods of time; and
- (b) to reduce compliance costs by reflecting commercial accounting concepts where appropriate; and
- (c) to minimise tax deferral.

## **When accruals method or realisation method applies**

### **230-100 When accruals method or realisation method applies**

*When accruals method applies and when realisation method applies*

- (1) This section tells you when to apply the accruals method and when to apply the realisation method if this Subdivision applies to gains and losses from a \*financial arrangement.

*Accruals method—sufficiently certain overall gain or loss at start time*

- (2) The accruals method provided for in this Subdivision applies to a gain or loss you make from a \*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.

Note: Subsection 230-105(1) tells you when you have a sufficiently certain overall gain or loss.

*Accruals method—sufficiently certain particular gain or loss*

- (3) The accruals method provided for in this Subdivision also applies to a gain or loss you make from a \*financial arrangement if:
- (a) the gain or loss arises from a \*financial benefit that you are to receive or are to provide under the arrangement; and
  - (b) the gain or loss:
    - (i) is sufficiently certain at the time when you start to have the arrangement and before you are to receive or provide the benefit; or
    - (ii) becomes sufficiently certain after the time when you start to have the arrangement and before you are to receive or provide the benefit; and
  - (c) the benefit has not already been taken into account in applying:
    - (i) the accruals method provided for in this Subdivision; or
    - (ii) the realisation method provided for in this Subdivision; to another gain or loss from the arrangement.

This subsection has effect subject to subsection (4).

Note: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

- (4) Subsection (3) does not apply to a gain or loss that you make from a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or

- (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
- (b) the arrangement is a \*qualifying security; and
- (c) you have not made an election under subsection 230-455(7).

*Realisation method—gain or loss not sufficiently certain*

- (5) The realisation method provided for in this Subdivision applies to a gain or loss that you make from a \*financial arrangement if the accruals method provided for in this Subdivision does not apply to that gain or loss.

Note: Section 230-180 tells you how to apply the realisation method to the gain or loss.

### **230-105 Sufficiently certain overall gain or loss**

- (1) You have a sufficiently certain overall gain or loss from a \*financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:
  - (a) a particular amount; or
  - (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

Note: Sections 230-70 and 230-75 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
  - (a) assume that you will continue to have the \*financial arrangement for the rest of its life; and
  - (b) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

### **230-110 Sufficiently certain gain or loss from particular event**

- (1) You have a sufficiently certain gain or loss from a \*financial arrangement at a particular time if it is sufficiently certain at that time that you will make a gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount;
- when one of the following occurs:
- (c) you receive a particular \*financial benefit under the arrangement or one of your rights under the arrangement \*ceases;
  - (d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

- (2) In applying subsection (1) to work out whether you have a sufficiently certain gain or loss at a particular time:
- (a) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss; and
  - (b) disregard any financial benefit that has already been taken into account in working out the amount of a sufficiently certain overall gain or loss from the \*financial arrangement under subsection 230-105(1) at the time when you started to have the arrangement; and
  - (c) disregard any financial benefit (or that part of any financial benefit) that has already been taken into account in working out the amount of a sufficiently certain gain or loss from the \*financial arrangement under subsection (1).

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of a gain or loss.

### **230-115 Sufficiently certain financial benefits**

- (1) In deciding for the purposes of this Subdivision whether it is sufficiently certain at a particular time that you will make a gain or loss from a \*financial arrangement, have regard only to:

- (a) \*financial benefits that you are sufficiently certain to receive;  
and
- (b) financial benefits that you are sufficiently certain to provide.

Note: The particular time may be the time at which you start to have the arrangement.

- (2) A \*financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:
  - (a) it is reasonably expected that you will receive or provide the financial benefit (assuming that you will continue to have the \*financial arrangement for the rest of its life); and
  - (b) at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy.
- (3) In applying subsection (2) to the \*financial benefit:
  - (a) you must have regard to:
    - (i) the terms and conditions of the \*financial arrangement;  
and
    - (ii) accepted pricing and valuation techniques; and
    - (iii) the economic or commercial substance and effect of the arrangement; and
    - (iv) the contingencies that attach to the other financial benefits that are to be provided or received under the arrangement; and
  - (b) you must treat the financial benefit as if it were not contingent if it is appropriate to do so having regard to the contingencies that attach to the other financial benefits that are to be received or provided under the arrangement.
- (4) In applying paragraph (2)(b) at a particular time (the *reference time*) to a \*financial benefit that depends on a variable that is based on:
  - (a) an interest rate; or
  - (b) a rate that solely or primarily reflects the time value of money; or
  - (c) a rate that solely or primarily reflects a consumer price index;  
or
  - (d) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;

you must assume that that variable will continue to have the value it has at the reference time.

- (5) Despite subsection (4), in applying paragraph (2)(b) at a particular time to a \*financial benefit that depends on a rate of change to a variable that is based on:
- (a) a rate that solely or primarily reflects a consumer price index;  
or
  - (b) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;
- you must assume that the rate of change to that variable will continue to be the rate of change that is current at that time.
- (6) If subsection (4) or (5) applies to a gain or loss and you are determining the amount of the gain or loss at a particular time, you must also assume that that variable will continue to have the value that it has at that time.
- (7) Subsections (4) and (5) do not limit paragraph (2)(b).
- (8) If all of the \*financial benefits provided and received under the \*financial arrangement are denominated in a particular foreign currency, those financial benefits are not to be translated into your \*applicable functional currency for the purposes of applying subsection (2) to the arrangement.
- (9) To avoid doubt:
- (a) a \*financial benefit that you have already provided at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to provide;  
and
  - (b) a financial benefit that you have already received at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to receive.

### **230-120 Financial arrangements with notional principal**

- (1) This section applies to a \*financial arrangement that you have if, in substance or effect, and having regard to the pricing, terms and conditions of the arrangement:
- (a) the arrangement consists of these things:

- (i) a leg, the \*financial benefits to be provided or received in respect of which are calculated by reference to, or are reasonably related to, a notional principal;
  - (ii) another leg, the financial benefits to be provided or received in respect of which also are calculated by reference to, or are reasonably related to, a notional principal;
  - (iii) if the arrangement includes one or more other things—those things; and
- (b) when you start to have the arrangement, the value of the notional principal in relation to one leg is equal to the value of the notional principal in relation to the other leg; and
  - (c) all or part of the notional principal in relation to each leg is provided or received at a time, regardless of whether that time is different in relation to each leg.

Example: A swap contract.

- (2) To avoid doubt, the \*financial benefits mentioned in subparagraphs (1)(a)(i) and (ii), and the notional principal in relation to each leg, need not actually be provided or received.
- (3) In applying this Subdivision to the \*financial arrangement:
  - (a) work out the \*financial benefits from the arrangement as follows:
    - (i) work out the financial benefits from each thing of which the arrangement consists separately from the financial benefits from each other thing of which the arrangement consists;
    - (ii) ensure that results under subparagraph (i) are consistent with the timing and amount of financial benefits to be actually provided or received under the arrangement; and
  - (b) work out your gains and losses from the arrangement as follows:
    - (i) work out the gains and losses from each thing of which the arrangement consists separately from the gains and losses from each other thing of which the arrangement consists;
    - (ii) treat the gains and losses mentioned in subparagraph (i) for all of those things as your gains and losses from the arrangement; and

- (c) in working out a gain or loss from a thing for the purposes of subparagraph (b)(i), and, if the accruals method applies to the gain or loss, how it is to be spread and allocated:
  - (i) if the thing is a leg—take into account the amount of the notional principal at a time and in a manner that properly reflects the way in which the financial benefits in respect of that leg are calculated; and
  - (ii) if the thing is *not* a leg—take into account an amount relevant to the thing at a time and in a manner that properly reflects the way in which the financial benefits in respect of that thing are calculated.

## The accruals method

### 230-125 Overview of the accruals method

If the accruals method applies to a gain or loss you make from a <sup>\*</sup>financial arrangement:

- (a) you use section 230-130 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 230-135 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 230-170 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

### 230-130 Applying accruals method to work out period over which gain or loss is to be spread

*Period over which overall gain or loss is to be spread*

- (1) If you have a sufficiently certain overall gain or loss from a <sup>\*</sup>financial arrangement under subsection 230-105(1), 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.

- (2) However, if you have sufficiently certain gains or losses from the arrangement that:
- (a) can be spread under subsection (3); and
  - (b) when considered together, represent adequately the overall gain or loss mentioned in subsection (1);
- you may spread those gains or losses in accordance with subsection (3) instead of spreading the overall gain or loss in accordance with subsection (1).

*Period over which particular gain or loss is to be spread*

- (3) If you have a sufficiently certain gain or loss from a \*financial arrangement under subsection 230-110(1), the period over which the gain or loss is to be spread is the period to which the gain or loss relates. Have regard to the pricing, terms and conditions of the arrangement in working out the period to which the gain or loss relates. This subsection has effect subject to subsections (4) and (5).
- (4) The start of the period over which a gain or loss to which subsection (3) applies is to be spread must:
- (a) not start earlier than the time when you start to have the \*financial arrangement; and
  - (b) not start earlier than the start of the income year during which it becomes sufficiently certain that you will make the gain or loss.
- (5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must:
- (a) not end later than the time when you will cease to have the \*financial arrangement; and
  - (b) not end later than the end of the income year during which:
    - (i) the \*financial benefit that gives rise to the gain or loss is to be received or provided; or
    - (ii) the right or obligation whose \*ceasing gives rise to the gain or loss is to cease.

## 230-135 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; 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).
- (3) The following subsections of this section clarify the way in which the gain or loss is to be spread in accordance with paragraph (2)(a).

### *Intervals to which parts of gain or loss allocated*

- (4) 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.

### *Fixing of amount and rate for interval*

- (5) For each interval:
- (a) determine a rate of return; and
  - (b) determine an amount to which you apply the rate of return.
- (6) For the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return for an interval, have regard to:
- (a) the amount or value; and
  - (b) the timing;
- of \*financial benefits that are to be taken into account in working out the amount of the gain or loss, and were provided or received by you during the interval.

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

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

*Regard to be had to financial benefits provided or received in interval*

- (8) In allocating the gain or loss to intervals, have regard to the \*financial benefits to be provided or received in each of those intervals.

**230-140 Method of spreading gain or loss—effective interest method**

- (1) This section clarifies that the method mentioned in subsection (2) of spreading gains and losses is a method covered by paragraph 230-135(2)(b) (methods approximating compounding accruals).
- (2) The method is the effective interest method mentioned in \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this subsection).
- (3) However, this section applies to a particular \*financial arrangement you have only if:
- (a) in a case where there is a discount or premium under the arrangement—when you start to have the arrangement, the annually compounded rate of return applicable to the discount or premium does not exceed 1%; and
  - (b) when you start to have the arrangement, neither the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) nor the expected life of the arrangement exceeds:
    - (i) unless subparagraph (ii) applies—30 years; or
    - (ii) if the regulations prescribe a different period for the purposes of this subparagraph—that period; and
  - (c) each \*financial benefit that you have an obligation to provide or a right to receive under the arrangement, and that gives rise to a gain or loss from the arrangement (other than a gain or loss that is attributable to any discount or premium):
    - (i) relates to a period not exceeding 12 months; and
    - (ii) will be provided or received in the period to which it relates; and

Note: Different financial benefits may relate to different periods.

- (d) you prepare a financial report for the year in which you start to have the arrangement; and
  - (e) that financial report is:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (f) all gains and losses from the arrangement to which the accrual method applies are spread in a way that is consistent with that financial report.
- (4) For the purposes of paragraph (3)(a), assume that you will continue to have the arrangement for the rest of its expected life.

**230-145 Application of effective interest method where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) For the purposes of paragraph 230-140(3)(d), treat yourself as having prepared a financial report for the income year in which you start to have the arrangement.
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:

- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with paragraph 230-140(3)(f) (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with paragraph 230-140(3)(f) (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
    - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-150 Election for portfolio treatment of fees**

- (1) You may make an election for an income year under this section if:
  - (a) you prepare a financial report for the income year in accordance with:

- (i) the \*accounting standards; or
  - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.
- (2) An election under this section is irrevocable.

**230-155 Election for portfolio treatment of fees where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-150(1)(a); and
    - (ii) audited in accordance with paragraph 230-150(1)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-150(1).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the first year as an income year);

- (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
- (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the second year as an income year);
- (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
- (e) next:
  - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  - (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-160 Portfolio treatment of fees**

- (1) This section applies in relation to a \*financial arrangement if:
  - (a) you have made an election under section 230-150 in an income year; and
  - (b) you start to have the financial arrangement in that income year or a later income year; and

- (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from fees in respect of the \*financial arrangement; and
  - (e) the fees play an integral role in determining the amount of the gain or loss; and
  - (f) the net amount of the fees is *not* expected to be significant relative to an overall gain or loss from the arrangement.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
- (a) to the extent that it arises from the fees, treat it as a gain or loss from the \*financial arrangement (the *fees gain or loss*) to which subsection 230-130(3) applies;
  - (b) to the extent that it does not arise from the fees, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-165(2) (premium/discount gain or loss).

*Determination of period for fees gain or loss*

- (3) The period over which the fees gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
- (a) the basis on which you determine the period accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the basis on which you determine the period is set and recorded before any fees in respect of the \*financial arrangement fall due; and
  - (c) the period can be justified objectively; and
  - (d) the period is reasonable in the circumstances.

*Spreading the fees gain or loss*

- (4) The method by which the fees gain or loss is to be spread is the method that you determine, if:
- (a) the basis on which you determine the method accords with the spreading of the fees gain or loss for the purposes of the

- profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
- (b) the method is determined before any fees in respect of the \*financial arrangement fall due; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

### **230-165 Portfolio treatment of premiums and discounts for acquiring portfolio**

- (1) This section applies in relation to a \*financial arrangement if:
  - (a) you have made an election under section 230-150 in an income year; and
  - (b) you start to have the financial arrangement in that income year or a later income year; and
  - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from a premium or discount in starting to have the portfolio; and
  - (e) the gain or loss is *not* expected to be significant relative to the amount of the gain or loss on the portfolio.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
  - (a) to the extent that it arises from the premium or discount, treat it as a gain or loss from the \*financial arrangement (the ***premium/discount gain or loss***) to which subsection 230-130(3) applies;
  - (b) to the extent that it does not arise from the premium or discount, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-160(2) (portfolio fees gain or loss).

*Determination of period for premium/discount gain or loss*

- (3) The period over which the premium/discount gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
- (a) the basis on which you determine the period accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the basis on which you determine the period is set and recorded before you start to have the \*financial arrangement; and
  - (c) the period can be justified objectively; and
  - (d) the period is reasonable in the circumstances.

*Spreading the premium/discount gain or loss*

- (4) The method by which the premium/discount gain or loss is to be spread is the method that you determine, if:
- (a) the basis on which you determine the method accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the method is determined before you start to have the \*financial arrangement; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

**230-170 Allocating gain or loss to income years**

- (1) You are taken, for the purposes of section 230-15, 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 230-135; 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 230-135; and
  - (b) that interval straddles 2 income years;
- you are taken, for purposes of section 230-15, 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 \*head company of 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 *leaving time*); and
  - (c) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group;
- an income year of the group is taken, for the purposes of applying this section to the group and the arrangement, to end at the leaving time.

### **230-175 Running balancing adjustments**

#### *Overestimate of financial benefit to be received*

- (1) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain, at a particular time, to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you receive the benefit (or the time comes for you to receive the benefit), the amount you receive (or are to receive) is nil or is less than the amount estimated.

The amount of the loss is equal to the difference between the amount estimated and the amount you receive (or are to receive). You are taken to have made the loss for the income year in which you receive the benefit (or in which the time comes for you to receive the benefit).

*Underestimate of financial benefit to be received*

- (2) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you receive the benefit, or the time comes for you to receive the benefit, the amount you receive, or are to receive, is more than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you receive or are to receive. You are taken to have made that gain in the income year in which you receive the benefit or in which the time comes for you to receive the benefit.

*Overestimate of financial benefit to be provided*

- (3) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you provide, or are to provide, is nil or is less than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you provide or are to provide. You are taken to have made that gain in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

*Underestimate of financial benefit to be provided*

- (4) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and

- (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you are to provide is more than the estimated amount referred to in paragraph (a).

The amount of the loss is equal to the difference between the amount estimated and the amount you are to provide. You are taken to have made that loss in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

## **Realisation method**

### **230-180 Realisation method**

- (1) If a gain or loss is to be taken into account using the realisation method, you are taken, for the purposes of section 230-15, to make the gain or loss for the income year in which the gain or loss occurs.

