Tax Laws Amendment (2010 Measures No. 1) Act 2010

No. 56, 2010

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

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

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Tax Laws Amendment (2010 Measures No. 1) Act 2010

No. 56, 2010

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

[*Assented to 3 June 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 June 2010
2. Schedule 1, Part 1	1 July 2010.	1 July 2010
3. Schedule 1, item 7	1 July 2010. However, if item 32 of Schedule 2 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* commences on or before 1 July 2010, the provision(s) do not commence at all.	
4. Schedule 1, item 8	The later of: (a) the start of 1 July 2010; and (b) immediately after the commencement of item 1 of Schedule 1 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 1, Part 3	1 July 2010.	1 July 2010
6. Schedule 2	The day after this Act receives the Royal Assent.	4 June 2010
7. Schedules 3 and 4	The day this Act receives the Royal Assent.	3 June 2010
8. Schedule 5, Parts 1 to 5	The day this Act receives the Royal Assent.	3 June 2010

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
9. Schedule 5, Part 6, Division 1	The day this Act receives the Royal Assent.	3 June 2010
10. Schedule 5, Part 6, Division 2	Immediately after the commencement of the provision(s) covered by table item 9.	
11. Schedule 5, Parts 7 to 18	The day this Act receives the Royal Assent.	3 June 2010
12. Schedule 5, Part 19, Division 1	The day this Act receives the Royal Assent.	3 June 2010
13. Schedule 5, Part 19, Division 2	Immediately after the commencement of the provision(s) covered by table item 12.	
14. Schedule 5, Part 20	The day this Act receives the Royal Assent.	3 June 2010
15. Schedule 6, Parts 1 to 5	The day this Act receives the Royal Assent.	3 June 2010
16. Schedule 6, Part 6, Divisions 1 to 3	The day after this Act receives the Royal Assent.	4 June 2010
17. Schedule 6, Part 6, Division 4	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 23 of Schedule 1 to the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*.	
18. Schedule 6, Part 7	Immediately after the commencement of Schedule 2 to the *Tax Laws Amendment (2008 Measures No. 2) Act 2008*.	24 June 2008
19. Schedule 6, Part 8	1 July 2006.	1 July 2006
20. Schedule 6, items 109 to 111	The day this Act receives the Royal Assent.	3 June 2010
21. Schedule 6, item 112	Immediately after the time specified in the *Tax Laws Amendment (2009 Measures No. 4) Act 2009* for the commencement of	18 September 2009

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	item 132 of Schedule 5 to that Act.	
22. Schedule 6, item 113	Immediately after the time specified in the *Tax Laws Amendment (2009 Measures No. 4) Act 2009* for the commencement of item 133 of Schedule 5 to that Act.	18 September 2009
23. Schedule 6, Parts 10 and 11	The day this Act receives the Royal Assent.	3 June 2010

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

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

3 Schedule(s)

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

4 Amendment of assessments

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

(a) the assessment was made before the commencement of Schedule 2 to this Act; and

(b) the amendment is made for the purpose of giving effect to item 1 or 2 of that Schedule; and

(c) the amendment is made within 4 years after the end of the income year in which the relevant CGT event happened.

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

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

(b) the amendment is made within 2 years after that commencement; and

(c) the amendment is made for the purpose of giving effect to Schedule 5 to this Act.

Schedule 1—Approved superannuation clearing house

Part 1—Main amendments

Retirement Savings Accounts Act 1997

1 After subsection 183(2)

Insert:

(2A) Subsection (2) does not apply if:

(a) the employer pays to an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) the amount of the deduction before the end of period mentioned in that subsection; and

(b) the approved clearing house accepts the payment.

Superannuation Guarantee (Administration) Act 1992

2 Subsection 6(1)

Insert:

approved clearing house has the meaning given by subsection 79A(3).

3 After section 23A

Insert:

23B Contributions through an approved clearing house

For the purposes of sections 23 and 23A:

(a) treat an employer that, at a particular time, pays an amount to an approved clearing house for the benefit of an employee as having made a contribution of the same amount to a complying superannuation fund or an RSA for the benefit of the employee at that time, if the approved clearing house accepts the payment; and

(b) disregard any contribution that the approved clearing house makes to a complying superannuation fund or an RSA as a result of the payment.

4 After subsection 32C(2A)

Insert:

Contributions through an approved clearing house

(2B) A contribution to a fund by an employer for the benefit of an employee is made in compliance with the choice of fund requirements if:

(a) section 79A (which is about a contribution through an approved clearing house) applies to the contribution; and

(b) the employee gives the employer written notice to the effect that the employee wants a fund to be a chosen fund for the employee in accordance with Division 4 of Part 3A (Choosing a fund); and

Note: Under section 32G (Limit on funds that may be chosen), the fund chosen by the employee must be an eligible choice fund and must be a fund to which the employer can make contributions.

(c) the employer passes onto the approved clearing house mentioned in section 79A the information that the employee included in the written notice, and any other prescribed information:

(i) within 21 days after the employee gives the notice to the employer; and

(ii) before or at the time the contribution is made; and

(d) the approved clearing house accepts the information.

5 After section 79

Insert:

79A Approved clearing house

(1) This section applies if:

(a) an employer pays an amount to an approved clearing house for the benefit of an employee; and

(b) as a result, the approved clearing house makes a contribution to an RSA, a superannuation fund or a superannuation scheme for the benefit of the employee.

(2) To avoid doubt, the approved clearing house makes the contribution to the RSA, superannuation fund or superannuation scheme on behalf of the employer, as the employer's agent.

(3) ***Approved clearing house*** means a body specified in the regulations for the purposes of this subsection.

Superannuation Industry (Supervision) Act 1993

6 After subsection 64(2)

Insert:

(2A) Subsection (2) does not apply if:

(a) the employer pays to an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) the amount of the deduction before the end of the period mentioned in that subsection; and

(b) the approved clearing house accepts the payment.

Part 2—Amendments conditional on the Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010

Income Tax Assessment Act 1936

7 After paragraph 16(4)(hba)

Insert:

(hbb) an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*), for the purposes of that body performing its functions in relation to superannuation contributions; or

Taxation Administration Act 1953

8 Subsection 355-65(3) in Schedule 1 (at the end of the table)

Add:

9	an approved clearing house (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*)	is for the purposes of that body performing its functions in relation to superannuation contributions.

Part 3—Application provision

9 Application provision

The amendments made by Part 1 of this Schedule apply to a payment made to an approved clearing house on or after the commencement of this item.

Schedule 2—Forestry managed investment schemes

Income Tax Assessment Act 1936

1 After subsection 82KZMGA(1)

Insert:

(1A) Paragraph (1)(b) does not apply to a CGT event if:

(a) the CGT event happens because of circumstances outside the taxpayer's control; and

Example: The interest is compulsorily acquired.

(b) when the taxpayer acquired the interest, the taxpayer could not reasonably have foreseen the CGT event happening.

Income Tax Assessment Act 1997

2 After subsection 394-10(5)

Insert:

(5A) Paragraph (5)(b) does not apply to a *CGT event if:

(a) the CGT event happens because of circumstances outside your control; and

Example: The forestry interest is compulsorily acquired.

(b) when you acquired the *forestry interest, you could not reasonably have foreseen the CGT event happening.

Taxation Administration Act 1953

3 After subsection 290-50(2) in Schedule 1

Insert:

(2A) For the purposes of subsection (2), disregard:

(a) subsection 82KZMGA(1A) of the *Income Tax Assessment Act 1936*; and

(b) subsection 394-10(5A) of the *Income Tax Assessment Act 1997*.

Note 1: Those 2 subsections relate to forestry managed investment schemes.

Note 2: The effect of this subsection is that a scheme will have been implemented in a way that is materially different from that described in a product ruling if the tax outcome for participants in the scheme is the same as that described in the ruling only because of the operation of the subsections mentioned in paragraphs (a) and (b).

4 Application provision

The amendments made by this Schedule apply to CGT events that happen on or after 1 July 2007.

Schedule 3—Managed investment trusts

Income Tax Assessment Act 1936

1 Subsection 95(1) (at the end of the note to the definition of *net income*)

Add "to this Act or Division 275 of the *Income Tax Assessment Act 1997*".

Income Tax Assessment Act 1997

2 Section 10-5 (after table item headed "lotteries")

Insert:

managed investment trusts

gains etc. from carried interests ..... 275-200(2)

3 Section 12-5 (after table item headed "losses")

Insert:

managed investment trusts

losses from carried interests ..... 275-200(4)

4 After Part 3-10

Insert:

Part 3-25—Particular kinds of trusts

Division 275—Australian managed investment trusts

Table of Subdivisions

Guide to Division 275

275-A Extended concept of managed investment trust for the purposes of this Division

275-B Choice for capital treatment of managed investment trust gains and losses

275-C Carried interests in managed investment trusts

Guide to Division 275

275-1 What this Division is about

The trustee of certain Australian managed investment trusts may make a choice that certain assets of the trust be dealt with under CGT rules. If the trustee does not make such a choice, those assets will be treated as revenue assets (see Subdivision 275-B).

Gains and profits from carried interests held in entities that are or were Australian managed investment trusts are included in the assessable income of the holder of the interests. The holder is entitled to a deduction from losses from such interests (see Subdivision 275-C).

Subdivision 275-A—Extended concept of managed investment trust for the purposes of this Division

Table of sections

275-5	Trust operated or managed by a financial services licensee etc.
275-10	Managed investment schemes that are not subject to requirement to be operated by financial services licensee
275-15	Every member of trust is a managed investment trust
275-20	No fund payment made in relation to the income year
275-25	Trust held by small group not to be treated as managed investment trust
275-30	Temporary circumstances outside the control of the trustee
275-35	Application of subsections 102L(15) and 102T(16)

275-15 Every member of trust is a managed investment trust

(1) For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if:

(a) the condition in item 1 of the table in subsection 12-400(1) in Schedule 1 to the *Taxation Administration Act 1953* is satisfied; and

(b) every *member of the trust is a managed investment trust in relation to the income year (or a trust that is treated in the same way as a managed investment trust in relation to the income year through the operation of this Subdivision).

(2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is satisfied:

(a) at the time the trustee of the trust makes the first *fund payment in relation to the income year; or

(b) if the trustee does not make such a payment in relation to the income year—at both the start and the end of the income year.

275-20 No fund payment made in relation to the income year

For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if:

(a) the trustee of the trust does not make a *fund payment in relation to the income year; and

(b) the trust would be a managed investment trust in relation to the income year (or a trust that would be treated in the same way as a managed investment trust in relation to the income year through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year; and

(c) the trust would be a managed investment trust in relation to the income year (or a trust that would be treated in the same way as a managed investment trust in relation to the income year through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year.

275-30 Temporary circumstances outside the control of the trustee

If, apart from a particular circumstance, a trust would be treated under this Subdivision in the same way as a *managed investment trust in relation to an income year, treat the trust in the same way as a managed investment trust in relation to the income year for the purposes of this Division if:

(a) the circumstance is temporary; and

(b) the circumstance arose outside the control of the trustee of the trust; and

(c) it is fair and reasonable to treat the trust as a managed investment trust in relation to the income year, having regard to the following matters:

(i) the matters in paragraphs (a) and (b);

(ii) the nature of the circumstance;

(iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;

(iv) the extent to which treating the trust as a managed investment trust in relation to the income year would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;

(v) any other relevant matter.

275-35 Application of subsections 102L(15) and 102T(16)

To avoid doubt, subsections 102L(15) and 102T(16) of the *Income Tax Assessment Act 1936* do not apply for the purposes of this Division.

Subdivision 275-B—Choice for capital treatment of managed investment trust gains and losses

Table of sections

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses
275-105 Covered assets
275-110 MIT not to be corporate unit trust or trading trust
275-115 MIT CGT choices
275-120 Consequences of not making choice—revenue account treatment

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses

(1) The modifications in subsection (2) apply if:

(a) a *CGT event happens at a time involving a *CGT asset; and

(b) the CGT asset is owned at that time by an entity that is a *managed investment trust in relation to the income year in which the time occurs; and

(c) the CGT event happens because the managed investment trust *disposes of, ceases to own or otherwise realises the asset; and

(d) the asset is covered by section 275-105; and

(e) the entity meets the requirement in section 275-110 at the time; and

(f) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.

(2) These provisions do not apply to the *CGT event:

(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);

(b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes);

(c) section 118-20 (about reducing capital gains if amount otherwise assessable);

(d) Division 70 and section 118-25 (about trading stock).

General exceptions

(3) The provisions referred to in subsection (2) can apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-13	Shares in a PDF
3	Section 118-60	Certain gifts

Trading stock and profit-making undertakings or plans involving land etc.

(4) The provisions referred to in subsection (2) can also apply to the *CGT event if:

(a) where the *CGT asset is land (including an interest in land), or a right or option to *acquire or *dispose of land (including an interest in land):

(i) the CGT asset is *trading stock; or

(ii) the circumstances existing at the time of the event would, disregarding this Subdivision, give rise to an amount being included in the assessable income of the

entity under section 15-15 or to a deduction for the entity under section 25-40 (about profit-making undertakings or plans); or

(b) where paragraph (a) does not apply:

(i) the *managed investment trust acquired the CGT asset in an income year for which the choice mentioned in paragraph (1)(f) was not in force; and

(ii) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the start of the income year in which that choice first came into force; and

(iii) the CGT asset was treated as trading stock in the *income tax return for the managed investment trust for the most recent income year ending before the start of the income year in which that choice first came into force; and

(iv) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the time of the event; and

(v) the CGT asset was treated as trading stock in the income tax return for the managed investment trust for the most recent income year ending before the time of the event.

Treatment of outgoings to acquire trading stock

(5) The modifications in subsection (6) apply if:

(a) an entity that is a *managed investment trust in relation to the income year *acquires a *CGT asset at a time in that income year; and

(b) the CGT asset is an item of *trading stock; and

(c) the CGT asset is *not* land (including an interest in land), or a right or option to acquire or *dispose of land (including an interest in land); and

(d) the entity incurs an outgoing in connection with acquiring the asset; and

(e) the asset is covered by section 275-105; and

(f) the entity meets the requirement in section 275-110 at the time; and

(g) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.

(6) The modifications are as follows:

(a) section 8-1 (about amounts you can deduct) does not apply to the *acquisition;

(b) Division 70 (about trading stock) does not apply in relation to the asset in respect of:

(i) the income year in which the time occurs; and

(ii) any later income year in relation to which the entity is a *managed investment trust and throughout which the entity meets the requirement in section 275-110.

275-105 Covered assets

(1) An asset is covered by this section if it is any of the following:

(a) a *share in a company (including a share in a *foreign hybrid company);

(b) a *non-share equity interest in a company;

(c) a unit in a unit trust;

(d) land (including an interest in land);

(e) a right or option to *acquire or *dispose of an asset of a kind mentioned in paragraph (a), (b), (c) or (d).

(2) However, the asset is *not* covered by this section if it is any of the following:

(a) a *Division 230 financial arrangement;

(b) a *debt interest.

275-110 MIT not to be corporate unit trust or trading trust

(1) An entity that is a trust meets the requirement in this section at a time if the entity is *not* any of the following at that time:

(a) a corporate unit trust (within the meaning of section 102J of the *Income Tax Assessment Act 1936*) in relation to the income year in which the time occurs;

(b) a trading trust for the purposes of Division 6C of Part III of that Act in relation to that income year.

(2) If, apart from a particular circumstance, a trust would meet the requirement in paragraph (1)(b) at a time, the trust also meets the requirement in this section at a time if:

(a) the circumstance is temporary; and

(b) the circumstance arose outside the control of the trustee of the trust; and

(c) the trustee of the trust is *not* liable to pay income tax on the net income of the trust under section 102S of the *Income Tax Assessment Act 1936* for the income year in which the time occurs; and

(d) it is fair and reasonable to treat the trust as meeting the requirement in this section at that time, having regard to the following matters:

(i) the matters in paragraphs (a), (b) and (c);

(ii) the nature of the circumstance;

(iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;

(iv) the extent to which treating the trust as meeting the requirement in this section at that time would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;

(v) any other relevant matter.

275-115 MIT CGT choices

(1) The trustee of an entity that is a *managed investment trust may make a choice under this section that covers the managed investment trust.

(2) The choice must be made in the *approved form.

(3) The choice can be made only:

(a) if the entity became a *managed investment trust in the 2009-10 income year or a later income year (whether or not the entity existed before it became a managed investment trust)—on or before the latest of the following days:

(i) the day it is required to lodge its *income tax return for the income year in which it became a managed investment trust;

(ii) if the Commissioner allows a later day for the managed investment trust—that later day; or

(b) otherwise—on or before the latest of the following days:

(i) the last day in the 3 month period starting on the day on which this section commences;

(ii) the last day of the 2009-10 income year;

(iii) if the Commissioner allows a later day for the managed investment trust—that later day.

(4) The choice, once made, cannot be revoked.

(5) The choice is in force:

(a) in the circumstances mentioned in paragraph (3)(a)—for the income year in which the entity became a *managed investment trust (whether or not the entity existed before it became a managed investment trust) and later income years; or

(b) in the circumstances mentioned in paragraph (3)(b)—for the 2008-09 income year and later income years.

275-120 Consequences of not making choice—revenue account treatment

(1) This section applies if:

(a) the requirements in subsection 275-100(1) are met in relation to a *CGT asset held by a *managed investment trust, apart from the requirement in paragraph 275-100(1)(f); and

(b) the CGT asset is not:

(i) land (including an interest in land); or

(ii) a right or option to *acquire or *dispose of land (including an interest in land); and

(c) the managed investment trust disposes of, ceases to own or otherwise realises the asset; and

(d) disregarding this section:

(i) the net proceeds (if any) from the disposal, cessation or realisation would not be reflected in an amount being included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and

(ii) the gain or profit (if any) on the disposal, cessation or realisation would not be reflected in an amount being

included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and

(iii) the loss (if any) on the disposal, cessation or realisation would not be reflected in an amount being deductible by the managed investment trust.

(2) For the purposes of this Act, treat the disposal, cessation of ownership of or realisation of the asset in the same way as the disposal, cessation of ownership of or realisation of a *revenue asset.

Subdivision 275-C—Carried interests in managed investment trusts

Table of sections

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

(1) This section applies if:

(a) you hold a *CGT asset in an income year that carries an entitlement to a distribution from an entity; and

(b) the entitlement to such a distribution is contingent upon the attainment of profits by the entity; and

(c) the entity satisfies any of these requirements:

(i) it is a *managed investment trust in relation to the income year;

(ii) it was a managed investment trust in relation to a previous income year; and

(d) you acquired the asset because of services you or your *associate provided, or will provide, to the entity; and

(e) you or your associate provided, or will provide, those services:

(i) as a manager of the entity; or

(ii) as an associate of a manager of the entity; or

(iii) as an employee of a manager of the entity; or

(iv) as an associate of an employee of a manager of the entity; and

(f) any of the following apply:

(i) you become entitled in the income year to such a distribution (regardless of whether the distribution is made immediately, or is to be made in the future);

(ii) a *CGT event happens in relation to the asset in the income year.

(2) Include in your assessable income for the income year:

(a) the amount of the distribution (except to the extent that it represents a return of capital that you or your associate contributed in order for you to *acquire the asset); or

(b) the amount of your gain or profit (if any) on the *CGT event.

(3) Subsection (2) does not apply to the extent that the amount is included in your assessable income as:

(a) *ordinary income under section 6-5; or

(b) *statutory income under a section of this Act, other than a provision in Part 3-1 or 3-3.

(4) An amount to which subsection (2) applies is taken, for the purposes of the *income tax laws, to have a source in Australia. For the purposes of this subsection, disregard subsection (3).

(5) You are entitled to a deduction for the income year for the amount of your loss (if any) on the *CGT event.

(6) Subsection (5) does not apply to the extent that you can deduct the amount under another provision of this Act.

(7) Subdivision 115-C does not apply to the amount of a distribution mentioned in subparagraph (1)(f)(i) if:

(a) that amount is included in your assessable income under subsection (2); or

(b) an amount referable to that amount is included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936*.

5 Subsection 840-805(6) (subsection heading)

Repeal the heading, substitute:

Exception—Australian permanent establishments

6 At the end of section 840-805

Add:

Exception—distributions on carried interests

(7) Subsections (2) and (3) do not apply to you to the extent that the fund payment part:

(a) is included in your assessable income under subsection 275-200(2) (Gains etc. from carried interests) for the income year because you hold or held a *CGT asset that carries an entitlement to a distribution mentioned in subsection 275-200(2); or

(b) would be so included if subsection 275-200(3) were disregarded.

(8) Subsection (4) does not apply to you to the extent that the fund payment part:

(a) is attributable to an amount included in the net income of the trust mentioned in that subsection because of subsection 275-200(2) (Gains etc. from carried interests) for the income year because the trust holds or held a *CGT asset that carries an entitlement to a distribution mentioned in subsection 275-200(2); or

(b) would be so included if subsection 275-200(3) were disregarded.

7 Subsection 995-1(1) (definition of *instalment income*)

Omit "and 45-465", substitute ", 45-286 and 45-465".

Income Tax (Transitional Provisions) Act 1997

8 After Part 3-10

Insert:

Part 3-25—Particular kinds of trusts

Division 275—Australian managed investment trusts

Table of Subdivisions

275-A Choice for capital treatment of MIT gains and losses

Subdivision 275-A—Choice for capital treatment of MIT gains and losses

Table of sections

275-10 Consequences of making choice—Commissioner cannot make certain amendments to previous assessments

275-10 Consequences of making choice—Commissioner cannot make certain amendments to previous assessments

(1) This section applies if:

(a) the trustee of a managed investment trust makes a choice under section 275-115 of the *Income Tax Assessment Act 1997* covering the trust that is in force for the 2008-09 income year; and

(b) the Commissioner made an assessment (the ***previous assessment***) for a previous income year for any of the following entities:

(i) the trustee of the managed investment trust;

(ii) a beneficiary of the managed investment trust;

(iii) an entity that holds interests in the managed investment trust indirectly, through a chain of trusts; and

(c) the previous assessment was made on the basis that:

(i) a CGT event happened at a time involving a CGT asset that was owned by the managed investment trust; and

(ii) a gain or loss was realised for income tax purposes because of the circumstances that gave rise to the CGT event; and

(d) the previous assessment was also made on the basis that:

(i) the gain or loss should be reflected in the net income of the managed investment trust for that previous income year; or

(ii) the gain or loss should be reflected in a tax loss or net capital loss of the managed investment trust for that previous income year; and

(e) the previous assessment was also made on one of these bases:

(i) the CGT asset was a revenue asset;

(ii) the CGT asset was *not* a revenue asset; and

(f) none of the provisions mentioned in subsection 275-100(2) of the *Income Tax Assessment Act 1997* would have applied at the time of the CGT event in relation to the asset, if these assumptions were made:

(i) Subdivision 275-B of the *Income Tax Assessment Act 1997* (and any other provision of that Act or of the *Income Tax Assessment Act 1936*, to the extent that it relates to that Subdivision) had applied in relation to the CGT event;

(ii) a choice under section 275-115 of the *Income Tax Assessment Act 1997* covering the entity for which the assessment was made was in force for the previous income year.

(2) The Commissioner cannot amend the previous assessment on the basis that:

(a) if subparagraph (1)(e)(i) applies—the CGT asset should *not* have been treated as a revenue asset; or

(b) if subparagraph (1)(e)(ii) applies—the CGT asset should have been treated as a revenue asset.

(3) Subsection (2) applies despite any other provision of this Act (apart from subsection (4) of this section), the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936*.

(4) Subsection (2) does not apply in any of these cases:

(a) if the entity for which the assessment was made gives the Commissioner a written consent to the amendment;

(b) if the Commissioner may amend the assessment in accordance with item 5 (fraud or evasion) or 6 (review or appeal) of the table in subsection 170(1) of the *Income Tax Assessment Act 1936*;

(c) if the amendment is made for the purpose of giving effect to a provision specified in the regulations for the purposes of this paragraph.

Taxation Administration Act 1953

9 After section 45-285 in Schedule 1

Insert:

45-286 Instalment income includes distributions by certain managed investment trusts

Your ***instalment income*** for a period includes trust income or trust capital that a trust distributes to you, or applies for your benefit, during that period if:

(a) the income or capital is not included in your instalment income under section 45-280 or 45-285; and

(b) the trust satisfies the condition in item 1 of the table in subsection 12-400(1) in relation to the income year that is or includes that period; and

(c) the trust is:

(i) a *managed investment trust for that income year; or

(ii) treated as a managed investment trust for that income year for the purposes of Division 275 of the *Income Tax Assessment Act 1997*; and

(d) the trust meets the requirement in section 275-110 of that Act throughout the income year.

(It does not matter whether the trust income or trust capital is included in your assessable income for the income year that is or includes that period.)

10 Application provision

(1) The amendments made by this Schedule apply in relation to CGT events that happen on or after the start of the 2008-09 income year.

(2) Despite subitem (1), subsections 275-100(5) and (6) of the *Income Tax Assessment Act 1997* as inserted by this Schedule (and any other provision inserted by this Schedule, to the extent that it relates to those subsections) apply in relation to acquisitions of assets that happen on or after the start of the 2008-09 income year.

(3) Despite subitem (1), section 275-120 of the *Income Tax Assessment Act 1997* as inserted by this Schedule (and any other provision inserted by

this Schedule, to the extent that it relates to that section) applies in relation to:

(a) disposals of assets; and

(b) cessations of ownership of assets; and

(c) other realisations of assets;

that happen on or after the commencement of this item.

(4) Despite subitem (1), Subdivision 275-C of the *Income Tax Assessment Act 1997* as inserted by this Schedule (and any other provision inserted by this Schedule, to the extent that it relates to that Subdivision) applies in relation to:

(a) entitlements to distributions that arise on or after the commencement of this item; and

(b) CGT events that happen on or after the commencement of this item.

(5) Despite subitem (1), section 45-286 in Schedule 1 to the *Taxation Administration Act 1953* as inserted by this Schedule (and any other provision inserted by this Schedule, to the extent that it relates to that section) applies in relation to distributions or applications of benefits that are made on or after the commencement of this item.

Schedule 4—25% entrepreneurs' tax offset

Income Tax Assessment Act 1997

1 Section 61-500

Omit:

> Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on whether your aggregated turnover is $50,000 or less or is more than $50,000.

Substitute:

> Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on:
>
> (a) whether your aggregated turnover is $50,000 or less or is more than $50,000; and
>
> (b) if you are an individual—whether you (and your spouse, if you have a spouse) have significant income from sources other than your small business.