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of the gain or loss.

- (2) For the purposes of subsection (1), a gain or loss from a \*financial arrangement is taken to occur at the time at which the last of the \*financial benefits taken into account in determining the amount of the gain or loss:
  - (a) is provided; or
  - (b) if the financial benefit is not provided at the time when it is due to be provided under the arrangement and it is reasonable to expect that the financial benefit will be provided—is due to be provided.

This subsection has effect subject to subsection (3).

- (3) For the purposes of subsection (1), you make a loss from a \*financial arrangement from writing off, as a bad debt, a right to a \*financial benefit (or a part of a financial benefit) if:
  - (a) the financial benefit was taken into account in working out the amount of a gain from the arrangement and the gain has been included in your assessable income under this Division; or
  - (b) the right is one in respect of money that you lent in the ordinary course of your \*business of lending money; or

- (c) the right is one that you bought in the ordinary course of your business of lending money.
- (4) The loss referred to in subsection (3) occurs when you write off the right to the \*financial benefit (or the part of the financial benefit) as a bad debt.
- (5) The amount of the loss referred to in subsection (3) is:
  - (a) if paragraph (3)(a) applies—so much of the gain referred to in that paragraph as is reasonably attributable to the \*financial benefit (or the part of the financial benefit); or
  - (b) if paragraph (3)(b) applies—the amount of the financial benefit (or the part of the financial benefit); or
  - (c) if paragraph (3)(c) applies—the amount of the financial benefit (or the part of the financial benefit) but only up to the value of the financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the loss referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

## **Reassessment and re-estimation**

### **230-185 Reassessment**

- (1) You must make a fresh assessment of which gains and losses from a \*financial arrangement the accruals method should apply to, and which gains and losses from that arrangement the realisation method should apply to, if:
  - (a) the accruals method, or the realisation method, provided for in this Subdivision applies to gains and losses from the arrangement; and
  - (b) there is a material change to:
    - (i) the terms and conditions of the arrangement; or
    - (ii) circumstances that affect the arrangement.

- (2) Without limiting subsection (1), the following changes are material changes to the terms and conditions of, or circumstances that affect, the \*financial arrangement:
- (a) a change to the terms or conditions of the arrangement in a way that alters the essential nature of the arrangement (for example, by altering it from a \*debt interest to an \*equity interest or from an equity interest to a debt interest);
  - (b) a change to the terms or conditions of the arrangement in a way that materially affects the contingencies on which significant obligations and rights under the arrangement are dependent (for example, by introducing such a contingency or removing such a contingency);
  - (c) a change in circumstances that makes something that:
    - (i) materially affects significant obligations and rights under the arrangement; and
    - (ii) was previously dependent on a contingency; no longer dependent on a contingency (because, for example, only one of a number of previously possible contingencies is realised);
  - (d) a change to:
    - (i) the terms on which credit is to be provided to an entity that is not a party to the arrangement; or
    - (ii) the credit rating of an entity that is not a party to the arrangement;if a significant obligation or right under the arrangement is dependent on that credit being provided or that rating being maintained;
  - (e) if the arrangement is, or includes, a financial asset or financial liability and you prepare your financial reports in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law;a change to the terms or conditions of, or circumstances that affect, the arrangement that are sufficient for the financial asset or financial liability to be treated as impaired for the purposes of those standards.

- (3) You do not need to make a reassessment under this section merely because of a change in the fair value of the \*financial arrangement.

### 230-190 Re-estimation

*When re-estimation necessary*

- (1) You re-estimate a gain or loss from a \*financial arrangement under subsection (5) if:
- (a) the accruals method applies to the gain or loss; and
  - (b) circumstances arise that materially affect:
    - (i) the amount or value; or
    - (ii) the timing;of \*financial benefits that were taken into account in working out the amount of the gain or loss; and
  - (c) the circumstances do not give rise to a re-estimation under section 230-200; and
  - (d) in a case where the gain or loss is spread using the method referred to in paragraph 230-135(2)(b) in accordance with section 230-140 (effective interest method)—the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) is more than 12 months.
- (2) If subsection (1) applies, you must re-estimate the gain or loss:
- (a) unless paragraph (b) applies—as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (1)(b); or
  - (b) if paragraph (1)(d) is satisfied and the terms and conditions of the \*financial arrangement provide for reset dates to occur no more than 12 months apart—at the relevant reset date.
- (3) 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 estimates 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;
  - (d) you have made a reassessment under section 230-185 in relation to gains or losses under the arrangement and you have determined on the reassessment under that section that the accruals method should continue to apply to those gains or losses.
- (4) You do not re-estimate the gain or loss from a \*financial arrangement under subsection (5) merely because of a change in the credit rating, or the creditworthiness, of a party or parties to the arrangement.

*Nature of re-estimation*

- (5) 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*

- (6) You may make the fresh allocation of the gain or loss under subsection (5) on these bases:
- (a) if you satisfy subsection (7) in relation to the \*financial arrangement—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) in any case—by adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

The object to be achieved by both bases is to 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.

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Note: The amount referred to in paragraph (b) is the amount to which the previous rate of return was being applied immediately before the re-estimation.

- (7) You satisfy this subsection in relation to a \*financial arrangement if every re-estimation you make under subsection (5) in relation to a gain or loss from the arrangement is made in accordance with:
  - (a) financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b) (regardless of whether Subdivision 230-F (reliance on financial reports method) are to apply to a particular financial arrangement); and
  - (b) \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this paragraph).
- (8) The following subsections apply if the re-estimation arises because of an impairment (within the meaning of the \*accounting standards) of:
  - (a) the \*financial arrangement; or
  - (b) a financial asset or financial liability that forms part of the arrangement.
- (9) Despite paragraph (6)(a), you must make the fresh allocation in accordance with paragraph (6)(b).
- (10) To the extent that the impairment results in you making a loss for an income year under section 230-15, you cannot deduct that loss for the income year.

**230-195 Balancing adjustment if rate of return maintained on re-estimation**

- (1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-190(6)(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, for the income year in which you make the re-estimation, equal to the amount of the decrease.
- (2) Subsection (3) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit (or a part of a financial benefit); and
- (b) the right:
- (i) is not one in respect of money that you lent in the ordinary course of your \*business of lending money; and
- (ii) is not one that you bought in the ordinary course of your business of lending money.
- (3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the \*financial arrangement as:
- (a) has been assessed under this Division; and
- (b) is reasonably attributable to the \*financial benefit (or the part of the financial benefit).
- (4) Subsection (5) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit; and
- (b) the right is one that you bought in the ordinary course of your \*business of lending money.
- (5) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed the value of the \*financial benefit you provided to acquire

the right to the financial benefit (or the part of the financial benefit).

- (6) For the purposes of this Act, a deduction for the balancing adjustment referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

## **230-200 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) the accruals method applies to the gain or loss; and
  - (b) a balancing adjustment is made in relation to the arrangement under Subdivision 230-G because you transfer to another entity:
    - (i) a proportionate share of all of your rights and/or obligations under the arrangement; or
    - (ii) a right or obligation that you have under the arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under the 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.

In applying paragraph (a), disregard subsections 230-70(4) and 230-75(4).

*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 to allow you to bring the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

## **Subdivision 230-C—Fair value method**

### **Table of sections**

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### **230-205 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from \*financial arrangements with the accounting treatment that applies where assets and liabilities are classified or designated as at fair value through profit or loss; and
- (b) to facilitate efficient price-making; and
- (c) to achieve the above objects without allowing you to obtain an inappropriate tax benefit.

## 230-210 Fair value election

### *Election*

- (1) You may make a *fair value election* under this section if you are eligible under subsection (2) to make the election for the income year in which you make the election.

### *Eligibility to make fair value election for an income year*

- (2) You are eligible to make a *fair value election* for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

### *Election irrevocable*

- (3) A \*fair value election is irrevocable.

Note: The election may cease to have effect, or cease to apply to a particular financial arrangement, under section 230-240.

**230-215 Fair value election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-210(2).
- (3) Work out the gain or loss you make from the \*financial arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-230 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-230 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

- (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-220 Financial arrangements to which fair value election applies**

- (1) A \*fair value election applies in relation to \*financial arrangements that:
- (a) are \*Division 230 financial arrangements; and
  - (b) are recognised in financial reports of the kind referred to in paragraph 230-210(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-210(2)(b); and
  - (c) are assets or liabilities that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in the financial reports, as at fair value through profit or loss; and
  - (d) you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-225.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*fair value election is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

### **230-225 Financial arrangements to which election does not apply**

- (1) A \*fair value election does not apply to a \*financial arrangement if:
- (a) the arrangement is an \*equity interest; and

- (b) you are the issuer of the equity interest.
- (2) A \*fair value election does not apply to a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*fair value election does not apply to a \*financial arrangement if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) A \*fair value election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

### **230-230 Applying fair value method to gains and losses**

- (1) If a \*fair value election applies to your \*financial arrangement, the gain or loss you make from the arrangement for an income year is:
- (a) the gain or loss that the standards referred to in paragraph 230-210(2)(a) require you to recognise in profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c); or
  - (b) if subsection 230-220(2) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-220(2)(b); or

- (c) if subsection 230-220(3) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that an election under Subdivision 230-E (hedging financial arrangements method) or Subdivision 230-F (method of relying on financial reports) may override a fair value election.

- (2) Subsection (3) applies if:
- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a \*fair value election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (3) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standards referred to in paragraph 230-210(2)(a) would require the group to recognise as at fair value through profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c) if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the financial arrangement after the leaving time were disregarded.

### **230-235 Splitting financial arrangements into 2 financial arrangements**

- (1) If:
- (a) a \*financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-220(1)(c); and
  - (b) a \*fair value election would apply to the arrangement if it were constituted solely by that asset or liability;

the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.

- (2) The 2 separate \*financial arrangements are:
  - (a) one consisting of the part referred to in paragraph (1)(a); and
  - (b) one consisting of the remaining part.

### **230-240 When election ceases to apply**

- (1) A \*fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-210(2) to make the fair value election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*fair value election at a later time if you become, at that later time, eligible under subsection 230-210(2) to make a fair value election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*fair value election ceases to apply to a particular \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-220(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-220(1)(b) and (c) are satisfied once more in relation to the arrangement).

### **230-245 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*fair value election ceases to have effect under subsection 230-240(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.

- (3) You must make a balancing adjustment under subsection (4) if a \*fair value election ceases to apply to a particular \*financial arrangement under subsection 230-240(3).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-D—Foreign exchange retranslation method**

#### **Table of sections**

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230-275	Balancing adjustment for election in relation to qualifying forex accounts
230-280	Applying foreign exchange retranslation method to gains and losses
230-285	When election ceases to apply
230-290	Balancing adjustment if election ceases to apply

#### **230-250 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from foreign exchange rate changes with the accounting treatment of profits and losses from such changes; and
- (b) to achieve this without allowing you to obtain an inappropriate tax benefit.

## 230-255 Foreign exchange retranslation election

### *General election*

- (1) You may make a **foreign exchange retranslation election** under this subsection if you are eligible under subsection (2) to make the election for the income year in which you make the election.

### *Eligibility to make election*

- (2) You are eligible to make a \*foreign exchange retranslation election for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

### *Election in relation to qualifying forex accounts*

- (3) You may make a **foreign exchange retranslation election** under this subsection in relation to a \*financial arrangement if:
- (a) the arrangement is a \*qualifying forex account; and
  - (b) you have not made a \*foreign exchange retranslation election under subsection (1) that applies to the account.
- You may make the election even if you start to have the arrangement before you make the election.

*Financial arrangements to which election in relation to qualifying  
forex accounts applies*

- (4) The election under subsection (3) applies to the \*financial arrangement:
- (a) from the time when you start to have the arrangement if the election is made before you start to have the arrangement; or
  - (b) from the start of the income year in which the election is made if you make the election after you start to have the arrangement.

*Election irrevocable*

- (5) A \*foreign exchange retranslation election is irrevocable.

Note: The election may cease to apply under section 230-285.

**230-260 Foreign exchange retranslation election where differing  
income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-255(2)(a);  
and
    - (ii) audited in accordance with paragraph 230-255(2)(b);  
and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-255(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:

- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-280 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-280 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
    - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-265 Financial arrangements to which general election applies**

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) applies to each of your \*financial arrangements:
  - (a) that are \*Division 230 financial arrangements; and

- (b) that are recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and
  - (c) in relation to which you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial reports, amounts in profit or loss (if any) that are attributable to changes in currency exchange rates; and
- (d) that you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-270.

Note: The election also has consequences under Subdivision 775-F for arrangements that are not Division 230 financial arrangements.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
  - (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
  - (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:

- (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
  - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
- (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
- (c) the \*foreign exchange retranslation election under subsection 230-255(1) is made by:
- (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
  - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

**230-270 Financial arrangements to which general election does not apply**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if:

- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) A \*foreign exchange retranslation election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

**230-275 Balancing adjustment for election in relation to qualifying forex accounts**

- (1) If a \*hedging financial arrangement that you have does not (apart from this section) meet the requirements of sections 230-355 to 230-365, treat it as meeting those requirements if the Commissioner makes a determination under subsection (2) in relation to the arrangement.
- (2) The Commissioner may make the determination if the Commissioner considers that this is appropriate, having regard to:
  - (a) the respects in which the arrangement does not meet those requirements; and
  - (b) the extent to which it does not meet those requirements; and
  - (c) the reasons why it does not meet those requirements; and
  - (d) if the Commissioner is considering whether to impose conditions under subsection (3)—the likelihood that you will comply with those conditions; and
  - (e) the objects of this Subdivision.
- (3) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you ceased to have the arrangement for its fair value at the time when the election started to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).

## 230-280 Applying foreign exchange retranslation method to gains and losses

### *General election*

- (1) You make a gain or loss from a \*financial arrangement for an income year if:
  - (a) a \*foreign exchange retranslation election under subsection 230-255(1) applies to the arrangement; and
  - (b) any of the following subparagraphs apply:
    - (i) the standard referred to in paragraph 230-265(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year;
    - (ii) if subsection 230-265(2) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b);
    - (iii) if subsection 230-265(3) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss for the year that is attributable to currency exchange rates mentioned in paragraph 230-265(1)(c) if the arrangement had been between 2 separate entities.

The amount of the gain or loss is the amount the standard requires, or would have required, you to recognise.

Note: See subsection 230-40(6).

### *Election in relation to qualifying forex accounts*

- (2) You make a gain or loss from a \*financial arrangement for an income year if:
  - (a) a \*foreign exchange retranslation election under subsection 230-255(3) applies to the arrangement; and
  - (b) the standard referred to in paragraph 230-265(1)(c):

- (i) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; or
- (ii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if that standard applied to the arrangement; or
- (iii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b); or
- (iv) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b) and if that standard applied to the arrangement.

The amount of the gain or loss is the amount the standard requires, or would require, you to recognise.

*Subsidiary leaving group*

- (3) Subsection (4) applies if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a \*foreign exchange retranslation election under subsection 230-255(1) or (3) applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (4) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standard referred to in paragraph 230-265(1)(c) would require the group to recognise in profit or loss in relation to the arrangement for that income year if:

- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
- (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

## **230-285 When election ceases to apply**

### *General election*

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-255(2) to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.
- (2) Subsection (1) does not prevent you from making a new \*foreign exchange retranslation election at a later time if you become, at that later time, eligible under subsection 230-255(2), to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-265(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-265(1)(b) and (c) are satisfied once more in relation to the arrangement).

### *Election in relation to qualifying forex accounts*

- (5) A \*foreign exchange retranslation election under subsection 230-255(3) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of subsection 230-255(3) during that income year.

- (6) If the election ceases to apply to a particular \*financial arrangement under subsection (5), the election cannot subsequently reapply to that arrangement (even if the requirements of subsection 230-255(3) are satisfied once more in relation to the arrangement).

### **230-290 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*foreign currency retranslation election ceases to have effect under subsection 230-285(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).
- (3) You must make a balancing adjustment under this section if a \*foreign currency retranslation election ceases to apply to a particular \*financial arrangement under subsection 230-285(3) or (5).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-E—Hedging financial arrangements method**

#### **Table of sections**

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- 230-310 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item
- 230-315 Hedging financial arrangement election
- 230-320 Hedging financial arrangement election where differing income and accounting years
- 230-325 Hedging financial arrangements to which election applies
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- 230-335 ***Hedging financial arrangement*** and ***hedged item***
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- 230-350 ***Derivative financial arrangement*** and ***foreign currency hedge***
- 230-355 Recording requirements
- 230-360 Determining basis for allocating gain or loss
- 230-365 Effectiveness of the hedge
- 230-370 When election ceases to apply
- 230-375 Balancing adjustment if election ceases to apply
- 230-380 Where requirements not met
- 230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements

**230-295 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and
- (b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

**230-300 Applying hedging financial arrangement method to gains and losses**

- (1) If you have a \*hedging financial arrangement to which a \*hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-310 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.