2 Subsection 61-505(2) (at the end of step 4 of the method statement)

Add:

> Note: If you are an individual, section 61-523 may reduce the amount of the tax offset.

3 Subsection 61-505(2) (at the end of step 5 of the method statement)

Add:

> Note: If you are an individual, section 61-523 may reduce the amount of the tax offset.

4 Subsection 61-510(2) (at the end of step 4 of the method statement)

Add:

Note:	If you are an individual, section 61-523 may reduce the amount of the tax offset.

5 Subsection 61-510(2) (at the end of step 5 of the method statement)

Add:

Note:	If you are an individual, section 61-523 may reduce the amount of the tax offset.

6 Subsection 61-520(2) (at the end of step 4 of the method statement)

Add:

Note:	If you are an individual, section 61-523 may reduce the amount of the tax offset.

7 Subsection 61-520(2) (at the end of step 5 of the method statement)

Add:

Note:	If you are an individual, section 61-523 may reduce the amount of the tax offset.

8 After section 61-520

Insert:

61-523 25% entrepreneurs' tax offset—reduction for non-small business income

Reduce the amount of your *tax offset worked out under subsection 61-505(2), 61-510(2) or 61-520(2) by the amount worked out using the following formula (but not below nil), if:

(a) you are an individual; and

(b) the amount worked out using the formula is greater than nil:

$$\frac{\text{Non-ETO small business income for the income year} - \text{Threshold amount}}{5}$$

where:

non-ETO small business income for the income year is worked out by:

(a) adding up the following:

(i) your taxable income for the year;

(ii) your *reportable fringe benefits total for the year;

(iii) your *reportable superannuation contributions (if any) for the year;

(iv) your *total net investment loss for the year; and

(b) subtracting:

(i) in a case covered by subsection 61-505(2)—your *net small business income for the year; or

(ii) in a case covered by subsection 61-510(2) or 61-520(2)—your net small business income share for the year (within the meaning of paragraph 61-510(1)(e) or 61-520(1)(e), whichever is applicable); and

(c) adding the following in relation to each individual (if any) who, on the last day of the year, is your *spouse:

(i) your spouse's taxable income for the year;

(ii) your spouse's reportable fringe benefits total for the year;

(iii) your spouse's reportable superannuation contributions (if any) for the year;

(iv) your spouse's total net investment loss for the year.

Note: ETO is short for 25% entrepreneurs' tax offset.

threshold amount means:

(a) $120,000 if:

(i) on any day during the income year, you have a dependant (within the meaning of the definition of ***dependant*** in subsection 159P(4) of the *Income Tax Assessment Act 1936*, disregarding paragraph (a) (spouse) of that definition); or

(ii) on the last day of the income year, you have a *spouse; or

(b) otherwise—$70,000.

9 Application provision

The amendments made by this Schedule apply in relation to assessments for income years that commence on or after 1 July 2009.

Schedule 5—Consolidation

Part 1—Use of the tax cost setting amount

Division 1—Main amendments

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed "financial arrangements" (first occurring))

Repeal the item, substitute:

consolidated groups and MEC groups	
assets in relation to Division 230 financial arrangement	701-61(4)
rights to future income	716-405

2 Subsection 701-55(3)

After "Division 70", insert "(other than Subdivision 70-E)".

3 Subsection 701-55(6)

Repeal the subsection, substitute:

Rights to future amounts to be included in assessable income of head company

(5C) If section 716-410 (rights to future amounts that are expected to be included in assessable income) covers the asset at the particular time, the expression means that section 716-405 may apply in relation to the asset after the particular time.

Other provisions

(6) If any provision of this Act that is not mentioned above is to apply in relation to the asset by including an amount in assessable income, or by allowing an amount as a deduction, in a way that brings into account (directly or indirectly) any of the following amounts:

(a) the cost of the asset;

(b) outgoings incurred, or amounts paid, in respect of the asset;

(c) expenditure in respect of the asset;

(d) an amount of a similar kind in respect of the asset;

the expression means that the provision applies, for the purpose of determining the amount included in assessable income or the amount of the deduction, as if the cost, outgoing, expenditure or other amount had been incurred or paid to acquire the asset at the particular time for an amount equal to its tax cost setting amount.

Note 1: This subsection modifies the application of the provision only for the purpose of determining the amount included in assessable income or the amount of the deduction. Therefore:

(a) the acquisition mentioned in this subsection is recognised only for that purpose; and

(b) apart from the things mentioned in subsection 701-56(1), that acquisition does not affect the operation of section 701-5 (the entry history rule) in relation to the asset for other purposes.

Note 2: For specific clarifications of the operation of this subsection in relation to bad debts, see Subdivision 716-S.

701-56 Setting the tax cost of an asset—subsection 701-55(6)

Entry history rule

(1) To avoid doubt, if subsection 701-55(6) applies in relation to an asset at the time (the ***joining time***) an entity (the ***joining entity***) became a *subsidiary member of a *consolidated group, the things that are taken to have happened in relation to the *head company of the group under section 701-5 (entry history rule) do not include:

(a) the cost, outgoing, expenditure or other amount incurred or paid to acquire the asset by the joining entity; and

(b) whether the cost, outgoing, expenditure or other amount incurred or paid by the joining entity to acquire the asset has been deducted by the joining entity before the joining time.

Trading stock

(2) Subsection 701-55(6) does not apply in relation to an asset if it is *trading stock.

Certain depreciating assets etc.

(3) Subsection 701-55(6) does not apply in relation to an asset if any of the following provisions are to apply in relation to the asset:

(a) Subdivision 40-F (Primary production depreciating assets);

(b) Subdivision 40-G (Capital expenditure of primary producers and other landholders);
(c) Subdivision 40-H (Capital expenditure that is immediately deductible);
(d) Subdivision 40-I (Capital expenditure that is deductible over time), other than section 40-880 (Business related costs);
(e) Subdivision 40-J (Capital expenditure for the establishment of trees in carbon sink forests);
(f) Division 41 (Additional deduction for certain new business investment);
(g) Division 43 (Deductions for capital works).

3A Subsection 701-58(2)

After "(5A)", insert ", (5C)".

3B At the end of Division 701

Add:

701-90 Valuable right to future income treated as separate asset

(1) This subsection covers a valuable right (including a contingent right) to receive an amount for the performance of work or services or the provision of goods (other than *trading stock) if:
(a) the valuable right forms part of a contract or agreement; and
(b) the *market value of the valuable right (taking into account all the obligations and conditions relating to the right) is greater than nil.

(2) For the purposes of this Part, treat a valuable right covered by subsection (1) as a separate asset.

(3) For the purposes of this Part, if:
(a) a valuable right is treated as a separate asset under subsection (2); and
(b) the contract or agreement mentioned in paragraph (1)(a) also includes one or more other rights;
for the purposes of this Part, treat the contract or agreement (excluding the valuable right) as a separate asset.

(4) For the purposes of this Part:

(a) take into account all the obligations and conditions relating to a valuable right treated as a separate asset under subsection (2) in working out the *market value of that separate asset; and

(b) if a contract or agreement (excluding the valuable right) is treated as a separate asset under subsection (3)—take into account all the obligations and conditions relating to each right (other than the valuable right) that forms part of the contract or agreement in working out the market value of that separate asset.

4 After Subdivision 716-G

Insert:

Subdivision 716-S—Miscellenous consequences of tax cost setting

Table of sections

716-400 Tax cost setting and bad debts
716-405 Tax cost setting and rights to future income—deduction
716-410 Rights to amounts that are expected to be included in assessable income after joining time

716-400 Tax cost setting and bad debts

(1) The object of this section is to clarify the effect of section 701-5 (entry history rule) and subsection 701-55(6) in relation to an asset that may give rise to a bad debt. It achieves this object by clarifying that certain things are taken to have happened in relation to the asset through the operation of section 701-5 and subsection 701-55(6).

(2) This section applies if:

(a) the tax cost of an asset was set at the time (the ***joining time***) an entity (the ***joining entity***) became a subsidiary member of a *consolidated group at the asset's tax cost setting amount; and

(b) the asset is a debt; and

(c) any of the following apply:

(i) the debt was included in the joining entity's assessable income before the joining time;

(ii) the debt was in respect of money that the joining entity lent before the joining time in the ordinary course of a business of lending money;

(iii) the joining entity bought the debt before the joining time in the ordinary course of a business of lending money; and

(d) the requirements in subsection 701-58(1) (intra-group assets) are *not* satisfied in relation to the asset.

(3) To avoid doubt, in determining the extent to which the *head company of the group can deduct an amount under section 25-35 (bad debts) in relation to the asset, section 701-5 (entry history rule) and subsection 701-55(6) have the effect that, before the joining time:

(a) in a case covered by subparagraph (2)(c)(i)—the head company included an amount equal to the tax cost setting amount in its assessable income in respect of the debt; or

(b) in a case covered by subparagraph (2)(c)(ii)—the head company lent an amount of money in respect of the debt equal to the tax cost setting amount in the ordinary course of a business of lending money; or

(c) in a case covered by subparagraph (2)(c)(iii)—the head company incurred expenditure equal to the tax cost setting amount in buying the debt in the ordinary course of a business of lending money.

716-405 Tax cost setting and rights to future income—deduction

(1) This section applies if:

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

(b) subsection 701-55(5C) applies in relation to the asset at the joining time.

Note: Subsection 701-55(5C) deals with assets covered by section 716-410 (Rights to amounts that are expected to be included in assessable income after joining time).

(2) An entity qualified for a deduction under subsection (5) for the asset for an income year ending after the joining time can deduct, for that income year:

(a) unless paragraph (b) applies—the amount determined under subsection (3A); or

(b) if it is reasonable to expect that no amount will be included in the assessable income of an entity qualified for a deduction under subsection (5) for the asset for any later income year—the unexpended tax cost setting amount for the asset for that income year.

(3) Paragraph (2)(b) does not apply in relation to an entity qualified for a deduction under subsection (5) for the asset for that income year if:

(a) the entity is the *head company of the group; and

(b) another entity ceased to be a *subsidiary member of the group in that income year; and

(c) the other entity can deduct an amount under subsection (2) for that income year because it is also qualified for a deduction under subsection (5) for the asset for that income year.

(3A) For the purposes of paragraph (2)(a), the amount is the lesser of the following:

(a) the *unexpended tax cost setting amount for the asset for that income year;

(b) the unexpended tax cost setting amount for the asset for the first income year ending after the joining time, divided by the lesser of:

(i) 10; or

(ii) if the contract or agreement giving rise to the valuable right mentioned in paragraph 716-410(a) is for a specified period—the number of days in that period that end after the joining time, divided by 365 and rounded upwards to the nearest whole number.

(4) The ***unexpended tax cost setting amount*** for the asset for an income year is the *tax cost setting amount for the asset, reduced by:

(a) the amounts (if any) of all deductions under this section in respect of the asset for previous income years ending after the joining time; and

(b) in determining the amount of a deduction under this section in respect of the asset for that income year for an entity that

ceased to be a *subsidiary member of the group in that income year—the amount (if any) that the *head company of the group can deduct under this section in respect of the asset for that income year.

(5) An entity is qualified for a deduction under this subsection for an income year for the asset if:

(a) the entity:

(i) is the *head company of the group; and

(ii) held the asset at a time in that income year (whether or not because of the operation of subsection 701-1(1) (the single entity rule)); or

(b) the entity:

(i) held the asset at a time in that income year; and

(ii) ceased to be a *subsidiary member of the group in that income year or an earlier income year.

(6) An amount deducted under this section:

(a) is not to be deducted under any other provision of this Act; and

(b) is not to be taken into account in determining an amount that is included in the assessable income of any entity qualified for a deduction under subsection (5) for any income year for the asset; and

(c) is not to be taken into account in determining an amount of a deduction of any entity qualified for a deduction under subsection (5) for any income year for the asset; and

(d) despite paragraphs (b) and (c), is taken never to have been included in any of the elements of the *cost base of the asset.

716-410 Rights to amounts that are expected to be included in assessable income after joining time

This section covers an asset at a time if:

(a) the asset is a valuable right covered by subsection 701-90(1); and

Note: Such a valuable right is treated as a separate asset for the purposes of this Part (see subsection 701-90(2)).

(b) the asset is held by an entity just before the time (the ***joining time***) it became a *subsidiary member of a *consolidated group; and

(c) it is reasonable to expect that an amount attributable to the asset will be included in the assessable income of the entity or any other entity after the joining time; and

(d) Division 230 does not apply in relation to the asset (disregarding section 230-455).

5 Subsection 995-1(1)

Insert:

unexpended tax cost setting amount has the meaning given by section 716-405.

Division 2—Foreign currency gains and losses

Income Tax Assessment Act 1997

6 After Subdivision 715-D

Insert:

Subdivision 715-E—Interactions with Division 775 (Foreign currency gains and losses)

Table of sections

715-370 Cost setting—reference time for determining currency exchange rate effect

715-370 Cost setting—reference time for determining currency exchange rate effect

(1) This section applies if:

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

(b) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group held an asset at the joining time because the joining entity became a subsidiary member of the group; and

(c) the asset is a reset cost base asset at the joining time (within the meaning of section 705-35); and

(d) in working out the asset's *tax cost setting amount, the currency exchange rate of a particular *foreign currency is taken into account in determining the *market value of the asset.

(2) For the purposes of Division 775, determine the extent of any *currency exchange rate effect after the joining time in relation to the asset, by reference to the currency exchange rate for the *foreign currency at the joining time.