(2) Except where subsection (5) applies, the gain or loss you make from the \*hedging financial arrangement is equal to the overall gain or loss you make from the arrangement.

(3) The gain or loss you make from the \*hedging financial arrangement is allocated over income years according to the determination referred to in subsection 230-360(1).

Note 1: The allocation is capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).

Note 2: The determination must be included in the record made under section 230-355.

(4) If the \*hedging financial arrangement is a \*foreign currency hedge and is a \*debt interest, split a gain or loss you make from the arrangement as follows:

(a) to the extent to which the gain or loss represents a \*currency exchange rate effect attributable to the outstanding balance in relation to the debt interest, treat it as a separate gain or loss to which subsections (1) and (2) apply;

(b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement that is allocated under Subdivision 230-B, 230-F or 230-G.

(5) If an event listed in the table in section 230-305 occurs:

(a) the gain or loss you make from the \*hedging financial arrangement is equal to any gain or loss that you would have made:

(i) while the arrangement was hedging the \*hedged item or items; and

(ii) on ceasing to have the arrangement;

if you ceased to have the arrangement for its fair value at the time of the event; and

(b) this Division further applies as if, just after the event, you had acquired the arrangement for its fair value at the time of the event.

Despite subsection (3), the gain or loss referred to in paragraph (a) is allocated over income years according to the table.

(6) The regulations may apply subsection (5) and section 230-305 (with the modifications that are provided for in the regulations) to

the situation in which you cease to have one or more, but not all, of the \*hedged items.

- (7) Subsection (8) applies if the \*hedging financial arrangement:
- (a) is a \*financial arrangement under section 230-50 (equity interests etc.); and
  - (b) is a \*foreign currency hedge; and
  - (c) is one that you issue.
- (8) Split a gain or loss you make from the arrangement as follows:
- (a) to the extent to which the gain or loss represents a \*currency exchange rate effect, treat it as a separate gain or loss to which subsections (1) and (2) apply;
  - (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement to which this Division does not apply.
- (9) Subsections (10) and (11) apply if:
- (a) a \*head company of a \*consolidated group or \*MEC group has a \*hedging financial arrangement; and
  - (b) a \*hedging financial arrangement election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time:
    - (i) the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group; and
    - (ii) the head company no longer has the \*hedged item (or all of the hedged items) because the subsidiary member ceased to be a member of the group.
- (10) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that would be allocated to the group in accordance with this section (disregarding subsection (5)) if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the \*financial arrangement after the leaving time were disregarded.

- (11) For the purposes of applying paragraph (5)(a) to the \*head company of the group at the leaving time, disregard item 2 of the table in section 230-305.

### **230-305 Table of events and allocation rules**

For the purposes of paragraph 230-300(5)(a), the following table lists events and their consequences:

<b>Table of events and allocation rules</b>		
<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-365 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-360(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; or (c) you cease to expect that you will have the hedged item or items	to the income year in which the event occurs.
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

### **230-310 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item**

- (1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make from a \*hedging financial arrangement with the tax classification of the \*hedged item.

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- (2) This section applies if:
- (a) you make a gain or loss from a \*hedging financial arrangement for an income year; and
  - (b) a \*hedging financial arrangement election applies to the arrangement.
- (3) Subject to subsection (4):
- (a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and
  - (b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).

Note: Section 230-300 tells you how to allocate the gain or loss to an income year or years.

- (4) A gain or loss you make from a \*hedging financial arrangement, to the extent to which it is reasonably attributable to a \*hedged item referred to in the following table, is dealt with in the way indicated in that item:

<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i> ) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage

<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
	by a particular percentage, under Division 855		
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G	is treated as a *capital gain from a CGT event that is reduced by the same percentage	is treated as a *capital loss from a CGT event that is reduced by the same percentage
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
10	a loss or outgoing incurred in gaining or producing *ordinary	is treated as ordinary income or statutory income from an	is treated as a loss incurred in gaining or producing ordinary

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<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
	income or *statutory income from an *Australian source	Australian source	income or statutory income from an Australian source
11	a loss or outgoing that is not allowed as a deduction	is treated as *non-assessable non-exempt income	is treated as a loss that is not allowed as a deduction
12	a net investment in a foreign operation (within the meaning of the *accounting standards) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations Act 2001</i> ).	(a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is treated as non-assessable non-exempt income; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain.	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is not deductible; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the loss.

(5) If:

- (a) a \*hedged item is your net investment in a foreign operation (within the meaning of the \*accounting standards); and
- (b) the foreign operation is carried on through:
  - (i) a company in which you hold shares; or
  - (ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*);

the hedged item is taken, for the purposes of applying the table in subsection (4), to be the interest you have in the shares of the company.

### **230-315 Hedging financial arrangement election**

#### *Election*

- (1) You can make a **hedging financial arrangement election** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make hedging financial arrangement election for an income year*

- (2) You are eligible to make a **hedging financial arrangement election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing standards; or
    - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

#### *Election irrevocable*

- (3) The \*hedging financial arrangement election is irrevocable.

Note: The election may cease to apply under section 230-385.

### **230-320 Hedging financial arrangement election where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the **first year**); and
  - (b) you prepare a financial report for the subsequent year (the **second year**); and

- (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-315(2)(a); and
    - (ii) audited in accordance with paragraph 230-315(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-315(2).

### **230-325 Hedging financial arrangements to which election applies**

- (1) A \*hedging financial arrangement election applies to a \*hedging financial arrangement if:
- (a) you start to have the arrangement in the income year in which you make the election or in a later income year; and
  - (b) the requirements in sections 230-355 to 230-365 are met in relation to the arrangement.

Note: Paragraph (b)—see section 230-380 for the Commissioner's discretion in relation to failures to meet the requirements of sections 230-355 to 230-365.

- (2) For the purposes of paragraph (1)(b), treat the requirement in paragraph 230-365(c) as being met even if you do not assess the hedging of the risk mentioned in that paragraph, but you can demonstrate that you intend to do so.
- (3) This section has effect subject to section 230-330.

### **230-330 Hedging financial arrangements to which election does not apply**

- (1) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

- (2) Subsection (1) does not apply to a \*hedging financial arrangement if:
- (a) the hedging financial arrangement is a \*foreign currency hedge; and
  - (b) you issue the hedging financial arrangement.
- (3) A \*hedging financial arrangement election does not apply to a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (4) A \*hedging financial arrangement election does not apply to a \*financial arrangement if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (5) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

### **230-335 Hedging financial arrangement and hedged item**

#### *Hedging financial arrangement*

- (1) A \*financial arrangement that you have that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a ***hedging financial arrangement*** if:

- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to a \*hedged item; and
- (b) at the time you create, acquire or apply the arrangement, the arrangement satisfies the requirements of the standards referred to in paragraph 230-315(2)(a) to be a hedging instrument; and
- (c) the arrangement is recorded as a hedging instrument in:
  - (i) your financial report (including documents and records on which the report is based); or
  - (ii) if the arrangement hedges a risk in relation to foreign currency—the financial report of a consolidated entity in which you are included (including documents and records on which the report is based);for the income year in which the rights and/or obligations are created, acquired or applied.

Note: For *document* and *record*, see section 25 of the *Acts Interpretation Act 1901*.

- (2) If:
  - (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities;paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.
- (3) A \*financial arrangement that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a **hedging financial arrangement** if:
  - (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to something; and
  - (b) one or more of subsections (4), (5), (6) or (7) is satisfied; and
  - (c) the requirements of paragraphs (1)(b) or (c) are not able to be satisfied:

- (i) because of the requirements of the standards referred to in paragraph 230-315(2)(a); and
  - (ii) not because of any act or omission on your part to deliberately fail to satisfy those requirements; and
  - (d) you satisfy the additional recording requirements of subsection 230-355(5); and
  - (e) you satisfy the requirements (if any) prescribed by the regulations for the purposes of this paragraph.
- (4) This subsection is satisfied if:
- (a) the \*financial arrangement hedges a foreign currency risk in relation to an anticipated dividend from a \*connected entity; and
  - (b) the dividend is \*non-assessable non-exempt income under section 23AJ of the *Income Tax Assessment Act 1936*.
- (5) This subsection is satisfied if:
- (a) you enter into a \*financial arrangement with a \*connected entity; and
  - (b) the standards referred to in paragraph 230-315(2)(a) require that a consolidated financial report be prepared that deals with both your affairs and the affairs of the connected entity; and
  - (c) the report properly reflects your affairs; and
  - (d) the arrangement satisfies the requirements of paragraph (1)(a); and
  - (e) the arrangement would satisfy the requirements of paragraph (1)(b) or (c) but for the fact that the consolidated report disregards the arrangement.
- (6) This subsection is satisfied if:
- (a) the period for which the risk or risks are hedged does not straddle 2 or more income years; and
  - (b) the \*financial arrangement satisfies the requirements of paragraph (1)(a); and
  - (c) the arrangement would satisfy the requirements of paragraph (1)(c) if the period for which the risk or risks that are hedged did straddle 2 or more income years.
- (7) This subsection is satisfied if the requirements prescribed by the regulations for the purposes of this subsection are satisfied.

*Financial arrangement hedging more than one type of risk*

- (8) A \*financial arrangement that hedges more than one type of risk may only be a **hedging financial arrangement** if the standards referred to in paragraph (1)(b) allow the arrangement to be designated as a hedge of those risks.

*More than one financial arrangement hedging the same risk or risks*

- (9) If 2 or more \*financial arrangements hedge the same risk or risks, each of the arrangements may only be a **hedging financial arrangement** if the standards referred to in paragraph (1)(b) allow those arrangements to be viewed in combination and jointly designated as hedging that risk or those risks.

*Hedged item*

- (10) If a \*financial arrangement that you have hedges a risk in relation to:
- (a) an asset or a part of an asset; or
  - (b) a liability or a part of a liability; or
  - (c) a firm commitment (within the meaning of the \*accounting standards) or a part of such a commitment; or
  - (d) a highly probable forecast transaction (within the meaning of the accounting standards) or a part of such a transaction; or
  - (e) a net investment in a foreign operation (within the meaning of the accounting standards) or a part of such an investment; or
  - (f) something prescribed by the regulations for the purposes of this paragraph;
- the asset (or that part of the asset), the liability (or that part of the liability), the commitment (or that part of the commitment), the transaction (or that part of the transaction) or the investment (or that part of the investment) is a **hedged item** for the arrangement.
- (11) If a \*financial arrangement is a \*hedging financial arrangement because of paragraph (4)(a), the anticipated dividend referred to in that subparagraph is a **hedged item** for the arrangement even if subsection (10) is not satisfied in relation to the anticipated dividend.

**230-340 Generally whole arrangement must be financial hedging arrangement**

- (1) Subject to subsections (2), (3) and (4), the whole of a \*financial arrangement must satisfy the requirements of subsection 230-335(1) or (3) for the arrangement to be a **hedging financial arrangement**.

*Partial hedges*

- (2) If a \*financial arrangement:
- (a) is an options contract; and
  - (b) hedges risk only in part by reference to changes in the intrinsic value of the options contract;
- the arrangement may be treated as a **hedging financial arrangement** to the extent to which the part of the arrangement referred to in paragraph (b) satisfies the requirements of subsection 230-335(1) or (3).
- (3) If a \*financial arrangement:
- (a) is a forward contract; and
  - (b) has a spot price element and an interest element;
- the arrangement may be treated as a **hedging financial arrangement** to the extent to which the spot price element satisfies the requirements of subsection 230-335(1) or (3).

*Proportionate hedges*

- (4) A specified proportion of a \*financial arrangement may be treated as a **hedging financial arrangement** to the extent to which that proportion of the arrangement satisfies the requirements of subsection 230-335(1) or (3).

*Separate financial arrangements if partial or proportionate hedge*

- (5) If a part (or parts), or a proportion (or proportions), of a \*financial arrangement is (or are) treated as a \*hedging financial arrangement under subsection (2), (3) or (4):
- (a) the part (or each of the parts), or the proportion (or each of the proportions), of the arrangement that is (or are) treated as a hedging financial arrangement is taken to be a separate financial arrangement for the purposes of this Division; and

- (b) the remaining part or proportion (if any) of the arrangement is taken to be a separate financial arrangement for the purposes of this Division.
- (6) Subsection (5) has effect even if there would not be separate \*arrangements under subsection 230-55(4).

### **230-345 Requirements not satisfied because of honest mistake or inadvertence**

If a \*derivative financial arrangement, or a \*foreign currency hedge, that you have would not be a \*hedging financial arrangement only because the requirements of paragraph 230-335(1)(b) or (c), or both, are not satisfied because of an honest mistake or inadvertence, it is nevertheless a **hedging financial arrangement** if the Commissioner considers this appropriate having regard to:

- (a) your documented risk management practices and policies; and
- (b) your record keeping practices; and
- (c) your accounting systems and controls; and
- (d) your internal governance processes; and
- (e) the circumstances surrounding the mistake or inadvertence (including the steps (if any) taken to correct or address the mistake or inadvertence and the steps (if any) taken to prevent a recurrence); and
- (f) the extent to which the requirements of paragraphs 230-335(1)(b) and (c) have been met; and
- (g) the objects of this Subdivision.

### **230-350 Derivative financial arrangement and foreign currency hedge**

#### *Derivative financial arrangement*

- (1) A **derivative financial arrangement** is a \*financial arrangement that you have where:
  - (a) its value changes in response to changes in a specified variable or variables; and
  - (b) there is no requirement for a net investment, or there is such a requirement but the net investment is smaller than would be required for other types of financial arrangement that would

be expected to have a similar response to changes in market factors.

Note: Paragraph (a)—a specified variable includes an interest rate, foreign exchange rate, credit rating, index or commodity or financial instrument price.

*Foreign currency hedge*

- (2) A **foreign currency hedge** is a \*financial arrangement that you have if:
- (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and
  - (b) the arrangement hedges a risk in relation to movements in currency exchange rates.

**230-355 Recording requirements**

- (1) The requirement of this section is that you must make, or have in place, a record that:
- (a) contains a description of the following:
    - (i) the \*hedging financial arrangement in relation to which the election is made;
    - (ii) the nature of the risk or risks being hedged;
    - (iii) the \*hedged item or items;
    - (iv) how you will assess the effectiveness of hedging the risk in reducing your exposure to changes in the fair value of the hedged item or items or cash flows or foreign currency exposure attributable to them;
    - (v) the risk management objective for, and the risk management strategy to be followed in, acquiring, creating or applying the arrangement; and
  - (b) contains any further details that the \*accounting standards require, by way of documentation, for an arrangement to be recorded in a financial report as a hedging instrument; and
  - (c) sets out the terms of the determinations you make under section 230-360.

To avoid doubt, paragraph (b) applies even if the arrangement is not recorded in your financial report as a hedging instrument.

- (2) To avoid doubt, the record may consist of a single document or 2 or more documents.

- (3) The record must be made or in place:
  - (a) at, or soon after, the time when you create, acquire or apply the \*hedging financial arrangement; or
  - (b) at such other time as is provided for in the regulations for the purposes of this paragraph.
- (4) The description must be sufficiently precise and detailed that the following are clear:
  - (a) that the risk in respect of the particular \*hedged item or items was the one hedged by the \*hedging financial arrangement;
  - (b) the extent to which the risk was hedged;
  - (c) that the rights and/or obligations comprising the hedging financial arrangement were in fact those created, acquired or applied for the purpose of hedging the risk.
- (5) If a \*financial arrangement is a \*hedging financial arrangement under subsection 230-335(2) or (3), the following requirements must be met in addition to the requirements of subsections (1), (3) and (4):
  - (a) you must make or have in place, at, or soon before or soon after, the time when you create, acquire or apply the arrangement, a record that sets out:
    - (i) a statement of why, and the way in which, the arrangement operates commercially or economically as a hedge of the \*hedged item or items; and
    - (ii) the reasons why the arrangement does not satisfy the requirements of the standards referred to in paragraph 230-315(2)(a) to be a hedging instrument;
  - (b) you must, at the end of each income year during which you have the arrangement, make a record of the accumulated gains and/or losses (whether realised or unrealised) as at the end of that income year from the arrangement or arrangements relating to the hedged item or items that are yet to be included in your assessable income or allowed to you as deductions;
  - (c) you must have, at the time when you create, acquire or apply the arrangement, a record that sets out your risk management policies and practices;
  - (d) you must have in place, at the time when you create, acquire or apply the arrangement, internal risk management systems

and controls that record the arrangement and the hedged item or items.

- (6) For the purposes of paragraph (5)(b), you must assume that:
- (a) all the gains from the \*financial arrangement would be assessable income; and
  - (b) all the losses from the financial arrangement would be allowed to you as deductions.

### **230-360 Determining basis for allocating gain or loss**

- (1) A requirement of this section is that you must determine the basis on which your gain or loss from the \*hedging financial arrangement is to be allocated to an income year, or over 2 or more income years, for the purposes of this Division.
- (2) It is also a requirement of this section that the basis that you determine must:
- (a) fairly and reasonably correspond with the basis on which gains, losses or other amounts in relation to the \*hedged item or items are recognised or allocated under this Act; and
  - (b) be objective; and
  - (c) be sufficiently precise and detailed that, when your gain, loss or other amount from the \*hedged item or items is taken into account for the purposes of this Act, the following will be clear from the record made under section 230-355:
    - (i) the time at which the gain or loss from the \*hedging financial arrangement is to be taken into account for the purposes of this Division;
    - (ii) the way in which that gain or loss will be dealt with under section 230-310.

Note: Paragraph (a) refers to an amount in relation to the hedged item or items being recognised or allocated under this Act. This would include an amount being allowed as a deduction or an amount being included in assessable income. If the hedged item were an asset, an amount referable to a part of the cost of the asset might, for example, be allowed as a deduction for a particular income year.

- (3) To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the \*hedging financial arrangement.

### **230-365 Effectiveness of the hedge**

The requirement of this section is that:

- (a) hedging the risk must be expected to be highly effective (within the meaning of the standards referred to in paragraph 230-315(2)(a)), for the period for which you expect to have the \*hedging financial arrangement, in reducing your exposure to changes in the fair value of the \*hedged item or items or cash flows attributable to your hedged risk; and
- (b) the fair value of the hedged item or items or cash flows relating to them and the fair value of the arrangement must be able to be reliably measured; and
- (c) you must assess the hedging of the risk by the arrangement:
  - (i) on a regular basis in accordance with the \*accounting standards; and
  - (ii) at least once in each 12 month period;and your assessment must be that it will be highly effective (within the meaning of the standards referred to in paragraph 230-315(2)(a)) in reducing your exposure to changes in the fair value of the hedged item or items or cash flows attributable to the hedged risk throughout the remainder of the period for which you expect to have the arrangement.

### **230-370 When election ceases to apply**

- (1) A \*hedging financial arrangement election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-315(2) to make the election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*hedging financial arrangement election at a later time if you become, at that later time, eligible under subsection 230-315(2) to make an election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

### **230-375 Balancing adjustment if election ceases to apply**

- (1) This section applies if a \*hedging financial arrangement election ceases to have effect under subsection 230-370(1).

- (2) You are taken, for the purposes of this Division, to have:
  - (a) disposed of each \*hedging financial arrangement to which the election applies for its fair value immediately before the election ceases to have effect; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect.
- (3) To avoid doubt, this Subdivision applies, for the purposes of working out the consequences of the disposal referred to in paragraph (2)(a), as if the \*hedging financial arrangement were one to which the \*hedging financial arrangement election applied at the time of the disposal.

### **230-380 Where requirements not met**

*Commissioner may determine that requirement met*

- (1) If a \*hedging financial arrangement that you have would not meet the requirements of sections 230-355 to 230-365, it nevertheless meets the requirements if the Commissioner considers this appropriate having regard to:
  - (a) the respects in which it would not do so; and
  - (b) the extent to which it would not do so; and
  - (c) the reasons why it would not do so; and
  - (d) if the Commissioner is considering whether to impose conditions under subsection (2)—the likelihood that you will comply with those conditions; and
  - (e) the objects of this Subdivision.

*Commissioner may impose additional record keeping requirements*

- (2) The Commissioner may make a determination under subsection (1) conditional on your keeping records in addition to those required by section 230-355.
- (3) A determination under subsection (1) ceases to have effect if you breach a condition imposed under subsection (2).
- (4) Subsection (3) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.

- (5) In deciding whether to make the determination under subsection (4), the Commissioner must have regard to:
- (a) your record keeping practices; and
  - (b) your compliance history; and
  - (c) any changes that have been made to:
    - (i) your accounting systems and controls; and
    - (ii) your internal governance processes;to ensure that breaches of the kind referred to in subsection (3) do not happen again; and
  - (d) any other relevant matter.

*Commissioner may determine matter under section 230-360*

- (6) If:
- (a) the Commissioner makes a determination under subsection (1) in relation to a \*hedging financial arrangement; and
  - (b) either or both of the following applies:
    - (i) you fail to determine a matter in relation to the arrangement under section 230-360;
    - (ii) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);the Commissioner may determine that matter and the Commissioner's determination has effect as if you had made the determination and recorded it under that section.

**230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements**

*When section applies*

- (1) This section applies if:
- (a) you start to have a \*hedging financial arrangement to which your \*hedging financial arrangement election applies; and
  - (b) you do not meet a requirement of section 230-355 or 230-360 in relation to the arrangement; and
  - (c) you deliberately fail to meet that requirement in order to have this Subdivision not apply to the arrangement.

*Hedging financial arrangement election ceases to apply*

- (2) The \*hedging financial arrangement election does not apply to a \*hedging financial arrangement you start to have after you fail to meet the requirement referred to in paragraph (1)(b).

*Commissioner may determine that hedging financial arrangement is to reapply*

- (3) Subsection (2) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (4) The Commissioner may make the determination under subsection (3) only if satisfied that you are unlikely to deliberately fail again to meet a requirement of section 230-355 or 230-360 in order to have this Subdivision not apply to a \*hedging financial arrangement.
- (5) In deciding whether to make the determination under subsection (3), the Commissioner must have regard to:
- (a) your record keeping practices; and
  - (b) your compliance history; and
  - (c) any changes that have been made to:
    - (i) your accounting systems and controls; and
    - (ii) your internal governance processes;to ensure that failures of the kind referred to in paragraph (1)(c) do not happen again; and
  - (d) any other relevant matter.
- (6) If the Commissioner makes a determination under subsection (3), the \*hedging financial arrangement election applies to a \*hedging financial arrangement only if you start to have the arrangement after the determination takes effect.

*Commissioner may still exercise powers under section 230-380*

- (7) This section does not prevent the Commissioner from exercising the Commissioner's powers under section 230-380 in relation to the \*hedging financial arrangement referred to in paragraph (1)(a).

## Subdivision 230-F—Reliance on financial reports

### Table of sections

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### 230-390 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a \*financial arrangement with the accounting treatment that applies to the arrangement; and
- (b) to achieve those objects without your obtaining inappropriate tax benefits.

### 230-395 Election to rely on financial reports

#### *Election*

- (1) You may make an *election to rely on financial reports* if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make election*

- (2) You are eligible to make an election to rely on financial reports for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards

made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and

- (b) the financial report is audited in accordance with:
  - (i) the \*auditing standards; or
  - (ii) if the auditing standards do not apply to the auditing of the financial report—comparable auditing standards made under a foreign law; and
- (c) your auditor has not qualified the auditor's report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of \*financial arrangements; and
- (d) your accounting systems and controls and your internal governance processes are reliable; and
- (e) no report of an audit or review conducted in the income year, or any of the preceding 4 income years, has included an adverse assessment of your accounting systems in a respect that is relevant to the taxation treatment of financial arrangements.

Note 1: Paragraph (b)—section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing standards for the purposes of this Division.

Note 2: For the purposes of paragraphs (c) and (e), a qualification or assessment may be relevant to the taxation treatment of financial arrangements even though it does not deal with the amount or timing of recognition of gains or losses (but relates, for example, to the reliability of the accounting systems through which information about financial arrangements is recorded).

- (3) Paragraph (2)(e) does not apply to a report of:
  - (a) an internal audit or review that you conduct; or
  - (b) an audit or review of a kind prescribed by the regulations for the purposes of this paragraph.

*Election irrevocable*

- (4) An election under subsection (1) is irrevocable.

Note: The election may cease to apply under section 230-425.

**230-400 Financial reports election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-395(2)(a); and
    - (ii) audited in accordance with paragraph 230-395(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-395(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-420 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-420 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

- (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

**230-405 Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)**

- (1) Paragraph 230-395(2)(c) or (e) does not apply in relation to your \*election to rely on financial reports for a particular income year or income years if the Commissioner determines that the paragraph does not apply to the election for that income year or those income years.
- (2) In deciding whether to make the determination under subsection (1), the Commissioner must have regard to:
- (a) the reasons for the non-compliance with the standards concerned; and
  - (b) the remedial action (if any) that you have undertaken to ensure that non-compliance with those standards does not occur in future (such as changes to your accounting systems and controls or to your internal governance structures); and
  - (c) if you, or your activities, are subject to regulatory oversight or review—any opinions expressed by the regulator about the adequacy of remedial action of the kind referred to in paragraph (b); and
  - (d) any other relevant matter.

### **230-410 Financial arrangements to which the election applies**

- (1) An \*election to rely on financial reports applies in relation to a \*financial arrangement that you have if:
- (a) the arrangement is a \*Division 230 financial arrangement;  
and
  - (b) you start to have the arrangement in the income year in which you make the election or in a later income year; and
  - (c) the arrangement is recognised in financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b); and
  - (d) if the arrangement is a financial arrangement under section 230-50—the arrangement is an asset or liability that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;  
to classify or designate, in the financial reports, as at fair value through profit or loss; and
  - (e) it is reasonably expected that the following is, or will be, the same:
    - (i) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the financial reports);
    - (ii) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the provisions of this Division if the election under subsection (1) did not apply to the arrangement); and
  - (f) the differences between the results of the following methods would reasonably be expected not to be substantial:
    - (i) the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year;
    - (ii) the method that would be applied by this Division to work out the amounts of those gains or losses if the election did not apply to the arrangement.

This subsection has effect subject to section 230-415.

- (2) In applying paragraph (1)(f) at the time when you start to have the \*financial arrangement, disregard any differences between the results of the methods referred to in subparagraphs (1)(f)(i) and (ii) that are attributable solely to the provision for the possible impairment of debts required by the standards referred to in paragraph 230-395(2)(a).
- (3) Subsections (4), (5) and (6) apply if, but for this subsection, paragraphs (1)(c) and (d) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law.
- Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.
- (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the \*financial arrangement.
- (5) Paragraph (1)(e) applies as if the reference in subparagraph (1)(e)(i) to the amount of the overall gain or loss you make from the \*financial arrangement (as determined in accordance with the financial reports) were a reference to the amount of that overall gain or loss (as would be determined in accordance with the financial reports if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph (3)(b)).
- (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i) to the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year were a reference to the method that would be used in your financial reports to work out those amounts if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph (3)(b).

- (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to a \*financial arrangement, assume that you had made any election that:
- (a) you could make under Subdivision 230-C or 230-D; and
  - (b) could apply to the arrangement.
- (8) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(c) and (d) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*election to rely on financial reports is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(c) and (d) are taken to be satisfied in relation to the arrangement.

### **230-415 Financial arrangements not covered by election**

- (1) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
- (a) the arrangement is an \*equity interest; and
  - (b) you are the issuer of the equity interest.
- (2) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

- (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) An \*election to rely on financial reports does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

#### **230-420 Effect of election to rely on financial reports**

- (1) If an \*election to rely on financial reports applies to a \*financial arrangement, the gain or loss you make from the arrangement for an income year is:
- (a) the gain or loss that the standards referred to in paragraph 230-395(2)(a) require you to recognise in profit or loss from that arrangement for that income year; or
  - (b) if subsection 230-410(3) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-395(2)(a) would have required you to recognise in profit or loss from that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-410(3)(b); or
  - (c) if subsection 230-410(8) applies to the arrangement—the gain or loss that the standards referred to in paragraph 230-410(1)(d) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-410(1)(d) if the arrangement had been between 2 separate entities.

**Schedule 1 Amendments**  
**Part 1 Main amendments**

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Note: Subsection 230-40(7) provides that this Subdivision does not apply to a gain or loss from a financial arrangement to the extent to which Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

- (2) Subsection (3) applies if:
- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) an \*election to rely on financial reports applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the subsidiary member has the arrangement.
- (3) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standards referred to in paragraph 230-395(2)(a) would require the group to recognise in profit or loss from the arrangement for that income year if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

**230-425 When election ceases to apply**

- (1) An election under subsection 230-395(1) ceases to have effect from the start of an income year if you cease to be eligible to make an \*election to rely on financial reports for that income year.
- (2) Subsection (1) does not prevent you from making a new election under subsection 230-395(1) at a later time if you become, at that later time, eligible to make an \*election to rely on financial reports for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) An election under subsection 230-395(1) ceases to apply to a \*financial arrangement from the start of an income year if the

arrangement ceases to satisfy a requirement of paragraph 230-410(1)(c), (d), (e) or (f) during that income year.

- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently apply to that arrangement (even if the requirements of paragraphs 230-410(1)(c), (d), (e) and (f) are satisfied once more in relation to the arrangement).

### **230-430 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if an election under subsection 230-395(1) ceases to have effect under subsection 230-425(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G in relation to each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make balancing adjustments under subsection (5) if an election under subsection 230-395(1) ceases to apply to a particular \*financial arrangement under subsection 230-425(3).
- (4) Subsection (3) does not apply to a \*financial arrangement if:
- (a) the arrangement is not one that you are required (whether or not as a result of a choice you make) by the standards referred to in paragraph 230-395(2)(a) to classify or designate, in your financial reports, as at fair value through profit or loss; and
  - (b) the election under subsection 230-395(1) ceases to apply to the arrangement because the arrangement fails to satisfy the requirements of paragraph 230-410(1)(e) or (f); and
  - (c) the arrangement ceases to satisfy the requirements of that paragraph because the arrangement becomes impaired for the purposes of those standards.
- (5) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.

- (6) If a balancing adjustment is made under subsection (2) or (5) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-G—Balancing adjustment on ceasing to have a financial arrangement**

#### **Table of sections**

230-435	When balancing adjustment made
230-440	Exceptions
230-445	Balancing adjustment

#### **230-435 When balancing adjustment made**

##### *When balancing adjustment made*

- (1) A balancing adjustment is made under this Subdivision if:
- (a) you transfer to another entity all of your rights and/or obligations under a \*financial arrangement; or
  - (b) all of your rights and/or obligations under a financial arrangement otherwise cease; or
  - (c) you transfer to another entity:
    - (i) a proportionate share of all of your rights and/or obligations under a financial arrangement; or
    - (ii) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit; or
  - (d) an \*arrangement that is a \*Division 230 financial arrangement ceases to be a financial arrangement.
- (2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation under a \*financial arrangement unless that right or obligation is one of the rights or obligations that constitute the financial arrangement.

Note: See subsections 230-45(1) and 230-50(1) and (2) for the rights and/or obligations that constitute a financial arrangement.

*Modifications for arrangements that are assets*

- (3) If the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs, paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred.
- (4) If a \*financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are treated as transferring a right under the arrangement to another entity if:
  - (a) you retain the right but assume a new obligation; and
  - (b) your assumption of the new obligation has the same effect, in substance, as transferring the right to another entity; and
  - (c) the new obligation arises only to the extent to which the right to \*financial benefits under the arrangement is satisfied; and
  - (d) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
  - (e) you must, under the new obligation, provide financial benefits you receive in relation to the right to the entity to which you owe the new obligation without delay.

*Historic rate rollover of derivative financial arrangement*

- (5) For the purposes of paragraph (1)(b), all of your rights and/or obligations under a \*financial arrangement that is a \*derivative financial arrangement are taken to \*cease if there is an historic rate rollover of the arrangement.

## **230-440 Exceptions**

*Equity interests etc.*

- (1) A balancing adjustment is not made under this Subdivision in relation to a \*financial arrangement at a time if:
  - (a) the arrangement is a financial arrangement under section 230-50 (equity interests etc.); and
  - (b) neither Subdivision 230-C nor Subdivision 230-F apply to the arrangement immediately before that time.

*Financial arrangements to which hedging financial arrangement elections apply*

- (2) Balancing adjustments are not made under this Subdivision in relation to a \*financial arrangement in relation to which a \*hedging financial arrangement election applies.