Division 3—Application and transitional provisions

7 Application provision

(1) The amendments made by Division 1 of this Part apply on and after 1 July 2002.

(2) The amendment made by Division 2 of this Part applies in relation to a consolidated group or MEC group on and after:

(a) if the head company of the group makes a choice in accordance with subitems (3) and (4)—1 July 2002; or

(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(3) A choice mentioned in paragraph (2)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(4) A choice mentioned in paragraph (2)(a) must be made in writing.

8 Transitional provision—use of the tax cost setting amount

(1) This item applies if:

(a) the tax cost of an asset was set at the time (the ***joining time***) an entity (the ***joining entity***) became a subsidiary member of a consolidated group or MEC group, at the asset's tax cost setting amount; and

(b) the asset is a trade receivable that is denominated in foreign currency; and

(c) CGT event C2 happens in relation to the asset:

(i) after the joining time; and

(ii) before 23 August 2006; and

(d) just before the CGT event, the head company of the group held the asset because of the operation of subsection 701-1(1) of the *Income Tax Assessment Act 1997* (the single entity rule); and

(e) disregarding section 118-20 of that Act, there is a capital gain or capital loss from the event; and

(f) the head company of the group makes a choice to apply this item, in accordance with subitems (4) and (5).

(2) These provisions do not apply to the CGT event:

(a) section 6-5 of the *Income Tax Assessment Act 1997* (about ordinary income);

(b) any other provision of that Act that includes an amount in assessable income, other than a provision in Part 3-1 or 3-3 of that Act;

(c) section 8-1 of that Act (about amounts you can deduct);

(d) any other provision of that Act that allows you to deduct an amount from your assessable income;

(e) section 118-20 of that Act.

(3) The provisions referred to in subitem (2) can apply to the CGT event to the extent that any capital gain or capital loss from the event is attributable to currency exchange rate fluctuations.

(4) A choice mentioned in paragraph (1)(f) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(5) The way the head company prepares its income tax return is sufficient evidence of the making of the choice.

Part 2—Group restructures

Income Tax Assessment Act 1997

9 Paragraph 703-75(2)(d)

Omit "group);", substitute "group); or".

10 After paragraph 703-75(2)(d)

Insert:

(e) section 719-125 (about the effects of a group conversion involving a MEC group);

11 Section 719-25 (heading)

Repeal the heading, substitute:

719-25 Head company, subsidiary members and members of a MEC group

12 At the end of section 719-25

Add:

(3) The ***members*** of a *MEC group are the *head company of the group and the *subsidiary members of the group.

13 Subparagraph 719-65(3)(d)(i)

Omit "the group came into existence as a result of a choice under section 719-50, and".

14 After paragraph 719-90(2)(c)

Insert:

(ca) section 719-125 (about the effects of a group conversion involving a MEC group); or

15 After Subdivision 719-B

Insert:

Subdivision 719-BA—Group conversions involving MEC groups

Table of sections

719-120 Application
719-125 Head company of new group retains history of head company of old group
719-130 Provisions of this Part not to apply to conversion
719-135 Provisions of this Part applying to conversion despite section 719-130
719-140 Other provisions of this Part not applying to conversion

719-120 Application

(1) This Subdivision applies if, at a particular time (the ***conversion time***):

(a) a *consolidated group (the ***new group***) is *created from a *MEC group (the ***old group***); or

(b) a MEC group (the ***new group***) is created from a consolidated group (the ***old group***).

(2) However, sections 719-130 and 719-135 apply only in relation to entities that:

(a) were *members of the old group just before the conversion time; and

(b) are members of the new group at that time.

719-125 Head company of new group retains history of head company of old group

(1) Everything that happened in relation to the *head company of the old group before the conversion time is taken instead to have happened in relation to:

(a) if the head company of the old group is the same entity as the head company of the new group—that entity in its role as head company of the new group; or

(b) otherwise—the head company of the new group (just as if the head company of the new group had been the head company of the old group at all times before the conversion time).

(2) To avoid doubt, subsection (1) also covers everything that, immediately before the conversion time, was taken to have

happened in relation to the *head company of the old group because of:

(a) section 701-1 (the single entity rule); or

(b) section 701-5 (the entry history rule); or

(c) section 703-75 (about the effects of choice to continue *consolidated group after shelf company becomes new head company); or

(d) section 719-90 (about the effects of a change of head company of a *MEC group); or

(e) one or more previous applications of this Division.

(3) Subsections (1) and (2) have effect:

(a) for the *head company core purposes in relation to an income year ending after the conversion time; and

(b) for the entity core purposes in relation to an income year ending after the conversion time; and

(c) for the purposes of determining the balance of the *franking account of the head company of the new group at and after the conversion time.

(4) Subsections (1) and (2) have effect subject to:

(a) section 701-40 (Exit history rule); and

(b) a provision of this Act to which section 701-40 is subject because of section 701-85 (about exceptions to the core rules in Division 701).

Note: An example of provisions covered by paragraph (b) of this subsection is Subdivision 717-E (about transferring to a company leaving a consolidated group various surpluses under the CFC rules in Part X of the *Income Tax Assessment Act 1936*).

719-130 Provisions of this Part not to apply to conversion

(1) A provision mentioned in subsection (5) that applies on an entity becoming a *member of a *consolidated group or *MEC group does *not* apply to an entity becoming such a member because of a situation described in subsection 719-120(1), unless the provision is expressed to apply despite this subsection.

Note 1: An example of the effect of this subsection is that section 701-5 (entry history rule) does not apply. See instead section 719-125.

Note 2: Further examples of the effect of this subsection are that Division 705 (cost setting on entry) and Division 707 (losses) do not apply.

(2) Subsection (1) does not affect the application of subsection 701-1(1) (the single entity rule).

(3) A provision mentioned in subsection (5) that applies on an entity ceasing to be a *member of a *consolidated group or *MEC group does *not* apply to an entity ceasing being such a member because of a situation described in subsection 719-120(1), unless the provision is expressed to apply despite this subsection.

Note 1: An example of the effect of this subsection is that section 701-40 (Exit history rule) does not apply. See instead section 719-125.

Note 2: Another example of the effect of this subsection is that Division 711 (cost setting on exit) does not apply.

(4) Subsection (3) does not apply if:

(a) the old group mentioned in subsection 719-120(1) is a *consolidated group; and

(b) the new group mentioned in subsection 719-120(1) is a *MEC group; and

(c) the entity ceasing to be a *member of the old group becomes an *eligible tier-1 company in respect of the new group.

(5) The provisions are as follows:

(a) Subdivision 104-L;

(b) section 165-212E;

(c) this Part (other than this Subdivision);

(d) Part 3-90 of the *Income Tax (Transitional Provisions) Act 1997*.

719-135 Provisions of this Part applying to conversion despite section 719-130

(1) This section applies despite subsections 719-130(1) and (3).

(2) If the new group is a *consolidated group, the following provisions may apply on an entity ceasing to be a *member of the old group:

(a) Subdivision 719-K;

(b) any other provision of this Part, to the extent that the application of the provision is necessary for the application of Subdivision 719-K.

719-140 Other provisions of this Part not applying to conversion

If the new group is a *consolidated group, the following provisions do not apply merely because the old group ceases to exist at the conversion time (or merely because the *potential MEC group of which the old group consisted ceases to exist at that time):

(a) section 719-280;

(b) section 719-465;

(c) section 719-705;

(d) section 719-725;

(e) any other provision of this Part, to the extent that the application of the provision is necessary for the application of any of those sections.

16 Subsection 995-1(1) (after paragraph (b) of the definition of *member*)

Insert:

(ba) in relation to a *MEC group—has the meaning given by section 719-25; and

(bb) in relation to a *potential MEC group—has the meaning given by section 719-10; and

17 Application provision

(1) The amendments made by this Part apply in relation to the creation of a MEC group from a consolidated group, or a consolidated group from a MEC group, on or after:

(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or

(b) otherwise—27 October 2006.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

(4) Despite subitem (1), the amendment made by item 13 of this Schedule applies on and after 1 July 2002.

Part 3—Pre-CGT proportions

Income Tax Assessment Act 1997

18 Section 705-125 (heading)

Repeal the heading, substitute:

705-125 Pre-CGT proportion for joining entity

19 Subsection 705-125(1)

Omit "That mechanism involves working out a factor by which the pre-CGT status can be attached to the joining entity's assets and then recognised in membership interests held in an entity that owns the assets on ceasing to be a *subsidiary member of the joined group.", substitute "That mechanism involves:

(a) working out the proportion (measured by market value) of the membership interests in the joining entity that have pre-CGT status; and

(b) if the joining entity later ceases being a member of the group, attaching pre-CGT status to that proportion of membership interests in it (see section 711-65), subject to integrity rules (see section 711-70).".

20 Subsections 705-125(2) and (3)

Repeal the subsections, substitute:

How to work out pre-CGT proportion

(2) The ***pre-CGT proportion*** is the amount worked out by dividing:

(a) the sum of the *market value of each *membership interest in the joining entity that is:

(i) held by a *member of the group at the joining time; and

(ii) is a *pre-CGT asset;

by:

(b) the sum of the market value of each membership interest in the joining entity that is held by a member of the group at the joining time.

21 Subsection 705-125(4)

Omit "paragraph (3)(a)", substitute "subsection (2)".

22 Section 705-165

Repeal the section.

23 Section 705-205

Repeal the section.

24 Section 705-245

Repeal the section.

25 Section 711-65 (heading)

Repeal the heading, substitute:

711-65 Membership interests treated as having been acquired before 20 September 1985

26 Subsection 711-65(1)

Repeal the subsection, substitute:

When this section applies

(1) This section applies unless:

(a) Subdivision 705-C (about one group joining another consolidated group) applies in relation to the old group; and

(b) the leaving entity is a *subsidiary member of the old group.

(1A) To avoid doubt, this section applies regardless of whether the leaving entity ceases to be a *subsidiary member of the old group at the leaving time because another entity also ceases to be a subsidiary member of the old group at the leaving time.

27 Subsection 711-65(2) (note)

Repeal the note.

28 Subsection 711-65(4) (definition of *leaving entity's pre-CGT proportion*)

Omit "subsection (5)", substitute "section 705-125".

29 Subsection 711-65(5)

Repeal the subsection.

30 Section 711-70

Repeal the section, substitute:

711-70 Additional integrity rule if membership interests treated as having been acquired before 20 September 1985 under section 711-65—application of Division 149 to head company

(1) This section applies if:

(a) the leaving entity held assets at the time it became a *subsidiary member of the old group (disregarding subsection 701-1(1) (the single entity rule)); and

(b) some or all of the assets:

(i) stopped being *pre-CGT assets under Division 149 at a time (the ***Division 149 time***) when the *head company of the group held them under subsection 701-1(1) (the single entity rule); or

(ii) would have stopped being pre-CGT assets under Division 149 at a time (also the ***Division 149 time***) when the head company of the group held them under subsection 701-1(1) (the single entity rule) if they had been pre-CGT assets just before that time; and

(c) the leaving entity was a subsidiary member of the group at that time.

(2) The *pre-CGT proportion of the leaving entity at the leaving time is taken to be nil.

(3) Adjust the old group's *allocable cost amount for the leaving entity as follows:

(a) if the amount under subsection (4) exceeds the amount under subsection (6)—increase the allocable cost amount by the excess;

(b) if the amount under subsection (4) falls short of the amount under subsection (6)—reduce the allocable cost amount by the shortfall.

(4) Subject to subsection (5), the amount under this subsection is:

(a) if Subdivision 705-A applied in relation to the leaving entity at the time it became a *subsidiary member of the old group—the total of the amounts that were taken into account under subsection 705-65(1) for *membership interests in the leaving entity at that time; or

(b) otherwise—assuming that Subdivision 705-A had applied in relation to the leaving entity at the time it became a subsidiary member of the old group, the total of the amounts that would have been taken into account under subsection 705-65(1) for membership interests in the leaving entity at that time.

(5) For the purposes of subsection (4), if a *membership interest in the leaving entity was covered under paragraph 705-125(2)(a) (pre-CGT interests) when it became a *subsidiary member of the old group, treat the amount that was taken into account for the membership interest under subsection 705-65(1) as the interest's *market value just after the Division 149 time.

(6) The amount under this subsection is the old group's *allocable cost amount for the leaving entity, worked out on the assumption that the leaving entity ceased to be a *subsidiary member of the old group just after the Division 149 time.

711-75 Additional integrity rule if membership interests treated as having been acquired before 20 September 1985 under section 711-65—application of CGT event K6

(1) This section applies if the leaving entity ceases to be a *subsidiary member of the old group because of a situation giving rise to *CGT event A1, C2, E1, E2 or E8 in relation to one or more *membership interests in the leaving entity.

(2) For the purposes of applying subsections 104-230(2) and (8) in relation to those *membership interests:

(a) disregard subsection 701-1(1) (the single entity rule) in working out the *net value of the leaving entity; and

(b) treat the reference in subsection 104-230(2) to "Just before the other event happened" as a reference to "Just before the leaving time".

Note 1: The single entity rule will continue to apply in determining whether the property mentioned in subsection 104-230(2) for the leaving entity was acquired on or after 20 September 1985.

Note 2: However, in a case of multiple exit from a consolidated group (see section 711-55), the property mentioned in subsection 104-230(2) for the leaving entity may include membership interests in another entity leaving the group at the leaving time. To determine which of those membership interests were acquired on or after 20 September 1985 for the purposes of applying subsection 104-230(2) to the leaving entity, see section 711-65.