*Bad debts, margining and conversion into, or exchange for, ordinary shares*

- (3) A balancing adjustment is not made under this Subdivision in relation to the following events:
- (a) a \*financial arrangement being written off in whole or part as a bad debt;
  - (b) a financial arrangement that is a \*derivative financial arrangement being settled or closed out for margining purposes;
  - (c) the ceasing of obligations or rights under a financial arrangement that is a \*traditional security if:
    - (i) the ceasing occurs because the traditional security is converted into ordinary shares in, or transferred to, a company that is the issuer of the traditional security or a \*connected entity; and
    - (ii) the traditional security was issued on the basis that it will or may convert into ordinary shares in, or be transferred to, the issuer of the traditional security or the connected entity;
  - (d) the ceasing of obligations or rights under a financial arrangement that is a traditional security if:
    - (i) the ceasing occurs because the traditional security is exchanged for ordinary shares in a company that is neither the issuer of the traditional security nor a connected entity; and
    - (ii) if the ceasing of the obligations or rights occurs because of a disposal—the disposal is to the issuer of the traditional security or a connected entity; and
    - (iii) the traditional security was issued on the basis that it will or may be exchanged for ordinary shares in the company.

Note: Paragraph (a)—for the treatment of bad debts, see paragraph 230-190(3)(c).

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*Subsidiary member leaving consolidated group or MEC group*

- (4) A balancing adjustment is not made under this Subdivision in relation to a subsidiary member of a \*consolidated group or \*MEC group that has a \*financial arrangement ceasing to be a member of the group.

**230-445 Balancing adjustment**

*Complete cessation or transfer*

- (1) Use the following method statement to make the balancing adjustment if paragraph 230-435(1)(a), (b) or (d) applies:

*Method statement for balancing adjustment*

Step 1. Add up the following:

- (a) the total of all the \*financial benefits you have received under the \*financial arrangement;

Note: This would include financial benefits you receive in relation to the transfer or cessation (see paragraph 230-60(2)(c)).

- (b) 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;

- (c) 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;

Note: The losses from the arrangement here include losses made in gaining or producing exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of a balancing adjustment under subitems

104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement;

- (e) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 2. Add up the following:

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

Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-60(1)(c)).

- (b) 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;

- (c) 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;

Note: The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement.

- (e) the total of the amounts that will be included in your assessable income after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

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 Division. 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 230-435(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 step 1; and
  - (b) the amounts referred to in step 2;
- by applying the proportion referred to in subparagraph 230-435(1)(c)(i) to them.

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

- (3) If subparagraph 230-435(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 step 1; and
  - (b) the amounts referred to 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 230-435(1)(c)(ii).

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

- (4) If subparagraph 230-435(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 step 1; and
    - (ii) the amounts referred to 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 230-435(1)(c)(iii); and
  - (b) by reducing those amounts by applying the proportion referred to in subparagraph 230-435(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 230-435(1) occurs.

*Treatment of bad debts in relation to financial arrangements*

- (7) For the purposes of applying paragraph (b) of step 1 of the method statement in subsection (1) to a \*financial arrangement, a bad debt deduction in relation to the arrangement to which subsection 230-25(3) applies is taken to be a deduction for a loss from the arrangement.

## **Subdivision 230-H—Exceptions**

### **Table of sections**

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230-455	Certain taxpayers where no significant deferral
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230-465	Ceasing to have a financial arrangement in certain circumstances
230-470	Forgiveness of commercial debts
230-475	Clarifying exceptions
230-480	Treatment of gains in form of franked distribution etc.

### **230-450 Short-term arrangements where non-money amount involved**

This Division does not apply in relation to your gains and losses from a \*financial arrangement if:

- (a) the arrangement is a financial arrangement under section 230-45; and
- (b) either:
  - (i) you acquired goods or other property (other than goods that are, or property that is, money or a \*money equivalent) or services (other than services that are a money equivalent) from another entity and the \*financial benefits you are to provide under the arrangement are consideration for those goods, that property or those services; or
  - (ii) you provided goods or other property (other than goods that are, or other property that is, money or a money equivalent) or services (other than services that are a money equivalent) to another entity and the financial benefits you are to receive under the arrangement are consideration for those goods, that property or those services; and
- (c) the period between the following is not more than 12 months:
  - (i) the time when you are to provide or receive the consideration (or a substantial proportion of it);
  - (ii) the time when you acquired or provided the property, goods or services (or a substantial proportion of them); and

- (d) the arrangement is not a \*derivative financial arrangement for any income year; and
- (e) a \*fair value election does not apply to the arrangement.

**230-455 Certain taxpayers where no significant deferral**

- (1) This Division does not apply in relation to your gains or losses from a \*financial arrangement for any income year if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*), a managed investment scheme (within the meaning of the *Corporations Act 2001*) or an entity with a similar status to such a scheme under a \*foreign law relating to corporate regulation; or
    - (iii) an \*ADI, a \*securitisation vehicle, an entity that is required to register under the *Financial Sector (Collection of Data) Act 2001* or an entity that would be required to register under that Act if it were a corporation; or
    - (iv) an entity other than an entity of a kind mentioned in subparagraph (i), (ii) or (iii); and
  - (b) where subparagraph (a)(ii) applies—you satisfy subsection (2) for the income year in which you start to have the arrangement; and
  - (c) where subparagraph (a)(iii) applies—you satisfy subsection (3) for the income year in which you start to have the arrangement; and
  - (d) where subparagraph (iv) applies—you satisfy subsection (4) for the income year in which you start to have the arrangement; and
  - (e) either:
    - (i) the arrangement is to end not more than 12 months after you start to have it; or
    - (ii) the arrangement is not a \*qualifying security.
- (2) An entity satisfies this subsection for an income year if:
  - (a) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is

- less than \$100 million if the income year is the one in which the entity comes into existence; or
- (b) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence.
- (3) An entity satisfies this subsection for an income year if:
- (a) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$20 million if the income year is the one in which the entity comes into existence; or
- (b) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$20 million if the income year is an income year after the one in which the entity comes into existence.
- (4) An entity satisfies this subsection for an income year if:
- (a) either:
- (i) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
- (ii) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
- (b) either:
- (i) the value of the entity's financial assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
- (ii) the value of the entity's financial assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year
-

- after the one in which the entity comes into existence;  
and
- (c) either:
- (i) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$300 million if the income year is the one in which the entity comes into existence; or
  - (ii) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$300 million if the income year is an income year after the one in which the entity comes into existence.
- (5) For the purposes of subsections (2) and (4), the value of the entity's assets or financial assets is to be determined in accordance with:
- (a) if the entity applies \*accounting standard AAS 25 in preparation of its financial reports—that accounting standard or another accounting standard prescribed by the regulations for the purposes of this paragraph; or
  - (b) if paragraph (a) does not apply and the entity prepares its financial reports in accordance with the accounting standards—the entity's financial reports; or
  - (c) if paragraphs (a) and (b) do not apply and the entity prepares its financial reports in accordance with an accounting standard comparable to accounting standard AAS 25 under a \*foreign law—that comparable standard; or
  - (d) if paragraphs (a), (b) and (c) do not apply—commercially accepted valuation principles.
- (6) Subsection (1) does not apply to your gains or losses from a \*financial arrangement for an income year if:
- (a) you have made an election under subsection (7) in that income year or an earlier income year; and
  - (b) you start to have the arrangement after the beginning of the income year in which you make the election.
- (7) An election under this subsection is an election to have this Division apply to all of the \*financial arrangements that you start to have in the income year in which the election is made or a later income year.
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- (8) An election under subsection (7) is irrevocable.
- (9) This section does not apply in relation to your gains or losses from a \*financial arrangement that you start to have after a time if you are not an individual and you failed to satisfy subsection (2), (3) or (4) (as the case may be) for an income year ending before that time.

## **230-460 Various rights and/or obligations**

### *Rights and/or obligations subject to an exception*

- (1) This Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations under the arrangement are the subject of an exception under any of the following subsections.

Note: Further exceptions are also provided for in section 230-475.

### *Leasing or property arrangement*

- (2) A right or obligation arising under:
  - (a) an \*arrangement to which Division 42A (about leases of luxury cars) of Schedule 2E to the *Income Tax Assessment Act 1936* applies; or
  - (b) an arrangement to which Division 240 of this Act (about arrangements treated as a sale and loan) applies; or
  - (c) an arrangement that relates to an asset to which Division 250 of this Act (about assets put to tax preferred use) applies; or
  - (d) an arrangement that, 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); or
    - (iii) intellectual property;and gives a right to control the use of the asset; or
  - (e) an arrangement that is a licence to use:
    - (i) real property; or
    - (ii) goods or a personal chattel (other than money or a money equivalent); or
    - (iii) intellectual property;

is the subject of an exception.

*Interest in partnership or trust*

- (3) A right carried by an interest in a partnership or a trust, or an obligation that corresponds to such a right, is the subject of an exception if:
- (a) there is only one class of interest in the partnership or trust;  
or
  - (b) the interest is an \*equity interest in the partnership or trust; or
  - (c) for a right or obligation relating to a trust—the trust is managed by a funds manager or custodian, or a responsible entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).
- (4) Subsection (3) does not apply if a \*fair value election, or an \*election to rely on financial reports, applies to the \*financial arrangement.

*Certain insurance policies*

- (5) A right or obligation under a \*life insurance policy is the subject of an exception unless:
- (a) you are not a \*life insurance company that is the insurer under the policy; and
  - (b) the policy is an annuity that is a \*qualifying security.
- (6) A right or obligation under a \*general insurance policy is the subject of an exception unless:
- (a) you are not a \*general insurance company; and
  - (b) the policy is a \*derivative financial arrangement.

*Certain workers' compensation arrangements*

- (7) A right or obligation in relation to a liability for workers' compensation claims to which Division 323 of Schedule J to the *Income Tax Assessment Act 1936* applies is the subject of an exception.

*Certain guarantees and indemnities*

- (8) A right or obligation under a guarantee or indemnity is the subject of an exception unless:
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- (a) the \*financial arrangement is the subject of a \*fair value election or an \*election to rely on financial reports; or
- (b) the financial arrangement is a \*derivative financial arrangement; or
- (c) the guarantee or indemnity is given in relation to a financial arrangement.

*Personal arrangements and personal injury*

- (9) The following rights and obligations are the subject of an exception:
  - (a) a right to receive, or an obligation to provide, consideration for providing personal services;
  - (b) a right, or obligation, arising from the administration of a deceased person's estate;
  - (c) a right to receive, or an obligation to provide, a gift under a deed;
  - (d) a right to receive, or an obligation to provide, a \*financial benefit by way of maintenance:
    - (i) to an individual who is or has been the \*spouse of the person liable to provide the benefit; or
    - (ii) to or for the benefit of an individual who is or has been a child of the person liable to provide the benefit; or
    - (iii) to or for the benefit of an individual who is or has been a child of an individual who is or has been a spouse of the person liable to provide the benefit;
  - (e) a right to receive, or an obligation to provide, a financial benefit in relation to personal injury to an individual;
  - (f) a right to receive, or an obligation to provide, a financial benefit in relation to an injury to an individual's reputation.
- (10) Without limiting paragraph (9)(e), that paragraph applies:
  - (a) even if the person to whom the \*financial benefit is to be provided is not the individual who was injured; and
  - (b) even if the personal injury to the individual takes the form of:
    - (i) a wrong to the individual; or
    - (ii) illness of the individual.

Note: The person referred to in paragraph (a) may, for example, be a relative of the individual who was injured.

*Superannuation and pension benefits*

- (11) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises from a person's membership of a superannuation or pension scheme, including:
- (a) a right of a dependant of a member to receive financial benefits or an obligation to provide financial benefits to a dependant of a member; and
  - (b) a right or obligation arising from an interest in:
    - (i) a \*complying superannuation fund or \*non-complying superannuation fund; or
    - (ii) a \*pooled superannuation trust; or
    - (iii) an \*approved deposit fund; or
    - (iv) an \*RSA.

*Interest in certain foreign companies, foreign trusts and FLPs*

- (12) A right or obligation that arises under an interest (within the meaning of Part XI of the *Income Tax Assessment Act 1936*) in a \*FIF or \*FLP is the subject of an exception.

*Proceeds from certain business sales*

- (13) A right to receive, or an obligation to provide, \*financial benefits arising from the sale of:
- (a) a business; or
  - (b) shares in a company that operates a business; or
  - (c) interests in a trust that operates a business;
- is the subject of an exception if the amounts, or the values, of those benefits are contingent only on the economic performance of the business after the sale.

*Infrastructure borrowings*

- (14) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises under an \*arrangement to which Division 16L of the *Income Tax Assessment Act 1936* applies.

*Farm Management Deposits*

- (15) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation is the right or obligation of an owner of a \*farm management deposit that relates to the deposit.

*Rights and obligations to which section 121EK of the Income Tax Assessment Act 1936 applies*

- (16) A right or obligation that arises because of a payment of an amount to which section 121EK of the *Income Tax Assessment Act 1936* applies is the subject of an exception.

*Forestry managed investment scheme interests*

- (17) A right or obligation under a \*forestry interest in a \*forestry managed investment scheme in relation to which you can claim deductions under Division 394 is the subject of an exception.

*Regulations may provide for exceptions*

- (18) A right or obligation of a kind specified in the regulations for the purposes of this subsection is the subject of an exception.

**230-465 Ceasing to have a financial arrangement in certain circumstances**

- (1) This section applies if:
- (a) you cease to have a \*financial arrangement (or part of a financial arrangement); and
  - (b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and
  - (c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
    - (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
    - (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial

- arrangement in the ordinary course of trading on a securities market; and
- (d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
  - (e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.
- (2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.
- Note:        However, the amount by which the loss is reduced is a capital loss.
- (3) In applying paragraph (1)(e), you must have regard to:
- (a) the financial position of the other party or parties to the \*financial arrangement; and
  - (b) the perceptions of the financial position of the other party or parties to the arrangement; and
  - (c) other relevant matters.

### **230-470 Forgiveness of commercial debts**

If a gain that you make from a \*financial arrangement arises from the forgiveness of a debt (as defined in Subdivision 245-B of Schedule 2C to the *Income Tax Assessment Act 1936*), the gain is reduced by:

- (a) if section 245-90 (about agreements to forgo capital losses or revenue reductions) of that Schedule does not apply—the debt’s net forgiven amount as defined in paragraph 245-85(2)(a) of that Schedule; or
- (b) if that section does apply—the debt’s provisional net forgiven amount as defined in paragraph 245-85(2)(b) of that Schedule.

Note:        Section 51AAA (about a net capital gains limit) of the *Income Tax Assessment Act 1936* also has the effect of preventing you from deducting losses.

## **230-475 Clarifying exceptions**

### *Exceptions*

- (1) To avoid doubt, this Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations are the subject of an exception under any of the following subsections.
- (2) This section is not intended to limit, expand or otherwise affect the operation of sections 230-45 to 230-55 (which tell you what is covered by the concept of ***financial arrangement***) in relation to rights and/or obligations other than those dealt with in this section.

### *Retirement village and residential or flexible care arrangements*

- (3) The following rights and obligations are the subject of an exception:
  - (a) a right or obligation arising under a \*retirement village residence contract;
  - (b) a right or obligation arising under a \*retirement village services contract;
  - (c) a right or obligation arising under an \*arrangement under which \*residential care or \*flexible care is provided.
- (4) For the purposes of subsection (3):
  - (a) a ***retirement village residence contract*** is a contract that gives rise to a right to occupy \*residential premises in a \*retirement village; and
  - (b) a ***retirement village services contract*** is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

## **230-480 Treatment of gains in form of franked distribution etc.**

- (1) This section applies if a gain you make from a \*financial arrangement is in the form of:
  - (a) a \*franked distribution (including a franked distribution that \*flows indirectly to you); or
  - (b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).

- (2) This Division does not apply to the gain to the extent that the \*franked distribution has a \*franked part.

## Subdivision 230-I—Other provisions

### Table of sections

230-485	Effect of change of residence—rules for particular methods
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230-515	Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations
230-520	Disregard gains or losses covered by value shifting regime
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### 230-485 Effect of change of residence—rules for particular methods

- (1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:
- (a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and
  - (b) determining the assessability of the gains and the deductibility of the losses according to:
    - (i) your residency in each period; and
    - (ii) the sources of the gains and the connection of the losses with your assessable income.
- (2) This section applies if:
- (a) you are a foreign resident for part of an income year (the *foreign residency period*) and an Australian resident for the other part of the income year (the *Australian residency period*); and
  - (b) section 230-490 does not apply in respect of the change of residence.

Note: See section 230-490 if you change residence, and after the change the gains and losses you make from the arrangement are not assessable or deductible under this Division.

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*Realisation method*

- (3) Subsection (4) applies if:
- (a) you have a \*financial arrangement at the time (the *residence change time*):
    - (i) you cease to be an Australian resident; or
    - (ii) you become an Australian resident; and
  - (b) you apply the realisation method to determine the amount of a gain or loss you make from the arrangement.
- (4) You are taken for the purposes of this Division:
- (a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

*Accruals and hedging financial arrangement methods*

- (5) Subsection (6) applies if:
- (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the accruals or hedging financial arrangement method to determine the amount of:
    - (i) a gain included in your assessable income under section 230-15 for the income year; or
    - (ii) a loss you can deduct under section 230-15 for the income year; and
  - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (6) Apply that method by apportioning the gain or loss on a reasonable basis between those periods so as to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

*Fair value, foreign exchange retranslation and financial reports methods*

- (7) Subsection (8) applies if:
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- (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the fair value or foreign exchange retranslation method or the method of relying on your financial reports to determine the amount of:
    - (i) a gain included in your assessable income under section 230-15 for the income year; or
    - (ii) a loss you can deduct under section 230-15 for the income year; and
  - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (8) Apply that method to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

**230-490 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement**

- (1) This section applies if:
- (a) you cease to be an Australian resident at a particular time (the *residence change time*); and
  - (b) you have a \*financial arrangement at the residence change time; and
  - (c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.
- (2) You are taken for the purposes of this Division:
- (a) to have disposed of the arrangement just before that time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

**230-495 Effect of change of accounting standards**

- (1) This section applies if:
- (a) one of these methods apply to take account of a gain or loss you make from a \*financial arrangement:
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- (i) the fair value method provided for in Subdivision 230-C; or
  - (ii) the foreign exchange retranslation method provided for in Subdivision 230-D; or
  - (iii) the method of relying on your financial reports provided for in Subdivision 230-F; and
- (b) there is a change in, or in the application of, the relevant standards (as mentioned in section 230-230 (fair value method), 230-280 (foreign exchange retranslation method) or 230-420 (method of relying on financial reports)) that apply in relation to the arrangement; and
- (c) that change applies to a particular income year and later years; and
- (d) as a result of the change, those standards require you to recognise in your statement of financial position an amount (the **equity amount**), in order to avoid the need to increase or decrease gains or losses recognised in profit or loss from the financial arrangement in respect of previous income years.
- (2) If the equity amount is positive, include in your assessable income for the particular income year mentioned in paragraph (1)(c) so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).
- (3) If the equity amount is negative, you are entitled to a deduction for the particular income year mentioned in paragraph (1)(c) equal to so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).

### **230-500 Comparable foreign accounting and auditing standards**

The regulations may:

- (a) specify that particular standards that apply under a \*foreign law are to be taken for the purposes of this Division to be comparable to the \*accounting standards; and
- (b) specify that particular standards that apply under a foreign law are to be taken for the purposes of this Division to be comparable to the \*auditing standards.

### **230-505 Financial arrangement as consideration for provision or acquisition of a thing**

- (1) This section applies if you start or cease to have a \*Division 230 financial arrangement as consideration for the provision or acquisition of a thing.
- (2) Work out the \*market value of the thing at the time at which you (in fact) provide or acquire it. For the purposes of applying this Act to you, treat the amount:
  - (a) you obtain for providing the thing; or
  - (b) you provide for acquiring the thing;as being that market value.

Note 1: The 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.

Note 2: This subsection does not affect the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it (except in the circumstances described in Note 3). However:

- (a) the market value of the thing will be, or form part of, those financial benefits for the purposes of section 230-445; and
- (b) in the case of a non arm's length transaction, the amount of those financial benefits may be affected by section 230-510.

Note 3: If the thing is itself a Division 230 financial arrangement and subsection (3) does not apply, this subsection will determine the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it.

- (3) Subsection (2) does not apply if:
  - (a) you start or cease to have the \*financial arrangement as mentioned in subsection (1) under an arrangement (the *starting or ceasing arrangement*); and
  - (b) the thing is itself a \*Division 230 financial arrangement; and
  - (c) the starting or ceasing arrangement is *not* itself a Division 230 financial arrangement.

Example: An arrangement for exchanging a share subject to Subdivision 230-C for another share subject to Subdivision 230-C, where the arrangement itself is not a Division 230 financial arrangement.

- (4) For the purposes of this section:
  - (a) treat yourself as providing a thing to another entity if:

- (i) you have provided, or are to provide, the thing to the other entity; or
  - (ii) you cease to have, have ceased to have or are to cease to have, the thing; or
  - (iii) the other entity starts to have, has started having or is to start to have, the thing; and
- (b) treat yourself as acquiring a thing if:
- (i) another entity has provided, or is to provide, the thing to you; or
  - (ii) another entity ceases to have, has ceased to have or is to cease to have, the thing; or
  - (iii) you start to have, have started to have or are to start to have, the thing.
- (5) For the purposes of this section, treat part of a \*Division 230 financial arrangement as a Division 230 financial arrangement.
- (6) Without limiting subsection (1), 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.
- (7) To avoid doubt, this section applies even if your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) is only part of the consideration for the provision or acquisition of the thing.
- (8) For the purposes of this section, treat your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) as consideration for the provision or acquisition of the thing if that starting or ceasing is, in substance or effect, done for the provision or acquisition of the thing.
- Example: Starting to have a financial arrangement in satisfaction of an obligation, where the obligation itself was incurred as consideration for the thing.

### **230-510 Non-arm's length dealings in relation to financial arrangement**

- (1) This section applies if:
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- (a) a balancing adjustment is made under Subdivision 230-G in relation to a \*Division 230 financial arrangement you have; and
- (b) if the balancing adjustment was made because of paragraph 230-435(1)(b) or (d) (cessations without transfer)—the arrangement is not a \*debt interest or loan.

*Non-arm's length transaction resulting in you starting to have the arrangement*

- (2) Subsection (3) applies if the parties to the dealing that resulted in you starting to have the arrangement were not dealing at \*arm's length in relation to the dealing.
- (3) For the purposes of this Division:
  - (a) disregard the amount of the \*financial benefit (if any) that you provided or received in relation to you starting to have the arrangement; and
  - (b) instead, treat yourself as having provided or received a financial benefit in relation to you starting to have the arrangement that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (2) were dealing at \*arm's length in relation to the dealing.

*Non-arm's length transaction resulting in change of an amount of a financial benefit that you provided or received under the financial arrangement*

- (4) Subsection (5) applies if the parties to a dealing that resulted in a change of an amount of a \*financial benefit that you provide or receive under the \*financial arrangement were not dealing at \*arm's length in relation to the dealing.
- (5) For the purposes of this Division:
  - (a) disregard the amount of the \*financial benefit (if any) that you provide or receive under the \*financial arrangement as a result of the dealing; and
  - (b) instead, treat yourself as providing or receiving a financial benefit under the financial arrangement as a result of the dealing that is equal to the amount of the financial benefit that you would have provided or received if the parties to the

dealing were dealing at \*arm's length in relation to the dealing.

*Non-arm's length transaction resulting in balancing adjustment*

- (6) Subsection (7) applies if the parties to the dealing that resulted in the balancing adjustment mentioned in subsection (1) being made were not dealing at \*arm's length in relation to the dealing.
- (7) For the purposes of this Division:
  - (a) disregard the amount of the \*financial benefit (if any) that you provide or receive in relation to the balancing adjustment; and
  - (b) instead, treat yourself as providing or receiving a financial benefit in relation to the balancing adjustment that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (6) were dealing at \*arm's length in relation to the dealing.

**230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations**

- (1) This section applies if:
  - (a) disregarding this Division, a provision mentioned in subsection (2) makes an adjustment to an amount (including a nil amount) (the *relevant amount*); and
  - (b) the relevant amount is relevant in determining the amount of a gain or loss you make from a \*Division 230 financial arrangement.
- (2) The provisions are as follows:
  - (a) section 52A of the *Income Tax Assessment Act 1936*;
  - (b) section 73B of the *Income Tax Assessment Act 1936*;
  - (c) Division 16J of Part III of the *Income Tax Assessment Act 1936*;
  - (d) Division 16K of Part III of the *Income Tax Assessment Act 1936*;
  - (e) subsection 245-65(2) in Schedule 2C to the *Income Tax Assessment Act 1936*;

- (f) section 775-40 of the *Income Tax Assessment Act 1997*.
- (3) In determining the amount of the gain or loss, treat the relevant amount as having been adjusted by the provision mentioned in subsection (2).
- (4) However, if the circumstances that give rise to the adjustment result in section 230-510 having the effect of altering the amount of the gain or loss, do not treat the relevant amount as having been adjusted under subsection (3) to the extent of that alteration.

### **230-520 Disregard gains or losses covered by value shifting regime**

- (1) Disregard a gain or loss under this Division from a \*financial arrangement to the extent that it is attributable to:
- (a) a shifting of value that has consequences under Division 723; or
  - or
  - (b) a \*value shift that has consequences under Division 725; or
  - (c) an \*indirect value shift that has consequences under Division 727; or
  - (d) a shifting of value that has consequences analogous to those under Division 723, 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.
- (2) Determine whether a shifting of value has the consequences mentioned in paragraph (1)(a) or (d) on the assumption that a \*realisation event in respect of all or part of the \*financial arrangement happens in the income year for the gain or loss.

### **230-525 Consolidated financial reports**

For the purposes of this Division, treat a financial report prepared by another entity as being prepared by you if:

- (a) the other entity is a \*connected entity of yours; and
- (b) the report is a consolidated financial report that deals with both your affairs and the affairs of the connected entity; and
- (c) the report properly reflects your affairs.

### **Subdivision 230-J—Additional operation of Division**

#### **Table of sections**

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230-530 Additional operation of Division

### **230-530 Additional operation of Division**

#### *Foreign currency*

- (1) This Division also applies to foreign currency as if the currency were a right that constituted a \*financial arrangement.

#### *Non-equity shares*

- (2) This Division also applies to a \*non-equity share in a company as if the share were a right that constituted a \*financial arrangement.

#### *Commodities held by traders*

- (3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a \*financial arrangement if:
- (a) you are an entity that trades or deals both in:
    - (i) that commodity; and
    - (ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and
  - (b) you hold that commodity for the purposes of dealing in the commodity; and
  - (c) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and
  - (d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

#### *Offsetting commodity contracts held by traders*

- (4) This Division also applies to a contract to which you are a party as if the contract were a \*financial arrangement if:
-

**Schedule 1** Amendments  
**Part 1** Main amendments

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- (a) you have a right to receive or an obligation to provide a commodity under the contract; and
- (b) you have a practice of dealing in the commodity through the performance of offsetting contracts to receive and provide the commodity; and
- (c) you do not have, as your sole or dominant purpose for entering into the contract, the purpose of receiving or delivering the commodity as part of your expected purchase, sale or usage requirements; and
- (d) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you enter into the contract; and
- (e) the contract is an asset or liability that you are required (whether or not as a result of a choice you make) by:
  - (i) the \*accounting standards; or
  - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

**2 At the end of subsection 775-15(4)**

Add:

Note: Under section 230-20, foreign exchange gains from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

**3 At the end of subsection 775-30(4)**

Add:

Note: Under section 230-20, foreign exchange losses from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

**4 Section 775-200**

After “4”, insert “or 9”.

**5 After subsection 775-270(1)**

Insert:

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- (1A) A choice under subsection (1) does not apply to a \*qualifying forex account held by you if a \*foreign exchange retranslation election by you is in effect in relation to the account under Subdivision 230-D.

## **6 At the end of Division 775**

Add:

### **Subdivision 775-F—Retranslation under foreign exchange retranslation election under Subdivision 230-D**

#### **Guide to Subdivision 775-F**

##### **775-290 What this Subdivision is about**

If you have made a foreign exchange retranslation election under Subdivision 230-D:

- (a) a forex realisation gain or a forex realisation loss you make in relation to an arrangement that is not a Division 230 financial arrangement as a result of forex realisation event 1 to 5 or 8 is disregarded; and
- (b) forex realisation event 9 enables any gains or losses to be worked out on a retranslation basis.

#### **Table of sections**

775-295	When this Subdivision applies
775-300	Tax consequences of choosing retranslation for arrangement
775-305	Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9
775-310	When election ceases to apply to arrangement
775-315	Balancing adjustment when election ceases to apply to arrangement

#### **775-295 When this Subdivision applies**

- (1) A \*foreign exchange retranslation election applies to an \*arrangement for the purposes of this Subdivision if:

- (a) you start to have the arrangement after the start of the income year in which the election is made; and
  - (b) the arrangement is recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and
  - (c) the arrangement is one in relation to which you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;to recognise, in the financial reports referred to in paragraph 230-255(1)(a), amounts in profit or loss (if any) that are attributable to changes in currency exchange rates.
- (2) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to \*financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (3) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if the arrangement is associated with a business of a kind specified in regulations made for the purposes of subsection 230-270(4).

### **775-300 Tax consequences of choosing retranslation for arrangement**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4, 5 or 8 is disregarded if:

- (a) the event happens in relation to an \*arrangement that you hold; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens.
- (2) If:
- (a) CGT event C1 or C2 happens in relation to an \*arrangement that you hold at the time of the event; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

**775-305 Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9**

*Forex realisation event 9*

- (1) **Forex realisation event 9** happens in relation to an \*arrangement during an income year if:
- (a) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (b) you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial report referred to in paragraph 230-255(1)(a) for that income year, amounts in profit or loss (if any) in relation to the arrangement that are attributable to changes in currency exchange rates.

The *forex realisation event 9* is taken to have happened in the income year.

*Forex realisation gain*

- (2) You make a *forex realisation gain* if the standard referred to in paragraph (1)(b) requires you to recognise an amount in profit in relation to the \*arrangement. That amount of the *forex realisation gain* is the amount the standard requires you to recognise.

*Forex realisation loss*

- (3) You make a *forex realisation loss* if the \*accounting standard referred to in paragraph (1)(b) requires you to recognise an amount in loss in relation to the \*arrangement. That amount of the *forex realisation loss* is the amount that the accounting standard requires you to recognise.

*Section does not apply to amounts previously recognised in equity*

- (4) Subsections (1), (2) and (3) do not apply to amounts that have previously been required by the standards referred to in paragraph 230-255(2)(a) to be recognised in equity.

### **775-310 When election ceases to apply to arrangement**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to an \*arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 775-295(1)(b) or (c) during that income year.
- (2) If the election ceases to apply to an \*arrangement under subsection (1), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 775-295(1)(b) and (c) are satisfied once more in relation to the arrangement).

### **775-315 Balancing adjustment when election ceases to apply to arrangement**

- (1) This section applies if:
- (a) you make a \*foreign exchange retranslation election; and

- (b) the election ceases to have effect or ceases to apply to an \*arrangement.
- (2) You are taken, for the purposes of this Division, to have:
  - (a) disposed of the \*arrangement for its fair value immediately before the election ceases to have effect or ceases to apply to the arrangement; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect or ceases to apply to the arrangement.

Note: Paragraph (a) means that there would be a forex realisation event 9 in relation to the arrangement.

### **7 Subsection 820-930(1)**

After “this Division”, insert “and Division 230”.

### **8 Subsection 995-1(1)**

Insert:

*auditing standard* has the same meaning as in the *Corporations Act 2001*.

### **9 Subsection 995-1(1) (definition of *cash settlable*)**

Omit “250-165(2)”, substitute “230-45(2)”.

### **10 Subsection 995-1(1)**

Insert:

*derivative financial arrangement* has the meaning given by subsection 230-350(1).

### **11 Subsection 995-1(1)**

Insert:

*Division 230 financial arrangement*: a \*financial arrangement is a *Division 230 financial arrangement* if Division 230 applies in relation to your gains and losses from the arrangement.

### **12 Subsection 995-1(1)**

Insert:

*election to rely on financial reports* has the meaning given by section 230-395.

**13 Subsection 995-1(1)**

Insert:

*fair value election* has the meaning given by subsection 230-210(1).

**14 Subsection 995-1(1) (definition of *financial arrangement*)**

Omit “sections 250-165 to 250-175”, substitute “sections 230-45 to 230-55”.

**15 Subsection 995-1(1)**

Insert:

*flexible care* has the same meaning as in the *Aged Care Act 1997*.

**16 Subsection 995-1(1)**

Insert:

*foreign currency hedge* has the meaning given by subsection 230-350(2).

**17 Subsection 995-1(1)**

Insert:

*foreign exchange retranslation election* has the meaning given by subsections 230-255(1) and (3).