(3) In determining the sum of the *cost bases of the property mentioned in subsection 104-230(6), treat the cost base of an asset that is included in that property as:

(a) if the asset has its *tax cost set at the leaving time under section 701-50—its *tax cost setting amount; or

(b) if the *terminating value of the asset is taken into account in working out the step 1 amount under section 711-25 for the leaving entity—that terminating value; or

(c) if the asset is taken into account in working out the step 3 amount under section 711-40 for the leaving entity—the value of the asset that is so taken into account.

31 Section 713-245

Repeal the section.

32 Section 713-270

Repeal the section.

33 Subsection 995-1(1) (definition of *pre-CGT factor*)

Repeal the definition.

34 Subsection 995-1(1)

Insert:

pre-CGT proportion has the meaning given by section 705-125.

35 Application provision

(1) The amendments made by this Part apply in relation to an entity that becomes a subsidiary member of a consolidated group or MEC group on or after:

(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or

(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

Part 4—No double counting of amounts in ACA

Income Tax Assessment Act 1997

36 After section 705-60

Insert:

705-62 No double counting of amounts in allocable cost amount

(1) The object of this section is to prevent a particular amount from being taken into account more than once in calculating the *allocable cost amount for the joining entity, in order to promote the object of this Subdivision set out in section 705-10.

(2) Subsection (3) applies if, apart from this section, 2 or more provisions of this Act operate with the result of altering:

(a) the *allocable cost amount for the joining entity; or

(b) the allocable cost amount for another entity that becomes a *subsidiary member of the group at the joining time;

because of a particular economic attribute of the joining entity (see subsection (6)).

(3) Only one of those alterations is to be made, as follows:

(a) if the *head company of the group makes a choice in accordance with subsections (4) and (5)—the alteration specified in the choice is to be made;

(b) otherwise—the alteration that is most appropriate (in the light of the object of this Subdivision) is to be made.

(4) A choice mentioned in paragraph (3)(a) must be made:

(a) by the day the *head company of the group lodges its *income tax return for the income year in which the joining time occurs; or

(b) within a further time allowed by the Commissioner.

(5) A choice mentioned in paragraph (3)(a) must be made in writing.

(6) The ***economic attributes*** of the joining entity mentioned in subsection (2) include the following:

(a) the joining entity's retained profits;
(b) the joining entity's distributions of profits to other entities;
(c) the joining entity's realised and unrealised losses;
(d) the joining entity's deductions;
(e) the joining entity's accounting liabilities (within the meaning of subsection 705-70(1));
(f) consideration received by the joining entity for issuing *membership interests in itself.

37 Application provision

(1) The amendment made by this Part applies in relation to a consolidated group or MEC group on and after:
(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or
(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) A choice mentioned in paragraph (1)(a) must be made:
(a) on or before 30 June 2011; or
(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

38 Transitional provision—choice where pre-commencement joining time

(1) This item applies if the joining time mentioned in paragraph 705-62(4)(a) of the *Income Tax Assessment Act 1997* occurs before the day on which this item commences.

(2) Despite subsection 705-62(4) of the *Income Tax Assessment Act 1997*, the choice mentioned in that subsection must be made:
(a) on or before 30 June 2011; or
(b) within a further time allowed by the Commissioner.

Part 5—Pre-joining time roll-overs

Income Tax Assessment Act 1997

39 Paragraph 104-505(1)(b)

Omit "(after any application of section 705-150)".

40 Section 705-60 (table item 3A)

Repeal the item, substitute:

3A	For each step 3A amount (if any) under section 705-93 (which is about pre-joining time roll-overs): (a) if the step 3A amount is a *deferred roll-over loss—add to the result of step 3 (as affected by any previous application of this step) the step 3A amount; or (b) if the step 3A amount is a *deferred roll-over gain—subtract from the result of step 3 (as affected by any previous application of this step) the step 3A amount	To adjust for certain roll-overs before the joining time affecting deferred gains and losses

41 Section 705-93 (heading)

Repeal the heading, substitute:

705-93 If pre-joining time roll-over from foreign resident company or head company—step 3A in working out allocable cost amount

42 After paragraph 705-93(1)(a)

Insert:

(aa) at the joining time, as a result of the Subdivision 126-B roll-over or the section 160ZZO roll-over, the roll-over asset has:

(i) a *deferred roll-over gain; or

(ii) a *deferred roll-over loss; and

43 Paragraph 705-93(1)(b)

Repeal the paragraph, substitute:

(b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over:

(i) was a foreign resident; or

(ii) is the *head company in relation to the joined group; and

44 Paragraph 705-93(1)(c)

Repeal the paragraph, substitute:

(c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over:

(i) was an Australian resident; and

(ii) is a *spread entity in relation to the joined group; and

45 Paragraph 705-93(1)(d)

Repeal the paragraph, substitute:

(d) if the recipient company was previously a *subsidiary member of another consolidated group—the conditions in section 104-182 were *not* satisfied at any time in relation to the other group between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the joining time; and

46 Subsection 705-93(2)

Repeal the subsection, substitute:

(2) The step 3A amount is the amount of the *deferred roll-over gain or the *deferred roll-over loss mentioned in paragraph (1)(aa).

47 Subsections 705-147(3), (4) and (5)

Repeal the subsections, substitute:

Membership interests in subsidiary members of group

(3) In applying section 705-93 for the purposes of this Subdivision, disregard paragraph 705-93(1)(f) if:

(a) the rollover asset mentioned in that section is a *membership interest in an entity that becomes a *subsidiary member at the formation time; and

(b) the rollover asset is *not* held at that time by the entity that becomes the *head company of the group.

Note: The step 3A amount is worked out under section 705-93.

48 Section 705-150

Repeal the section.

49 Subsections 705-227(3), (4) and (5)

Repeal the subsections, substitute:

Membership interests in subsidiary members of group

(3) In applying section 705-93 for the purposes of this Subdivision, disregard paragraph 705-93(1)(f) if:

(a) the rollover asset mentioned in that section is a *membership interest in an entity that becomes a *subsidiary member at the linked entity joining time; and

(b) the rollover asset is *not* held at that time by the entity that becomes the *head company of the group.

Note: The step 3A amount is worked out under section 705-93.

50 Subsection 995-1(1)

Insert:

deferred roll-over gain: an asset has a deferred roll-over gain at a particular time if:

(a) before that time there was a roll-over under a provision or former provision of this Act in relation to a disposal or a *CGT event that happened in relation to the asset; and

(b) as a result of the roll-over all or part of a *capital gain from the disposal or CGT event was disregarded.

The amount of the deferred roll-over gain is equal to the amount of the capital gain that was disregarded, reduced by the amount (if any) by which the gain has been taken into account in working out a *net capital gain (section 102-5) or *net capital loss (section 102-10) in relation to the asset between the roll-over time and the particular time.

51 Subsection 995-1(1)

Insert:

deferred roll-over loss: an asset has a deferred roll-over loss at a particular time if:

(a) before that time there was a roll-over under a provision or former provision of this Act in relation to a disposal or a *CGT event that happened in relation to the asset; and

(b) as a result of the roll-over all or part of a *capital loss from the disposal or CGT event was disregarded.

The amount of the deferred roll-over loss is equal to the amount of the capital loss that was disregarded, reduced by the amount (if any) by which the loss has been taken into account in working out a *net capital gain (section 102-5) or *net capital loss (section 102-10) in relation to the asset between the roll-over time and the particular time.

52 Subsection 995-1(1)

Insert:

spread entity, in relation to a *consolidated group or *MEC group, means a *member of the group that is not a *stick entity in relation to the group.

53 Subsection 995-1(1)

Insert:

stick entity:

(a) in relation to a *consolidated group—means a *member of the group that is:

(i) the *head company of the group; or

(ii) a chosen transitional entity (within the meaning of Division 701 of the *Income Tax (Transitional Provisions) Act 1997*); or

(iii) a transitional foreign-held subsidiary (within the meaning of Division 701C of the *Income Tax (Transitional Provisions) Act 1997*); or

(b) in relation to a *MEC group—means a member of the group that is:

(i) the head company of the group; or

(ii) a chosen transitional entity (within the meaning of Division 701 of the *Income Tax (Transitional Provisions) Act 1997*); or

(iii) a transitional foreign-held subsidiary (within the meaning of Division 701C of the *Income Tax (Transitional Provisions) Act 1997*); or

(iv) an *eligible tier-1 company.

Income Tax (Transitional Provisions) Act 1997

54 Section 126-165 (paragraph (c) of the example)

Omit "section 705-150", substitute "section 705-93".

55 Application provision

The amendments made by this Part apply on and after 1 July 2002.

Part 6—Phasing out over-depreciation adjustments

Division 1—Joining times between 8 May 2007 and 30 June 2009

Income Tax Assessment Act 1997

56 Paragraph 705-50(2)(b)

Omit "before the joining time", substitute "during the period of 5 years ending at the joining time".

57 Application provision

The amendment made by this Division applies in relation to entities that become members of a consolidated group or MEC group during the period:

(a) starting on 9 May 2007; and

(b) ending on 30 June 2009.

Division 2—Repeal of section 705-50 with effect from 1 July 2009

Income Tax Assessment Act 1997

58 Section 705-50

Repeal the section.

59 Section 705-55 (heading)

Repeal the heading, substitute:

705-55 Order of application of sections 705-40, 705-45 and 705-47

60 Subparagraph 705-55(b)(iii)

Omit "705-47;", substitute "705-47.".

61 Subparagraph 705-55(b)(iv)

Repeal the subparagraph.

62 Paragraph 705-57(2)(d)

Omit "705-45, 705-47 or 705-50", substitute "705-45 or 705-47".

63 Subsection 705-57(6)

Omit "705-45, 705-47 or 705-50", substitute "705-45 or 705-47".

64 Subsection 705-59(7)

Omit "705-45, 705-47 and 705-50", substitute "705-45 and 705-47".

65 Section 705-190

Repeal the section.

66 Section 713-225(5)

Repeal the subsection.

67 Section 713-230

Repeal the section.

68 Subsection 715-900(2) (note 2)

Repeal the note, substitute:

Note 2: The operation of Division 58 just before the joining time can affect the basis on which the tax cost is set for a depreciating asset that becomes an asset of the head company of the consolidated group at the joining time because of section 701-1 (the single entity rule). That Division provides the basis for working out under Division 40 the asset's adjustable value. This is the entity's terminating value for the asset, which in turn can affect the tax cost setting amount for the asset under sections 705-40, 705-45 and 705-47.

69 Subsection 716-330(9)

Repeal the subsection.

70 Subsection 716-340(8) (note)

Repeal the note, substitute:

Note: Subsections (6), (7) and (8) can affect the working out of the tax cost setting amount for the in-house software, by affecting the joining entity's terminating value for the software, which section 705-30 defines as being the adjustable value of the software just before the joining time, and which is relevant to sections 705-40 and 705-57 (which may reduce the tax cost setting amount for the software).

71 Subsection 995-1(1) (definition of *over-depreciated*)

Repeal the definition.

72 Subsection 995-1(1) (definition of *over-depreciation*)

Repeal the definition.

Income Tax (Transitional Provisions) Act 1997

73 Section 126-165 (paragraph (b) of the example)

Repeal the paragraph.

74 Subsection 701-40(1)

Omit "(5)", substitute "(4)".

75 Paragraph 701-40(3)(b)

Omit "section 705-50", substitute "former section 705-50".

76 Subsection 701-40(5)

Repeal the subsection.

77 Subsection 705-305(9) (note)

Omit "sections 705-40 and 705-50", substitute "section 705-40".

78 Application provision

The amendments made by this Division apply in relation to entities that become members of a consolidated group or MEC group on or after 1 July 2009.

Part 7—Leaving time liabilities

Division 1—Timing

Income Tax Assessment Act 1997

79 Subsection 711-20(1) (cell at table item 1, column headed "What the step requires")

Omit "the *terminating values of assets that the leaving entity takes with it when it ceases to be a *subsidiary member", substitute "the *terminating values of the leaving entity's assets just before the leaving time".

80 Subsection 711-20(1) (cell at table item 2, column headed "What the step requires")

Omit "the *terminating value of the assets that the leaving entity takes with it", substitute "the *terminating value of the leaving entity's assets just before the leaving time".

81 Subsection 711-20(1) (cell at table item 4, column headed "What the step requires")

Omit:

(a) the liabilities that the leaving entity takes with it when it ceases to be a *subsidiary member; and

Substitute:

(a) the leaving entity's liabilities just before the leaving time; and

82 Section 711-25 (heading)

Repeal the heading, substitute:

711-25 Terminating values of the leaving entity's assets—step 1 in working out allocable cost amount

83 Subsection 711-45(1)

Omit "is a liability of the leaving entity at the leaving time", substitute "is a liability of the leaving entity just before the leaving time".

84 Paragraph 713-265(4)(a)

Omit "is a liability of the partnership at the leaving time", substitute "is a liability of the partnership just before the leaving time".

85 Paragraph 713-265(4)(b)

Omit "of the partner at the leaving time", substitute "of the partner just before the leaving time".

86 Subsection 713-265(4)

Omit "of the partner at the leaving time,", substitute "of the partner just before the leaving time,".

87 Application provision

(1) The amendments made by this Division apply on and after the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) The amendments made by this Division are to be disregarded for the purposes of interpreting:

(a) the provisions amended by this Division, as they applied before the day mentioned in subitem (1); and

(b) any other provision of the *Income Tax Assessment Act 1997* or the *Income Tax (Transitional Provisions) Act 1997*, as that provision applied before the day mentioned in subitem (1), to the extent that it relates to a provision mentioned in paragraph (a).