**18 Subsection 995-1(1)**

Insert:

*hedged item* has the meaning given by subsections 230-335(10) and (11).

**19 Subsection 995-1(1)**

Insert:

*hedging financial arrangement* has the meaning given by subsections 230-335(1) to (9) and sections 230-340 and 230-345.

**20 Subsection 995-1(1)**

Insert:

*hedging financial arrangement election* has the meaning given by section 230-315.

**21 Subsection 995-1(1) (definition of *money equivalent*)**

Repeal the definition, substitute:

*money equivalent* means:

- (a) a right to receive money or something that is a \*money equivalent under this definition; or
- (b) a \*financial arrangement (within the meaning of section 230-45).

**22 Subsection 995-1(1)**

Insert:

*qualifying security* has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

**23 Subsection 995-1(1)**

Insert:

*residential care* has the same meaning as in the *Aged Care Act 1997*.

**24 Subsection 995-1(1)**

Insert:

*residential premises* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**25 Subsection 995-1(1)**

Insert:

*retirement village* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**26 Subsection 995-1(1)**

Insert:

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*retirement village residence contract* has the meaning given by paragraph 230-475(4)(a).

## 27 Subsection 995-1(1)

Insert:

*retirement village services contract* has the meaning given by paragraph 230-475(4)(b).

## 28 Subsection 995-1(1) (paragraph (aa) of the definition of *special accrual amount*)

Repeal the paragraph, substitute:

- (aa) Subdivision 230-A of this Act (which deals with gains and losses from financial arrangements) if:
- (i) the accruals method provided for in Subdivision 230-B of this Act is applied to take account of the gain or loss concerned; and
  - (ii) all the \*financial benefits provided and received under the \*financial arrangement concerned are denominated in a particular foreign currency;

## 29 Subsection 995-1(1)

Insert:

*Subdivision 230-G assessable gain* from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a gain you make from the arrangement for the purposes of Division 230.

## 30 Subsection 995-1(1)

Insert:

*Subdivision 230-G loss* from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a loss you make from the arrangement for the purposes of Division 230.

## **Part 2—Consequential amendments**

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

#### **31 Subsection 6(1)**

Insert:

*Division 230 financial arrangement* has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **32 Subsection 51AAA(2) (at the end of the table)**

Add:

14	Division 230	Financial arrangements
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#### **33 Paragraph 82KZLA(a)**

Repeal the paragraph, substitute:

(a) a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*); or

#### **34 Before paragraph 96C(5A)(a)**

Insert:

(aa) Division 230 of the *Income Tax Assessment Act 1997*; and

#### **35 At the end of subsection 102CA(2)**

Add:

; or (c) the right is, or is part of, a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*).

#### **36 Subsection 121D(8)**

Omit “contract”, substitute “financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*)”.

#### **37 At the end of section 121EB**

Add:

- (3) To avoid doubt, this section applies for the purposes of applying Subdivision 230-A of the *Income Tax Assessment Act 1997* to a financial arrangement (within the meaning of that Act).

Note: This means that it is possible for financial arrangements to be entered into between the bank and the branch and for the bank or the branch to have a gain or loss from such an arrangement dealt with under Division 230 of the *Income Tax Assessment Act 1997*.

### 38 Section 128NBA

Omit “net Division 16E amount” (wherever occurring), substitute “net financial arrangement amount”.

Note: The heading to section 128NBA is replaced by the heading “Credits in respect of amounts assessed in relation to certain financial arrangements”.

### 39 Paragraph 128NBA(1)(a)

After “a qualifying security”, insert “or a Division 230 financial arrangement”.

### 40 Subsection 128NBA(5)

Repeal the subsection, substitute:

*Net financial arrangement amount*

- (5) For the purposes of this section, if:
- (a) in the case of a qualifying security—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the qualifying security, attributable agreement payment or payment of interest under section 159GQ; or
  - (b) in the case of a Division 230 financial arrangement—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*;
- exceeds:
- (c) in the case of a qualifying security—the sum of all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the security or the payment, as the case may be, under that section; or

- (d) in the case of a Division 230 financial arrangement—the sum of:
- (i) all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*; and
  - (ii) all amounts (if any) of interest paid under the arrangement before the interest mentioned in paragraph (1)(a) is paid;
- there is a net financial arrangement amount equal to the excess.
- (6) For the purposes of paragraph (5)(b) and subparagraph (5)(d)(i), disregard any year of income in which the taxpayer was not an Australian resident.
- (7) For the purposes of subsection (6):
- (a) if section 230-485 of the *Income Tax Assessment Act 1997* applies in relation to a year of income:
    - (i) treat the foreign residency period mentioned in that section as a year of income in which the taxpayer was not an Australian resident; and
    - (ii) treat the Australian residency period mentioned in that section as a year of income in which the taxpayer was an Australian resident; and
  - (b) if section 230-490 of that Act applies in relation to a year of income:
    - (i) treat the period during that year in which the taxpayer was not an Australian resident as a year of income in which the taxpayer was not an Australian resident; and
    - (ii) treat the period during that year in which the taxpayer was an Australian resident as a year of income in which the taxpayer was an Australian resident.

#### **41 Section 160ZZV (definition of *derivative transaction*)**

Omit “means a transaction”, substitute “means a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*) that is”.

#### **42 Section 160ZZV (definition of *derivative transaction*)**

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After “does not include a transaction”, insert “entered into”.

#### **43 After subsection 160ZZW(1)**

Insert:

- (1A) To avoid doubt, subsection (2) applies for the purposes of applying Subdivision 230-A of the *Income Tax Assessment Act 1997* to a financial arrangement (within the meaning of that Act).

Note: This means that it is possible for financial arrangements to be entered into between the bank and the branch and for the bank or the branch to have a gain or loss from such an arrangement dealt with under Division 230 of the *Income Tax Assessment Act 1997*.

#### **44 Section 160ZZX**

Before “All”, insert “(1)”.

#### **45 At the end of section 160ZZX**

Add:

- (2) All gains from a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*) made by a foreign bank through its Australian branch is taken, for the purposes of this Act, to be from an Australian source.

#### **46 After subsection 262A(2AAC)**

Insert:

- (2AAD) Subsection (1) applies to a person who has a Division 230 financial arrangement even if the person is not carrying on a business in relation to the arrangement. However, that subsection only requires the person to keep records that, for the purposes of this Act, are relevant to the arrangement.
- (2AAE) To avoid doubt, for the purposes of subsection (4), if the records mentioned in that subsection relate to a Division 230 financial arrangement that a person has, the transactions or acts mentioned in that subsection are taken to be completed at:
- (a) the end of the year of income in which the person ceases to have the arrangement; or
  - (b) if:
    - (i) the person applies the hedging financial arrangement method in Subdivision 230-E of the *Income Tax*

*Assessment Act 1997* to determine the amount of one or more gains or losses the person makes from the arrangement; and

- (ii) determining the way in which those gains or losses are dealt with in accordance with subsection 230-310(4) of that Act is possible only at a time after the end of the income year mentioned in paragraph (a);  
the end of the year of income in which that time occurs.

**47 After paragraph 262A(3)(c)**

Insert:

- (ca) for records required to be kept under section 230-355 of the *Income Tax Assessment Act 1997*—comply with the applicable provisions of that section; and

**48 Subsection 317(1) (paragraph (b) of the definition of *tainted interest income*)**

After “Part III”, insert “(or would be so included if Division 230 of the *Income Tax Assessment Act 1997* did not apply)”.

**49 After paragraph 389(b)**

Insert:

- (ba) Division 230 of the *Income Tax Assessment Act 1997*;

**50 At the end of section 557A**

Add:

- ; and (c) Division 230 of the *Income Tax Assessment Act 1997*.

**51 Subsection 57-25(6) of Schedule 2D (after table item 6)**

Insert:

- 6A Division 230

***Income Tax Assessment Act 1997***

**52 Section 10-5 (after table item headed “consideration”)**

Insert:

**consolidated groups and MEC groups**

Assets in relation to Division 230 financial arrangement... 701-61(3)

**53 Section 10-5 (after table item headed “films”)**

Insert:

**financial arrangements**

gains from..... 230-15(1)

**54 Section 12-5 (after table item headed “conservation covenants”)**

Insert:

**financial arrangements**

Assets in relation to Division 230 financial arrangement... 701-61(4)

**55 Section 11-10 (after table item headed “dividends or shares”)**

Insert:

**financial arrangements**

gains related to exempt income ..... 230-30

**56 Section 11-55 (after table item headed “employment”)**

Insert:

**financial arrangements**

gains related to non-assessable non-exempt income ..... 230-30

**57 Section 12-5 (table item headed “financial arrangements”)**

Repeal the item, substitute:

**financial arrangements**

losses from..... 230-15(2) and (3)

see also *borrowing expenses, infrastructure borrowings, interest, leases and securities*

**58 At the end of subsection 25-35(5)**

Add:

Note: Subsections 230-180(3), (5) and (6) and 230-195(3), (5) and (6) provide that in certain circumstances a deduction for a loss in relation to a financial arrangement is to be treated, for the purposes of this Act, as a deduction of a bad debt. The rules referred to in this subsection apply to that deduction.

**59 After subsection 25-85(4)**

Insert:

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(4A) Subsections (2) and (3) do not apply to a \*return on a \*debt interest that is a \*Division 230 financial arrangement.

**60 At the end of section 25-90**

Add:

Note: This section does not apply to a Division 230 financial arrangement.

**61 Subsection 40-180(1) (note)**

Omit “Note”, substitute “Note 1”.

**62 At the end of subsection 40-180(1)**

Add:

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

**63 Subsection 40-185(1) (note)**

Omit “Note”, substitute “Note 1”.

**64 At the end of subsection 40-185(1)**

Add:

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

**65 At the end of subsection 40-300(1)**

Add:

Note: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

**66 Subsection 40-305(1) (note)**

Omit “Note”, substitute “Note 1”.

**67 At the end of subsection 40-305(1)**

Add:

**Schedule 1 Amendments**  
**Part 2 Consequential amendments**

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Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

**68 Section 70-10**

Repeal the section, substitute:

**70-10 Meaning of *trading stock***

*Trading stock* includes:

(a) anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a \*business; and

(b) \*live stock;

but does not include a \*Division 230 financial arrangement.

Note 1: Shares in a PDF are not trading stock. See section 124ZO of the *Income Tax Assessment Act 1936*.

Note 2: If a company becomes a PDF, its shares are taken not to have been trading stock before it became a PDF. See section 124ZQ of the *Income Tax Assessment Act 1936*.

**69 At the end of section 102-20**

Add:

Note 5: Under subsection 230-310(4) gains and losses are taken to arise from a CGT event in particular circumstances.

**70 At the end of section 104-5**

Add:

Note: Subsection 230-310(4) (which deals with hedging financial arrangements) provides that in certain circumstances a CGT event is taken to have occurred in relation to a hedging financial arrangement at the same time as a CGT event actually occurs in relation to a hedged item covered by the arrangement.

**71 At the end of subsection 110-25(1)**

Add:

Note 3: An amount that makes up all or part of an element of the cost base of an asset may be determined under section 230-505, if the amount is provided for acquiring a thing, and you start or cease to have a Division 230 financial arrangement as consideration for the acquisition of the thing.

## **72 At the end of section 112-5**

Add:

- (7) Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a \*Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

## **73 Section 112-97 (after table item 22A)**

Insert:

22B	You start or cease to have a *Division 230 financial arrangement as consideration for the acquisition of a thing	All elements of cost base and reduced cost base	section 230-505
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## **74 Subsection 116-10(7) (note)**

Omit “Note”, substitute “Note 1”.

## **75 At the end of subsection 116-10(7)**

Add:

- Note 2: Section 230-505 of this Act (Division 230 financial arrangement as consideration for provision or acquisition of a thing) also modifies capital proceeds.

## **76 Section 118-27**

Repeal the section, substitute:

### **118-27 Division 230 financial arrangements**

- (1) A \*capital gain or \*capital loss you make:
- (a) from a \*CGT asset; or
  - (b) in creating a CGT asset; or
  - (c) from the discharge of a liability;
- is disregarded if, at the time of the \*CGT event, the asset or liability is, or is part of, a \*Division 230 financial arrangement.

Note 1: Paragraph (b) is relevant for CGT event D1.

Note 2: Paragraph (c) is relevant for CGT event L7.

- (2) Subsection (1) does not apply to the following:

- (a) a gain or loss that subsection 230-310(4) (which deals with hedging financial arrangements) provides is to be treated as a \*capital gain or \*capital loss;
  - (b) a loss that is reduced under subsection 230-465(2), to the extent of that reduction (this is the extent to which the loss is of a capital nature).
- (3) Subsection (1) does not apply if the situation that gives rise to the \*CGT event does *not* result in a gain from the arrangement being included in your assessable income under Division 230, or in a loss from the arrangement entitling you to a deduction under Division 230.

**77 Section 130-100**

After “a \*traditional security”, insert “or \*qualifying security”.

**78 Paragraph 130-100(a)**

After “the traditional security” (wherever occurring), insert “or the qualifying security”.

**79 Sections 250-165 to 250-175**

Repeal the sections.

**80 After paragraph 295-85(2)(a)**

Insert:

(aa) section 230-15 (about financial arrangements);

**81 Section 320-45**

Before “If”, insert “(1)”.

**82 At the end of section 320-45**

Add:

(2) Subsection (1) has effect despite anything in Division 230.

**83 After paragraph 396-30(1)(b)**

Insert:

; or (c) an amount allowable as a deduction to the borrower under Division 230, to the extent that, if that Division did not apply,

the amount would be allowable as a deduction to the borrower in the circumstances mentioned in paragraph (b).

#### **84 After paragraph 396-30(2)(b)**

Insert:

- ; or (c) an amount included in the assessable income of the lender under Division 230, to the extent that, if that Division did not apply, the amount would be included in the assessable income of the lender in the circumstances mentioned in paragraph (b).

#### **85 After subsection 701-55(5)**

Insert:

*Division 230 (financial arrangements)*

(5A) If Division 230 is to apply in relation to the asset, the expression means that the Division applies as if the asset were acquired at the particular time for a payment equal to:

- (a) unless paragraph (b) applies—the asset’s \*tax cost setting amount; or
- (b) if the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group, and Subdivision 230-C (fair value method), Subdivision 230-D (foreign exchange retranslation method) or Subdivision 230-F (reliance on financial reports method) is to apply in relation to the asset—the asset’s \*Division 230 starting value at the particular time.

(5B) To avoid doubt, for the purposes of paragraph (5A)(b), determine the asset’s \*Division 230 starting value by reference to the relevant standards (as mentioned in section 230-230, 230-280 or 230-420) that apply in relation to the \*head company’s financial report for the income year in which the entity becomes a subsidiary member of the group.

#### **86 Subsection 701-58(2)**

Omit “subsections 701-55(2), (3), (4), (5) and (6)”, substitute “subsections 701-55(2), (3), (4), (5), (5A) and (6)”.

#### **87 After section 701-60**

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Insert:

**701-61 Assets in relation to Division 230 financial arrangement—  
head company’s assessable income or deduction**

- (1) This section applies if:
  - (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group; and
  - (b) paragraph 701-55(5A)(b) applies in relation to one or more assets of the joining entity.
- (2) Work out if the total of the \*Division 230 starting values for those assets exceeds or falls short of the total of their \*tax cost setting amounts.
- (3) If there is an excess, an amount equal to 25% of that excess is included in the \*head company’s assessable income for:
  - (a) the income year in which the particular time mentioned in subsection 701-55(5A) occurs; and
  - (b) each of the 3 subsequent income years.
- (4) If there is a shortfall, the \*head company is entitled to a deduction equal to 25% of that shortfall for:
  - (a) the income year in which the particular time mentioned in subsection 701-55(5A) occurs; and
  - (b) each of the 3 subsequent income years.

**88 After subsection 705-30(3A)**

Insert:

*Division 230 financial arrangements*

- (3B) If an asset of the joining entity is or is part of a \*Division 230 financial arrangement, 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 Division 230.

**89 After Subdivision 715-D**

Insert:

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## **Subdivision 715-F—Interactions with Division 230 (financial arrangements)**

### **Table of sections**

715-375	Cost setting—amount of liability that is Division 230 financial arrangement
715-380	Exit history rule not to affect certain matters related to Division 230 financial arrangements
715-385	Exit history rule and elective methods applying to Division 230 financial arrangements

### **715-375 Cost setting—amount of liability that is Division 230 financial arrangement**

- (1) Subsection (2) applies if:
  - (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) a thing (the *accounting liability*) is, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, a liability of the joining entity at the joining time that can or must be recognised in the entity's statement of financial position; and
  - (c) the accounting liability is or is part of a \*Division 230 financial arrangement.
- (2) For the purposes of Division 230, treat the \*head company of the group as starting to have the accounting liability at the joining time.
- (3) Subsection (4) applies if:
  - (a) the requirements in subsection (1) are met; and
  - (b) Subdivision 230-C (fair value method), Subdivision 230-D (foreign exchange retranslation method) or Subdivision 230-F (reliance on financial reports method) is to apply in relation to the accounting liability after the joining time.
- (4) For as long as Subdivision 230-C, 230-D or 230-F applies in relation to the accounting liability, treat the amount of the accounting liability as its \*Division 230 starting value at the joining

time for the purposes of those Subdivisions and  
Subdivision 230-G.

**715-380 Exit history rule not to affect certain matters related to  
Division 230 financial arrangements**

*Spreading fees gain or loss*

- (1) Subsection (2) applies if:
  - (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) but for the cessation of membership and section 701-40 (the exit history rule), the \*head company of the group would spread a fees gain or loss mentioned in section 230-160 over a period that ended after the leaving time.
- (2) Despite section 701-40 (the exit history rule), the \*head company of the \*consolidated group continues to spread the fees gain or loss over that period, in accordance with section 230-160.

*Assessable income and deductions under section 701-61*

- (3) Subsection (4) applies if:
  - (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) but for the cessation of membership and section 701-40 (the exit history rule):
    - (i) an amount would be included in the assessable income of the \*head company of the group under section 701-61 for an income year ending after the leaving time; or
    - (ii) the head company of the group would be entitled to a deduction under section 701-61 for an income year ending after the leaving time.
- (4) Despite section 701-40 (the exit history rule), the amount is included in the assessable income of the \*head company for the income year, or the head company is entitled to the deduction for the income year.

**715-385 Exit history rule and elective methods applying to  
Division 230 financial arrangements**

- (1) Subsection (2) applies if:
- (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
  - (b) the \*head company of the group has a \*Division 230 financial arrangement at the leaving time because the leaving entity is taken by subsection 701-1(1) (the single entity rule) to be a part of the head company; and
  - (c) after the leaving time, the leaving entity makes an election of a kind mentioned in section 230-220 (fair value method), 230-265 (foreign exchange retranslation method), 230-325 (hedging method) or 230-410 (reliance on financial reports method).
- (2) For the purposes of determining whether the election applies to the financial arrangement, disregard paragraphs 230-220(1)(d), 230-265(1)(d), 230-325(a) and 230-410(1)(b)).

**90 Subsection 715-660(1) (after table item 3)**

Insert:

- |    |   |   |
|----|---|---|
| 3A | section 230-210, 230-255, 230-315<br>or 230-395 | Choice about treatment of gains and losses from *Division 230 financial arrangement |
|----|---|---|

**91 Subsection 715-665(1) (after table item 1)**

Insert:

- |    |   |   |
|----|---|---|
| 1A | section 230-210, 230-255, 230-315<br>or 230-395 | Choice about treatment of gains and losses from *Division 230 financial arrangement |
|----|---|---|

**92 Section 775-170**

Repeal the section.

**93 Subsections 775-195(8) and (9)**

Repeal the subsections.

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**94 Subsections 960-55(3) and (4)**

Repeal the subsections.

**95 Subsections 960-60(5) and (6)**

Repeal the subsections.

**96 Subsection 995-1(1)**

Insert:

***Division 230 starting value:***

- (a) the ***Division 230 starting value*** of an asset or liability that is or is part of a \*Division 230 financial arrangement to which Subdivision 230-C (fair value method) applies is the amount of the asset or the amount of the liability according to the relevant standards mentioned in section 230-230 that apply in relation to the arrangement; and
- (b) the ***Division 230 starting value*** of an asset or liability that is or is part of a Division 230 financial arrangement to which Subdivision 230-D (foreign exchange retranslation method) applies is the value of the asset or the amount of the liability according to the relevant standards mentioned in section 230-280 that apply in relation to the arrangement; and
- (c) the ***Division 230 starting value*** of an asset or liability that is or is part of a Division 230 financial arrangement to which Subdivision 230-F (reliance on financial reports method) applies is the value of the asset or the amount of the liability according to the relevant standards mentioned in section 230-420 that apply in relation to the arrangement.

**97 Subsection 995-1(1) (after paragraph (b) of the definition of special accrual amount)**

Insert:

- (ba) Division 230 (other than Subdivision 230-B) of this Act;

***Income Tax (Transitional Provisions) Act 1997***

**98 Subsection 295-390(5) (subparagraph (a)(iii) of the definition of fixed interest complying ADF)**

After “*Income Tax Assessment Act 1936*”, insert “(or would be so included if Division 230 of the *Income Tax Assessment Act 1997* did not apply)”.

## **99 Before Subdivision 715-J**

Insert:

### **Subdivision 715-F—Interactions with Division 230 (financial arrangements)**

#### **Table of sections**

715-380 Exit history rule not to affect certain matters related to Division 230 financial arrangements

#### **715-380 Exit history rule not to affect certain matters related to Division 230 financial arrangements**

##### *Transitional balancing adjustments*

- (1) Subsection (2) applies if:
  - (a) an entity (the *leaving entity*) ceases to be a subsidiary member of a consolidated group at a time (the *leaving time*); and
  - (b) but for the cessation of membership and section 701-40 of the *Income Tax Assessment Act 1997* (the exit history rule), the head company of the group would be subject to a balancing adjustment under item 104 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* for an income year ending after the leaving time.
- (2) Despite section 701-40 of the *Income Tax Assessment Act 1997* (the exit history rule), the head company of the consolidated group continues to be subject to the balancing adjustment for income years ending after the leaving time.

## **100 Paragraph 77(1)(b) of Schedule 4**

Repeal the paragraph.

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

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### 101 Subsection 45-120(2B) in Schedule 1

Repeal the subsection (including the heading), substitute:

*Net gains under Division 230 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 Division 230 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 Division 230 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).

## **Part 3—Application and transitional provisions**

### **102 Definitions**

In this Part:

*financial arrangement amendments* means the amendments made by Parts 1 and 2 of this Schedule.

*first applicable income year* means the first income year for which the financial arrangement amendments apply to you under item 103.

*lodgment date* means the due date for you to lodge an income tax return.

### **103 Application of financial arrangement amendments (income years)**

- (1) Subject to subitem (2), the financial arrangement amendments apply to you for income years commencing on or after 1 July 2010.
- (2) The financial arrangement amendments apply to you for income years commencing on or after 1 July 2009 if you elect to have this subitem apply to you.

Note: For a consolidated group, it is the head entity that would make the election.

- (3) An election under subitem (2) must be made on or before the first lodgment date that occurs on or after the start of your first income year commencing on or after 1 July 2009.

### **104 Application of financial arrangement amendments (financial arrangements)**

#### *Future financial arrangements*

- (1) The financial arrangement amendments apply to financial arrangements that you start to have in the first applicable income year or a later income year.

#### *Existing financial arrangements*

- (2) The financial arrangement amendments apply to all financial arrangements that:

**Schedule 1** Amendments

**Part 3** Application and transitional provisions

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- (a) you started to have before the start of the first applicable income year; and
    - (b) you have at the start of that income year;only if you elect to have this subitem apply to you.
  - (3) The financial arrangement amendments do not apply under subitem (2) to a financial arrangement that arose from a disposal of property (including a disposal of a capital asset, a revenue asset, a depreciating asset or trading stock).
  - (4) The financial arrangement amendments do not apply under subitem (2) to a financial arrangement if:
    - (a) the election is made by the head company of a consolidated group or MEC group; and
    - (b) the election specifies that the election is not to apply to financial arrangements in relation to life insurance business carried on by a member of the consolidated group or MEC group; and
    - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
  - (5) An election under subitem (2) must:
    - (a) be made on or before the first lodgment date that occurs on or after the start of the first applicable income year; and
    - (b) be notified to the Commissioner on or before the lodgment date referred to in paragraph (a).
  - (6) If you make an election under subitem (2), treat subsection 230-455(7) of the *Income Tax Assessment Act 1997* as allowing you to make an election under that subsection that applies to:
    - (a) in any case—all of the financial arrangements that you start to have in the income year in which the election is made or a later income year; or
    - (b) if you make the election at the same time as you make the election under subitem (2)—all of your financial arrangements to which the financial arrangements amendments apply.
  - (7) If you make an election under subitem (2), treat section 230-150 of the *Income Tax Assessment Act 1997* as allowing you to make an election
-

under that section that, despite paragraph 230-160(1)(b), applies to a financial arrangement that:

- (a) you started to have before the start of the first applicable income year; and
  - (b) you have at the start of that income year.
- (8) An election that you make under Subdivision 230-C, 230-D or 230-F of the *Income Tax Assessment Act 1997* extends to financial arrangements referred to in subitem (2) only if that election is made on or before the first lodgment date that occurs after the start of the first applicable income year.
- (9) An election that you make under Subdivision 230-E of the *Income Tax Assessment Act 1997* extends to a financial arrangement referred to in subitem (2) only if:
- (a) that election is made on or before the first lodgment date that occurs after the start of the first applicable income year; and
  - (b) the requirements of section 230-335 were satisfied in relation to the arrangement at the time the arrangement was created, acquired or applied; and
  - (c) at, or soon after, the time you make the election, you have in place records in relation to the arrangement that satisfy the requirements of section 230-355 and section 230-360 (other than subparagraph 230-360(2)(c)(ii)); and
  - (d) the requirements of section 230-365 have been satisfied at all times since the arrangement was created, acquired or applied for the purpose of hedging a risk in relation to a hedged item.
- (10) To avoid doubt, subsection 230-310(4) does not apply to a financial arrangement that you started to have before the start of the first applicable income year and that you have at the start of that income year.
- (11) To avoid doubt, the election referred to in subitem (8) or (9) applies to the financial arrangements referred to in subitem (2) even though you started to have the arrangements before the election is made.
- (12) If you make an election under subitem (2), balancing adjustments must be made under subitem (13).
- (13) Use the following method statement to make the balancing adjustments under this subitem:
-

*Balancing adjustment method statement*

- Step 1. Work out the total of all the amounts that relate to the financial arrangements and that would have been included in your assessable income if Division 230 of the *Income Tax Assessment Act 1997* had applied to gains and losses from the arrangements from the time when you started to have them: the result is the ***notional assessable amount***.
- Step 2. Work out the total of all the amounts that relate to the financial arrangements and that would have been allowable to you as deductions if that Division had applied to gains and losses from the arrangements from the time when you started to have them: the result is the ***notional deductible amount***.
- Step 3. Work out the total of all the amounts that relate to the financial arrangements and have been included in your assessable income from the time when you started to have them: the result is the ***actual assessed amount***.
- Step 4. Work out the total of all the amounts that relate to the financial arrangements and that have been allowable as deductions for you from the time when you started to have them: the result is the ***actual deducted amount***.
- Step 5. Add the notional assessable amount to the actual deducted amount: the result is the ***step 5 amount***.
- Step 6. Add the actual assessed amount to the notional deductible amount: the result is the ***step 6 amount***.
- Step 7. Compare the step 5 amount with the step 6 amount. If the step 5 amount exceeds the step 6 amount, the excess is included in your assessable income as a balancing adjustment. If the step 6 amount exceeds the step 5 amount, the excess is allowable as a deduction as a balancing adjustment. If the step 5 amount and the step 6 amount are equal there is no balancing adjustment.

(14) If:

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- (a) an amount is recorded in a deferred tax asset account in accordance with:
  - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (ii) if that standard does not apply to the preparation of your financial reports—a comparable accounting standard that applies to the preparation of your financial reports under a foreign law;  
immediately before the start of the first applicable income year; and
- (b) the whole or a part of that amount (the *attributable assessable amount*) is attributable to a financial arrangement referred to in subitem (2); and
- (c) the method of relying on financial reports provided for in Subdivision 230-F applies to take account of a gain or loss you make from the financial arrangement;

the following provisions have effect:

- (d) the financial arrangement is to be disregarded for the purposes of steps 1 to 4 of the method statement in subitem (13); and
- (e) the attributable assessable amount is to be reduced to the extent to which it represents unused tax credits and then grossed up under subitem (16); and
- (f) the step 6 amount is to be increased by the amount obtained under paragraph (e).

(15) If:

- (a) an amount is recorded in a deferred tax liability account in accordance with:
  - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (ii) if that standard does not apply to the preparation of your financial reports—a comparable accounting standard that applies to the preparation of your financial reports under a foreign law;  
immediately before the start of the first applicable income year; and

- (b) the whole or a part of that amount (the *attributable deductible amount*) is attributable to a financial arrangement referred to in subitem (2); and
- (c) the method of relying on financial reports provided for in Subdivision 230-F applies to take account of a gain or loss you make from the financial arrangement;

the following provisions have effect:

- (d) the financial arrangement is to be disregarded for the purposes of steps 1 to 4 of the method statement in subitem (13);
  - (e) the attributable deductible amount is to be reduced to the extent to which it represents unused tax credits and then grossed up under subitem (16);
  - (f) the step 5 amount is to be increased by the amount obtained under paragraph (e).
- (16) An amount is to be grossed up for the purposes of subitems (14) and (15) by multiplying the amount by:

$$\frac{1}{\text{Tax rate taken into account in working out the attributable assessable amount or attributable deductible amount}}$$

- (17) A balancing adjustment under subitem (13) is to be spread evenly over the first applicable income year and the next 3 income years.
- (18) In applying steps 1 and 2 in the method statement in subitem (13) to financial arrangements, assume that any election that extends to the arrangements under subitem (6) had applied to those financial arrangements from the time when you started to have them.
- (19) In applying section 121EH of the *Income Tax Assessment Act 1936*, disregard any balancing adjustment under subitem (13).

### **105 Application of financial arrangement amendments (arrangements that are not financial arrangements)**

- (1) Subject to this item, item 104 applies to arrangements that are not financial arrangements in the same way that it applies to financial arrangements.

- (2) However, the method statement in subitem 104(13) applies to arrangements that are not financial arrangements in accordance with subitem (1) of this item as if:
- (a) the reference in step 1 of that method statement to “Division 230 of the *Income Tax Assessment Act 1997*” were a reference to “Subdivision 775-F of the *Income Tax Assessment Act 1997*”; and
  - (b) the reference in step 2 of that method statement to “Division” were a reference to “Subdivision”.

## Part 4—Amendments relating to Division 775

### *Income Tax Assessment Act 1997*

#### **106 Section 775-170**

Before “This”, insert “(1)”.

#### **107 At the end of section 775-170**

Add:

- (2) This Division does not apply to a \*forex realisation gain or a \*forex realisation loss made by:
- (a) a \*securitisation vehicle; or
  - (b) an entity that satisfies the requirements of subsection 820-39(3).

#### **108 At the end of section 775-195**

Add:

- (9) The following are not entitled to make a choice under this section:
- (a) a \*securitisation vehicle;
  - (b) an entity that satisfies the requirements of subsection 820-39(3).

#### **109 Paragraph 775-270(2A)(a)**

Repeal the paragraph, substitute:

- (a) either:
- (i) you make a choice within 30 days after the commencement of the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*; or
  - (ii) you make a choice within 90 days after the commencement of Part 1 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*; and

#### **110 At the end of section 960-55**

Add:

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(4) Despite subsection (1), section 960-50 does not apply for the purposes of working out the assessable income, deductions or tax offsets of:

- (a) a \*securitisation vehicle; or
- (b) an entity that satisfies the requirements of subsection 820-39(3).

**111 At the end of section 960-60**

Add:

- (6) The following are not entitled to make a choice under this section:
- (a) a \*securitisation vehicle;
  - (b) an entity that satisfies the requirements of subsection 820-39(3).

**112 Subsection 995-1(1) (paragraph (b) of the definition of *qualifying forex account*)**

Repeal the paragraph.

***New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003***

**113 Paragraph 77(1)(b) of Schedule 4**

Repeal the paragraph, substitute:

- (b) for the purposes of working out the assessable income or allowable deductions of:
- (i) an ADI or a non-ADI financial institution (within the meaning of the *Income Tax Assessment Act 1997*); or
  - (ii) a securitisation vehicle (within the meaning of that Act);  
or
  - (iii) an entity that satisfies the requirements of subsection 820-39(3) of that Act;

**114 Application**

The amendments made by this Part apply on and after 17 December 2003.

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*[Minister's second reading speech made in—  
House of Representatives on 4 December 2008  
Senate on 12 February 2009]*

(239/08)