Division 2—Adjustment of step 4 amount

Income Tax Assessment Act 1997

88 Subsection 711-45(8)

Repeal the subsection, substitute:

Adjustment where amount of liability differed for purpose of calculating allocable cost amount on entry

(8) Subsection (10) applies if:

(a) either:

(i) an amount (the ***exit liability amount***) was added for a particular liability under subsection (5); or

(ii) a particular liability is covered by subsection (5), but no amount was added for it under that subsection (in which case the ***exit liability amount*** is zero); and

(b) the liability was taken into account in working out the *allocable cost amount (the ***original entry ACA***) for a *subsidiary member (whether or not the leaving entity) of the old group in accordance with Division 705; and

(c) the exit liability amount is not the same as the amount (the ***entry liability amount***) of the liability that was taken into account in working out the original entry ACA, after any adjustments made under:

(i) section 705-70, 705-75 or 705-80; and

(ii) subsection (9) of this section; and

(d) if the liability is a provision for annual leave or long service leave, or a provision for a liability contingent on a future event:

(i) in the case of a liability that was, in accordance with the *accounting principles that the entity would have used if it had prepared its financial statements just before the time it became a subsidiary member of the group, a current liability of the entity at that time—the leaving time occurs less than 1 year after that time; or

(ii) otherwise—the leaving time occurs less than 4 years after that time.

(9) Make these adjustments to the entry liability amount if, at a time when the leaving entity was a *subsidiary member of the old group, the *head company of the group paid an amount that reduced the liability:

(a) reduce the entry liability amount by the amount of the reduction; and

(b) if the payment gave rise to an amount being included in the assessable income of the head company—after making the

reduction in paragraph (a), further reduce the entry liability amount by the product of:

(i) the amount included in assessable income; and

(ii) the *corporate tax rate; and

(c) if the payment gave rise to a deduction for the head company—after making the reduction in paragraph (a), increase the entry liability amount by the product of:

(i) the amount deducted; and

(ii) the corporate tax rate.

(10) The step 4 amount is altered by:

(a) if the entry liability amount exceeds the exit liability amount—increasing the step 4 amount by the excess; or

(b) if the entry liability amount falls short of the exit liability amount—decreasing the step 4 amount by the shortfall.

89 Application provision

The amendment made by this Division applies in relation to an entity ceasing to be a subsidiary member of a consolidated group or MEC group on or after the day on which the Bill that became this Act was introduced into the House of Representatives.

Part 8—Accounting principles

Income Tax Assessment Act 1997

90 Paragraph 701-40(2)(b)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "*accounting principles".

91 Paragraph 705-56(1)(b)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "its *accounting principles for tax cost setting".

92 Subsection 705-58(1)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, require them to be set off against each other", substitute ", in accordance with *accounting principles, they are required to be set off against each other".

93 Subsection 705-59(2)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the entity's *accounting principles for tax cost setting".

94 Subsection 705-70(1)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the joining entity's *accounting principles for tax cost setting".

95 Subsection 705-70(1)

Omit "that can or must be recognised in the entity's statement of financial position".

96 Subsection 705-70(1A)

Omit "those *accounting standards or statements", substitute "the *accounting principles".

97 At the end of section 705-70

Add:

Joining entity's accounting principles for tax cost setting

(3) The joining entity's ***accounting principles for tax cost setting*** are the *accounting principles that the entity would use if it were to prepare its financial statements just before the joining time.

98 Paragraph 705-80(1)(a)

Omit "*accounting standards or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the joining entity's *accounting principles for tax cost setting".

99 Paragraph 705-85(3)(b)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the joining entity's *accounting principles for tax cost setting".

100 Subsection 705-90(2)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the joining entity's *accounting principles for tax cost setting".

101 Subsection 705-90(2)

Omit "that could be recognised in the joining entity's statement of financial position if that statement were prepared as at the joining time".

102 Subsection 711-45(1)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the leaving entity's *accounting principles for tax cost setting".

103 Subsection 711-45(1)

Omit "that can or must be identified in the entity's statement of financial position".

104 After subsection 711-45(1)

Insert:

Leaving entity's accounting principles for tax cost setting

(1A) The leaving entity's ***accounting principles for tax cost setting*** are the *accounting principles that the group would use if it were to prepare its financial statements just before the leaving time (disregarding subsection 701-1(1) (the single entity rule)).

105 Subsection 711-45(5)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the leaving entity's *accounting principles for tax cost setting".

106 Subsection 711-45(7)

Omit "*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "the leaving entity's *accounting principles for tax cost setting".

107 Paragraph 713-225(6)(a)

Omit "according to *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "in accordance with the *accounting principles that the partnership would use if it were to prepare its financial statements just before the joining time".

108 Paragraph 713-225(6)(a)

Omit "that can or must be recognised in the partnership's statement of financial position".

109 Paragraph 713-265(4)(a)

Omit "according to *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board", substitute "in accordance with the *accounting principles that the partnership would use if it were to prepare its financial statements just before the leaving time (disregarding subsection 701-1(1) (the single entity rule))".

110 Paragraph 713-265(4)(a)

Omit "that can or must be recognised in the partnership's statement of financial position".

111 Subsection 995-1(1)

Insert:

accounting principles: A matter is in accordance with ***accounting principles*** if it is in accordance with:

(a) *accounting standards; or

(b) if there are no accounting standards applicable to the matter—authoritative pronouncements of the Australian Accounting Standards Board that apply to the preparation of financial statements.

112 Subsection 995-1(1)

Insert:

accounting principles for tax cost setting has the meaning given by:

(a) subsection 705-70(3); and

(b) subsection 711-45(1A).

113 Application provision

The amendments made by this Part apply on and after the day on which the Bill that became this Act was introduced into the House of Representatives.

Part 9—Inherited deductions

Income Tax Assessment Act 1997

114 At the end of section 705-115

Add:

(3) Subsection (2) does *not* cover a deduction under section 43-15 (which relates to *undeducted construction expenditure) if the joining entity *acquired the asset to which the deduction relates at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

115 Subsection 711-35(1)

Repeal the subsection, substitute:

(1) Work out the step 2 amount for the purposes of the table in subsection 711-20(1) by multiplying all deductions covered by subsection (2) by the *general company tax rate.

116 At the end of section 711-35

Add:

(3) Subsection (2) does *not* cover a deduction under section 43-15 (which relates to *undeducted construction expenditure) if, because of section 701-40 (the exit history rule), the leaving entity is taken to have *acquired the asset to which the deduction relates at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

117 Application provision

(1) The amendments made by items 114 and 116 apply on and after 1 July 2002.

(2) The other amendment made by this Part applies on and after the day on which the Bill that became this Act was introduced into the House of Representatives.

Part 10—General insurance companies

Income Tax Assessment Act 1997

118 At the end of Subdivision 713-M

Add:

713-725 Treatment of certain assets and liabilities of general insurance companies

(1) This section applies if a *general insurance company becomes or ceases to be a *subsidiary member of a *consolidated group.

(2) If the *general insurance company becomes a *subsidiary member of the group:

(a) in working out the step 2 amount for the purposes of the table in section 705-60, reduce that amount by the sum of the amount of each thing mentioned in subsection (4); and

(b) in working out the *tax cost setting amount of a thing mentioned in subsection (4) for the purposes of section 705-35, treat the *market value of the thing as zero.

(3) If the *general insurance company ceases to be a *subsidiary member of the group:

(a) in working out the step 4 amount for the purposes of the table in section 711-20, reduce that amount by the sum of the amount of each thing mentioned in subsection (4); and

(b) for the purposes of section 711-25, treat the *terminating value of a thing mentioned in subsection (4) as zero.

(4) The things are the *general insurance company's:

(a) deferred acquisition costs in relation to the company's unearned premium reserve; and

(b) deferred reinsurance expenses in relation to the company's unearned premium reserve; and

(c) recoveries receivable in relation to the company's *outstanding claims.

119 Application provision

The amendment made by this Part applies in relation to a general insurance company becoming or ceasing to be a subsidiary member of a consolidated group or MEC group on or after 1 July 2002.

Part 11—Retained cost base assets

Division 1—Cash management trusts

Income Tax Assessment Act 1997

120 Subsection 705-25(2)

Omit "paragraph (a) or (b)", substitute "paragraph (a), (b) or (ba)".

121 After paragraph 705-25(5)(b)

Insert:

(ba) a unit in a *cash management trust, if:

(i) the redemption value of the unit is expressed in Australian dollars; and

(ii) the redemption value of the unit cannot increase; or

122 Subsection 995-1(1)

Insert:

cash management trust means a trust that satisfies these requirements:

(a) the trust is of a kind commonly known as a cash management trust;

(b) each unit in the trust carries the same rights as every other unit in the trust.

Division 2—Rights to future income assets

Income Tax Assessment Act 1997

123 After subsection 705-25(4A)

Insert:

Rights to payments in respect of uncompleted work etc.

(4B) If the *retained cost base asset is covered by paragraph (d) of the definition of that expression, its *tax cost setting amount is equal to the joining entity's *terminating value for the asset.

124 Subparagraph 705-25(5)(c)(ii)

Omit "is incurred.", substitute "is incurred; or".

125 After paragraph 705-25(5)(c)

Insert:

; or (d) a right that is an asset covered by section 716-410 (rights to future amounts that are expected to be included in assessable income) if at the time the right was created:

(i) the *head company was the head company of a *consolidatable group; and

(ii) the joining entity was a *subsidiary member of the consolidatable group.

Division 3—Application provision

126 Application provision

(1) The amendments made by Division 1 of this Part apply in relation to a consolidated group or MEC group on and after:

(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or

(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

(4) The amendments made by Division 2 of this Part apply in relation to a consolidated group or MEC group on and after 1 July 2002.

Part 12—Removal of CGT event L7

Income Tax Assessment Act 1997

127 Section 104-5 (table item relating to CGT event L7)

Repeal the item.

128 Section 104-530

Repeal the section.

129 Section 110-10 (table item relating to CGT event L7)

Repeal the item.

Income Tax (Transitional Provisions) Act 1997

130 Section 701-34

Repeal the section.

131 Application provision

(1) The amendments made by this Part apply on and after 1 July 2002.

(2) However, the amendments made by this Part do not apply in relation to a CGT event that:

(a) is CGT event L7; and

(b) happens before the day on which the Bill that became this Act was introduced into the House of Representatives; and

(c) gives rise to a capital loss.

Part 13—Reduction in tax cost setting amount that exceeds market value of certain retained cost base assets

Income Tax Assessment Act 1997

132 After section 705-25

Insert:

705-27 Reduction in tax cost setting amount that exceeds market value of certain retained cost base assets

(1) If:

(a) a *retained cost base asset of the joining entity is a right to receive a specified amount of such Australian currency, covered by paragraph 705-25(5)(b); and

(b) the *market value of the asset is less than the *tax cost setting amount of the asset; and

(c) the head company makes a *capital gain under *CGT event L3 (disregarding this subsection) as a result of the joining entity becoming a *subsidiary member of the group;

reduce the tax cost setting amount of the asset by the amount of the gain (but not below zero).

Note: Reducing the tax cost setting amount of the asset will also reduce the amount of the capital gain (see paragraph 104-510(1)(b)). The amount of the capital gain might be reduced to nil.

(2) If:

(a) the requirements in subsection 701-58(1) (intra-group assets) are satisfied in relation to the asset; and

(b) the joining entity has been entitled to a deduction for an income year ending on or before the joining time because of the *market value of the asset being less than the specified amount mentioned in paragraph (1)(a); and

(c) the accounting liability that corresponds to the asset has *not* been reduced under subsection 705-75(2);

reduce the amount of the reduction under subsection (1) by the amount of the deduction (but not below zero).

(3) If the *tax cost setting amount of 2 or more of the joining entity's assets could be reduced in accordance with subsections (1) and (2):

(a) subsections (1) and (2) apply sequentially to each of those assets; and

(b) the *head company may choose the sequence of assets to which subsections (1) and (2) apply; and

(c) if the head company does not make such a choice—subsections (1) and (2) apply sequentially to each of those assets according to the time at which they were created, from earliest to latest.

Note: Once the amount of the capital gain is reduced to nil as a result of the application of subsections (1) and (2), no further reductions of tax cost setting amount can be made under those subsections.

(4) A choice the *head company can make under paragraph (3)(b) must be made:

(a) by the day the head company lodges its *income tax return for the income year in which the *CGT event happened; or

(b) within a further time allowed by the Commissioner.

(5) The way the *head company prepares its *income tax return is sufficient evidence of the making of the choice.

133 Paragraph 705-35(1)(b)

Omit "in accordance with section 705-25".

134 Application provision

(1) The amendments made by this Part apply in relation to entities that become members of a consolidated group or MEC group on or after:

(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or

(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

Part 14—Blackhole expenditure for MEC Groups

Income Tax Assessment Act 1997

135 Paragraph 110-35(10)(a)

After "a *consolidated group", insert "or *MEC group".

136 Application provision

The amendment made by this Part applies to CGT events happening on or after 1 July 2005.

Part 15—Transitional concession for SAPs

New Business Tax System (Consolidation and Other Measures) Act 2003

137 Subsection 2(1) (table item 2)

Repeal the item, substitute:

1A. Schedule 1, items 1 to 27	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
1B. Schedule 1, item 27A	Immediately after the commencement of the provisions covered by table item 1A	24 October 2002
1C. Schedule 1, items 28 to 36	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
2. Schedules 2 and 3	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002

138 After item 27 of Schedule 1

Insert:

27A Paragraph 701-30(1)(a)

Repeal the paragraph, substitute:

(a) on or before the first day of the first income year of the head company starting after 30 June 2003; and

Note: Section 701-30 of the *Income Tax (Transitional Provisions) Act 1997* was repealed by item 285 of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* on 14 September 2006. Therefore the amendment made by this item will not apply after that repeal.

139 Application provision

(1) The amendments made by this Part apply in relation to a consolidated group or MEC group only if the head company of the group makes a choice in accordance with subitems (2) and (3).

(2) The choice must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) The choice must be made in writing.

140 Transitional provision—revocation of choice for transitional entities

(1) This item applies in relation to a consolidated group or MEC group if:

(a) the head company of the group makes a choice in accordance with subitems (2) and (3) of the previous item; and

(b) the group came into existence:

(i) on or after 1 July 2003; and

(ii) on a day other than the first day of the first income year of the head company starting after 1 July 2003.

(2) In determining whether a choice under subsection 701-5(1) of the *Income Tax (Transitional Provisions) Act 1997* in relation to the group can be revoked, treat the reference in paragraph 701-5(4)(a) of that Act to 31 December 2005 as instead being a reference to the day that is 6 months after the commencement of this item.

Part 16—Loss multiplication rules for widely held companies

Income Tax Assessment Act 1997

141 After subsection 165-115X(2)

Insert:

(2A) A *widely held company that, apart from this subsection, would have a relevant equity interest in a *loss company at a particular time does not have such an interest at that time.

(2B) Subsection (2A) does not apply if:

(a) an entity has a controlling stake in the loss company (see section 165-115Z); and

(b) that entity has a direct or indirect interest in, or is owed a debt by, the *widely held company, being an interest or debt in respect of which:

(i) the entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(ii) the entity has deducted or can deduct, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(2C) Subsection (2A) does not apply in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the *widely held company at an earlier time, and had a controlling stake in the loss company (see section 165-115Z) at the earlier time:

(a) made a capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

142 After subsection 165-115X(3)

Insert:

(3A) Subsection (3) does not apply if the first entity is a *widely held company.

143 Subsection 165-115X(4)

Omit "However, subsection (3)", substitute "Subsection (3)".

144 After subsection 165-115Y(3)

Insert:

(3A) A *widely held company that, apart from this subsection, would have a relevant debt interest in a *loss company at a particular time does not have such an interest at that time.

(3B) Subsection (3A) does not apply if:

(a) an entity has a controlling stake in the loss company (see section 165-115Z); and

(b) that entity has a direct or indirect interest in, or is owed a debt by, the *widely held company, being an interest or debt in respect of which:

(i) the entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(ii) the entity has deducted or can deduct, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(3C) Subsection (3A) does not apply in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the *widely held company at an earlier time, and had a controlling stake in the *loss company (see section 165-115Z) at the earlier time:

(a) made a *capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

145 After subsection 165-115Y(4)

Insert:

(4A) Subsection (4) does not apply if the first entity is a *widely held company.

146 Subsection 165-115Y(5)

Omit "However, subsection (4)", substitute "Subsection (4)".

146A Section 715-230 (note 1)

Omit "a direct or indirect interest in a subsidiary member", substitute "certain kinds of interests in a member".

147 After paragraph 715-255(1)(b)

Insert:

and (ba) the *head company has a relevant equity interest under section 165-115X in the leaving entity at the leaving time;

148 After subsection 715-255(1)

Insert:

(1A) For the purposes of paragraph (1)(ba), in determining whether the *head company has the relevant equity interest, disregard the

operation of subsection 701-1(1) (the single entity rule) in applying subsections 165-115X(2C) and 165-115X(4).

148A After section 715-260

Insert:

715-265 Head company does not have relevant equity or debt interest in a loss company if widely held top company does not have such an interest

(1) For the purposes of Subdivision 165-CD, treat the *head company of a *consolidated group as *not* having a relevant equity interest in a *loss company at a particular time if:

(a) the head company is an *eligible tier-1 company of a *top company at that time; and

(b) the top company is a *widely held company at that time; and

(c) because of subsections 165-115X(2A), (2B) and (2C), the top company does not have a relevant equity interest under section 165-115X in the loss company at that time.

(2) For the purposes of paragraph (1)(c), disregard the operation of subsection 701-1(1) (the single entity rule) in determining whether subsection 165-115X(2C) has the effect that the *top company has the relevant equity interest mentioned in that paragraph.

(3) For the purposes of Subdivision 165-CD, treat the *head company of a *consolidated group as *not* having a relevant debt interest in a *loss company at a particular time if:

(a) the head company is an *eligible tier-1 company of a *top company at that time; and

(b) the top company is a *widely held company at that time; and

(c) because of subsections 165-115Y(3A), (3B) and (3C), the top company does not have a relevant debt interest under section 165-115Y in the loss company at that time.

149 Subsection 715-270(5)

Omit "If the trust is a *loss company at the leaving time, the *head company must", substitute "If the trust is a *loss company at the leaving time and the *head company has a relevant equity interest under section 165-115X in the leaving entity at the leaving time, the head company must".

150 After subsection 715-270(5)

Insert:

(5A) For the purposes of subsection (5), in determining whether the *head company has the relevant equity interest, disregard the operation of subsection 701-1(1) (the single entity rule) in applying subsections 165-115X(2C) and 165-115X(4).

150A Section 715-450 (note)

Omit "a direct or indirect interest in a subsidiary member", substitute "certain kinds of interests in a member".

150B Subdivision 715-H (heading)

Repeal the heading, substitute:

Subdivision 715-H—Cancelling loss on realisation event for direct or indirect interest in a member of a consolidated group

150C Paragraph 715-610(2)(d)

Omit "a consolidated group.", substitute "a consolidated group; or".

150D At the end of subsection 715-610(2)

Add:

(e) all of these conditions are satisfied at that time:

(i) the realised interest was an equity or loan interest, an *indirect equity or loan interest or an external indirect equity or loan interest, in the *head company of a consolidated group;

(ii) the owner was *not* a member of the group;

(iii) the head company was an *eligible tier-1 company of a *top company.

150E Subsection 715-610(3)

Omit "a *subsidiary member", substitute "a member".

150F Subsection 715-610(3)

Omit "the subsidiary member" (wherever occurring), substitute "the member".

151 After section 719-735

Insert:

719-740 Head company does not have relevant equity or debt interest in a loss company if widely held top company does not have such an interest

(1) For the purposes of Subdivision 165-CD, treat the *head company of a *MEC group as *not* having a relevant equity interest in a *loss company at a particular time if:

(a) the *top company of the group is a *widely held company at that time; and

(b) because of subsections 165-115X(2A), (2B) and (2C), the top company does not have a relevant equity interest under section 165-115X in the loss company at that time.

(2) For the purposes of paragraph (1)(b), disregard the operation of subsection 701-1(1) (the single entity rule) in determining whether subsection 165-115X(2C) has the effect that the *top company has the relevant equity interest mentioned in that paragraph.

(3) For the purposes of Subdivision 165-CD, treat the *head company of a *MEC group as *not* having a relevant debt interest in a *loss company at a particular time if:

(a) the *top company of the group is a *widely held company at that time; and

(b) because of subsections 165-115Y(3A), (3B) and (3C), the top company does not have a relevant debt interest under section 165-115Y in the loss company at that time.

152 Application provision

The amendments made by this Part apply on and after 1 July 2002.

Part 17—CGT straddles

Income Tax Assessment Act 1997

153 At the end of Subdivision 716-Z

Add:

716-860 CGT event straddling joining or leaving time

(1) This section applies if:

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

(b) disregarding the operation of subsection 701-1(1) (the single entity rule), the joining entity held a *CGT asset at the joining time; and

(c) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group held the CGT asset at the joining time; and

(d) a *CGT event happened in relation to the asset at a time before the joining time (disregarding this section), but the circumstances that gave rise to the CGT event first existed at a time on or after the joining time.

(2) This section also applies if:

(a) an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group at a particular time (the ***leaving time***); and

(b) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group held a *CGT asset at the leaving time; and

(c) disregarding the operation of subsection 701-1(1) (the single entity rule), the leaving entity held the CGT asset at the leaving time; and

(d) a *CGT event happened in relation to the asset at a time before the leaving time (disregarding this section), but the circumstances that gave rise to the CGT event first existed at a time on or after the leaving time.

(3) For the purposes of this Act, treat the *CGT event as happening at the time when the circumstances that gave rise to the CGT event first existed.

154 Application provision

The amendment made by this Part applies in relation to CGT events that happen after 8 May 2007.

Part 18—Choice to consolidate

Income Tax Assessment Act 1997

155 Subsection 703-50(1)

Omit "in the *approved form given to the Commissioner within the period described in subsection (3)", substitute "in writing".

156 At the end of subsection 703-50(1)

Add:

Note: The head company of the group must give the Commissioner a notice in the approved form containing information about the group (see sections 703-58 and 703-60).

157 Subsection 703-50(3)

Repeal the subsection, substitute:

(3) The choice can be made no later than:

(a) if the company is required to give the Commissioner its *income tax return for the income year during which the specified day mentioned in subsection (1) occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

158 Subsections 703-50(5) and (6)

Repeal the subsections.

159 Before section 703-60 (after the group heading)

Insert:

703-58 Notice of choice to consolidate

(1) If a *consolidated group comes into existence on the day specified in a choice under section 703-50, the *head company of the group

must give the Commissioner a notice in the *approved form containing the following information:

(a) the identity of the head company;

(b) the day specified in the choice on which the *consolidatable group is taken to be consolidated;

(c) the identity of each *subsidiary member of the group on that day;

(d) the identity of each entity that was a subsidiary member of the group on that day but was *not* such a subsidiary member when the notice is given;

(e) the identity of each entity that was *not* a subsidiary member of the group on that day but was such a subsidiary member when the notice is given;

(f) the identity of each entity that became a subsidiary member of the group after that day but was *not* such a subsidiary member when the notice is given.

(2) The notice must be given no later than:

(a) if the *head company is required to give the Commissioner its *income tax return for the income year during which that day occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the head company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

160 Paragraph 703-60(2)(b)

Omit "more than 28 days before the choice is made", substitute "before the relevant notice is given to the Commissioner under section 703-58 (notice of choice to consolidate)".

161 Subsection 703-60(2)

Omit "at the same time as the choice is made".

162 After subsection 703-60(2)

Insert:

(2A) The notice must be given no later than:

(a) if the *head company is required to give the Commissioner its *income tax return for the income year during which that day occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the head company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

163 Paragraph 703-60(3)(b)

Omit "a notice of choice under section 719-50 is given after that time", substitute "a choice under section 719-50 is made after that time".

164 Paragraph 703-60(3)(c)

Omit "more than 28 days before the notice of choice is given", substitute "before the relevant notice is given to the Commissioner under section 719-76 (notice of choice to consolidate)".

165 Subsection 703-60(3)

Omit "at the same time as the notice of choice is given".

166 At the end of section 703-60

Add:

(4) The notice must be given no later than:

(a) if the *head company is required to give the Commissioner its *income tax return for the income year during which that day occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the head company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

167 Paragraph 719-5(4)(c)

Omit "within the applicable period worked out under subsection (6), the *provisional head company of the MEC group gives the Commissioner a written notice, in the *approved form", substitute "the *provisional head company of the MEC group makes a choice in writing no later than the day mentioned in subsection (6)".

168 Paragraph 719-5(4)(d)

Omit "the notice under paragraph (c)" (wherever occurring), substitute "the choice".

169 Paragraph 719-5(4)(f)

Omit "the notice under paragraph (c)", substitute "the choice".

170 At the end of subsection 719-5(4)

Add:

Note: The provisional head company of the group must give the Commissioner a notice in the approved form containing information about each entity that becomes a subsidiary member of the group on that day because of the choice (see sections 719-77 and 719-80).

171 Subsection 719-5(6)

Repeal the subsection, substitute:

(6) The day mentioned in paragraph (4)(c) is:

(a) if the company mentioned in subsection (6A) is required to give the Commissioner its *income tax return for the income year during which the time mentioned in paragraph (4)(b) occurs—the day on which that company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which that company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

(6A) The company is:

(a) in a case where subsection 719-75(1) or (2) applies—the company that will be the *head company of the group as at the end of the income year; and

(b) in a case where subsection 719-75(3) applies—the company that will be the head company of the group immediately before the group ceased to exist.

172 Paragraph 719-40(1)(e)

Omit "within the applicable period worked out under subsection (2), the company mentioned in paragraph (b) gives the Commissioner a written notice, in the *approved form", substitute "the company mentioned in paragraph (b) makes a choice in writing no later than the day mentioned in subsection (2)".

173 Subparagraph 719-40(1)(e)(ii)

After "comes into existence", insert "at that time".

174 Paragraph 719-40(1)(f)

Omit "the notice under paragraph (e)" (wherever occurring), substitute "the choice".

175 At the end of subsection 719-40(1)

Add:

Note: The company mentioned in paragraph (b) must give the Commissioner a notice in the approved form containing information about the special conversion event (see sections 719-78 and 719-80).

176 Subsection 719-40(2)

Repeal the subsection, substitute:

(2) The day mentioned in paragraph (1)(e) is:

(a) if the company is required to give the Commissioner its *income tax return for the income year during which that time occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

177 Subsection 719-50(1)

Repeal the subsection, substitute:

Making a choice to consolidate

(1) If:

(a) a *potential MEC group (the ***first group***) derived from 2 or more *eligible tier-1 companies of a *top company is in existence at the start of a particular day; and

(b) that day is after 30 June 2002; and

(c) none of those eligible tier-1 companies is already a member of a *MEC group or a *consolidated group;

those eligible tier-1 companies, jointly, may make a choice in writing that the first group be consolidated on and after that day. If they do so, the choice must specify that day.

Note: The provisional head company must give the Commissioner a notice in the approved form containing information about the group (see sections 719-76 and 719-80).

178 Subsection 719-50(3)

Repeal the subsection, substitute:

(3) A choice can be made no later than:

(a) if the company mentioned in subsection (3A) is required to give the Commissioner its *income tax return for the income year during which that day occurs—the day on which that company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which that company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

(3A) The company is:

(a) in a case where subsection 719-75(1) or (2) applies—the company that will be the *head company of the group as at the end of the income year; and

(b) in a case where subsection 719-75(3) applies—the company that will be the head company of the group immediately before the group ceased to exist.

179 Paragraph 719-50(4)(b)

Repeal the paragraph, substitute:

(b) another company (the ***other company***) that was an eligible tier-1 company at the start of the specified day ceased to exist at a time before:

(i) the day on which the company mentioned in paragraph (a) gives the Commissioner its *income tax return for the income year during which the day specified in the choice occurs; or

(ii) the last day in the period within which the company mentioned in paragraph (a) would be required to give the Commissioner such a return if it were required to give the Commissioner such a return; and

180 Section 719-55

Repeal the section, substitute:

719-55 When choice starts to have effect

A choice under section 719-50 is taken to have started to have effect on the day specified in the choice.

181 Subsection 719-60(1)

Omit "give notice of a choice under section 719-50, the notice", substitute "make a choice under section 719-50, the choice".

182 Subsection 719-60(3)

Repeal the subsection, substitute:

Appointment after formation of group

(3) If a *cessation event happens to the *provisional head company of a *MEC group, the *eligible tier-1 companies that are or were members of the MEC group immediately after the cessation event may make a choice in writing, jointly appointing one of those companies to be the provisional head company of the group. The appointment is taken to have come into force immediately after the cessation event.

183 Before section 719-80 (after the group heading)

Insert:

719-76 Notice of choice to consolidate

(1) This section applies if:

(a) a *MEC group comes into existence on the day specified in a choice under section 719-50; and

(b) subsection 719-75(1), (2) or (3) would apply to the MEC group in relation to the *income year of a company in which the specified day occurred; and

(c) in a case where subsection 719-75(1) or (2) applies—the company will be the *head company of the group as at the end of the income year; and

(d) in a case where subsection 719-75(3) applies—the company will be the head company of the group immediately before the group ceased to exist.

(2) The company must give the Commissioner a notice in the *approved form containing the following information:

(a) the identity of the company;

(b) the day specified in the choice on which the *MEC group comes into existence;

(c) the identity of each *eligible tier-1 company of the *top company in relation to the MEC group on that day;

(d) the identity of each *subsidiary member of the group on that day;

(e) the identity of each entity that was a subsidiary member of the group on that day but was *not* such a subsidiary member when the notice is given;

(f) the identity of each entity that was *not* a subsidiary member of the group on that day but was such a subsidiary member when the notice is given;

(g) the identity of each entity that became a subsidiary member of the group after that day but was *not* such a subsidiary member when the notice is given.

(3) The notice must be given no later than:

(a) if the company is required to give the Commissioner its *income tax return for the income year during which that day occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

719-77 Notice in relation to new eligible tier-1 members etc.

(1) This section applies if:

(a) a *MEC group consists of the members of a *potential MEC group derived from one or more *eligible tier-1 companies of a *top company; and

(b) one or more other companies become eligible tier-1 companies of the top company at a time because of a choice under subsection 719-5(4).

(2) The *head company of the *MEC group must give the Commissioner a notice in the *approved form containing the following information:

(a) the identity of the head company;

(b) the time mentioned in paragraph (1)(b);

(c) the identity of each entity that became an *eligible tier-1 company of the *top company in relation to the MEC group at that time because of the choice;

(d) the identity of each entity that became a *subsidiary member of the group at that time because of the choice;

(e) the identity of each entity that was a subsidiary member of the group at that time but was not such a subsidiary member when the notice is given.

(3) The notice must be given no later than:

(a) if the *head company is required to give the Commissioner its *income tax return for the income year during which that time occurs—the day on which the head company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the head company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

719-78 Notice of special conversion event

(1) This section applies if a *MEC group comes into existence at the time because of a choice under paragraph 719-40(e).

(2) The company mentioned in paragraph 719-40(b) must give the Commissioner a notice in the *approved form containing the following information:

(a) the identity of the company;

(b) the time at which the *MEC group comes into existence;

(c) the identity of each *eligible tier-1 company of the *top company in relation to the MEC group on that day;

(d) the identity of each *subsidiary member of the group at that time;

(e) the identity of each entity that was a subsidiary member of the group at that time but was *not* such a subsidiary member when the notice is given;

(f) the identity of each entity that was *not* a subsidiary member of the group at that time but was such a subsidiary member when the notice is given;

(g) the identity of each entity that became a subsidiary member of the group after that time but was *not* such a subsidiary member when the notice is given.

(3) The notice must be given no later than:

(a) if the company is required to give the Commissioner its *income tax return for the income year during which that time occurs—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the company would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

719-79 Notice of appointment of provisional head company after formation of group

(1) This section applies if an entity is appointed to be the *provisional head company of a *MEC group because of a choice under subsection 719-60(3).

(2) The *provisional head company must give the Commissioner a notice in the *approved form containing the following information:

(a) the identity of the provisional head company;

(b) the day on which the choice was made;

(c) the day on which the *cessation event mentioned in subsection 719-60(3) occurs.

(3) The notice must be given no later than:

(a) if:

(i) the group came into existence because of a choice under section 719-50; and

(ii) the event happens more than 28 days before a notice under section 719-76 in relation to the choice is given;

the day on which the notice mentioned in subparagraph (ii) is given; or

(b) in any other case—28 days after the *cessation event.

184 Subparagraph 719-80(2)(a)(ii)

Omit "more than 28 days before notice of the choice is given", substitute "before the relevant notice is given to the Commissioner under section 719-76 (notice of choice to consolidate)".

185 Paragraph 719-80(2)(a)

Omit "on the day on which notice of the choice is given", substitute "no later than the day mentioned in subsection (3)".

186 Subparagraph 719-80(2)(b)(iii)

Omit "more than 28 days before notice of the choice is given", substitute "before the relevant notice is given to the Commissioner under section 703-58 (notice of choice to consolidate)".

187 Paragraph 719-80(2)(b)

Omit "on the day on which notice of the choice is given", substitute "no later than the day mentioned in subsection (3)".

188 At the end of section 719-80

Add:

(3) The day is:

(a) if the entity is required to give the Commissioner its *income tax return for the income year during which the notifiable event happens—the day on which the company gives the Commissioner that income tax return; or

(b) otherwise—the last day in the period within which the entity would be required to give the Commissioner such a return if it were required to give the Commissioner such a return.

Income Tax (Transitional Provisions) Act 1997

189 Paragraph 701-5(2)(a)

Repeal the paragraph, substitute:

(a) the day on which the head company must give the notice under section 703-58 of the *Income Tax Assessment Act 1997* (notice of choice to consolidate); and

190 Paragraph 701D-15(3)(a)

Repeal the paragraph, substitute:

(a) the day on which the head company must give the notice under section 703-58 of the *Income Tax Assessment Act 1997* (notice of choice to consolidate); and

Taxation Administration Act 1953

191 Paragraph 45-885(1)(e) in Schedule 1

Omit "the Commissioner receives the choice to consolidate", substitute "the Commissioner receives the notice under section 703-58 of the *Income Tax Assessment Act 1997* in relation to the choice to consolidate".

192 Section 45-935 in Schedule 1 (table item 1)

Omit "the Commissioner receives a notice of the consolidation", substitute "the Commissioner receives a notice under section 719-76 of the *Income Tax Assessment Act 1997* in relation the consolidation".

193 Application provision

(1) The amendments made by this Part apply in relation to a consolidated group or MEC group on or after:

(a) if the head company of the consolidated group (or the head company or provisional head company of the MEC group) makes a choice in accordance with subitems (2) and (3)—10 February 2010; or

(b) otherwise—1 July 2002.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2014; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

Part 19—Life insurance companies

Division 1—Amendments applying before the introduction of first home saver accounts

Income Tax Assessment Act 1997

194 After section 713-510

Insert:

713-510A Disregard single entity rule in working out certain amounts in respect of life insurance company

(1) This section applies if a *life insurance company is a *member of a *consolidated group.

(2) However, if the *life insurance company is a *subsidiary member of the group, this section does not apply:

(a) for the purposes of working out the *tax cost setting amount of an asset of the life insurance company when it becomes a subsidiary member of the group; and

(b) for the purposes of working out the tax cost setting amount of a *membership interest in the life insurance company if it ceases to be a subsidiary member of the group.

(3) Disregard section 701-1 (the single entity rule) in working out any of the following for the purposes of Division 320 in relation to the *life insurance company:

(a) amounts of the *head company's ordinary income and statutory income derived from *segregated exempt assets that are not assessable income and are not *exempt income under paragraph 320-37(1)(a);

(b) the head company's taxable income of the *complying superannuation class (see section 320-137);

(c) the head company's *tax loss of the complying superannuation class (see section 320-141);

(d) the total *transfer value of the head company's *virtual PST assets (see paragraph 320-175(1)(a));

(e) the amount of the head company's virtual PST liabilities (see paragraph 320-175(1)(b));

(f) the total transfer value of the head company's segregated exempt assets (see paragraph 320-230(1)(a));

(g) the amount of the head company's *exempt life insurance policy liabilities (see paragraph 320-230(1)(b)).

195 Group heading before section 713-553

Repeal the heading.

196 Sections 713-553, 713-555 and 713-560

Repeal the sections.

197 Application provision

The amendments made by this Division apply on and after 1 July 2002.

Division 2—Amendments applying from the introduction of first home savers accounts

Income Tax Assessment Act 1997

198 Paragraph 713-510A(3)(b)

Omit "*complying superannuation class", substitute "*complying superannuation/FHSA class".

199 Paragraph 713-510A(3)(c)

Omit "complying superannuation class", substitute "complying superannuation/FHSA class".

200 Paragraph 713-510A(3)(d)

Omit "*virtual PST", substitute "*complying superannuation/FHSA".

201 Paragraph 713-510A(3)(e)

Omit "*virtual PST", substitute "*complying superannuation/FHSA".

202 Application provision

The amendments made by this Division apply on and after the commencement of the *First Home Saver Accounts (Consequential Amendments) Act 2008.*

Part 20—Non-membership equity interests

Income Tax Assessment Act 1997

203 Subsection 705-65(6)

Repeal the subsection, substitute:

Non-membership equity interests

(6) For the purposes of this section, if at the joining time a *member of the joined group holds a *non-membership equity interest in the joining entity, that non-membership equity interest is treated as if it were a *membership interest in the joining entity.

204 Subsection 705-85(3) (heading)

Repeal the heading, substitute:

Increase to cover certain non-membership equity interests and certain equity interests

205 Paragraph 705-85(3)(a)

Repeal the paragraph, substitute:

(a) the amount that would be the balance of the joining entity's *non-share capital account, assuming that:

(i) if the joining entity is not a company—the joining entity were a company; and

(ii) each *non-membership equity interest (if any) in the joining entity held at the joining time by a person other than a *member of the joined group were a *non-share equity interest in the joining entity; and

(iii) the non-share equity interests (if any) mentioned in subparagraph (ii) were the only non-share equity interests in the joining entity; and

206 Paragraph 705-85(3)(b)

Omit "market value", substitute "*market value".

207 Subsection 705-145(5)

Repeal the subsection, substitute:

Non-membership equity interests

(5) For the purposes of this section, if, on becoming a *subsidiary member, an entity holds a *non-membership equity interest in another entity that becomes a subsidiary member at the same time, that non-membership equity interest is treated as if it were a *membership interest in that other entity.

208 Subsection 705-195(1)

Omit "rights or options", substitute "*non-membership equity interests".

209 Subsection 705-195(2)

Repeal the subsection, substitute:

Non-membership equity interests

(2) Subsection 705-65(6) has effect as if it also treated as a *membership interest in the *head company of the acquired group a *non-membership equity interest in a *subsidiary member of the acquired group, where that interest was held at the acquisition time by a *member of the acquiring group.

210 Paragraph 705-200(1)(b)

Omit "rights or options to acquire *membership interests", substitute "*non-membership equity interests".

211 Subsection 705-200(3)

Repeal the subsection, substitute:

Non-membership equity interests

(3) Paragraph 705-85(3)(a) has effect as if it also increased the step 2 amount worked out under section 705-70 by the amount that would be the sum of the balances of the *non-share capital accounts of the *subsidiary members of the acquired group, assuming that:

(a) for a subsidiary member that is not a company—the subsidiary member were a company; and

(b) each *non-membership equity interest (if any) in a subsidiary member held at the acquisition time by a person other than a

*member of the acquiring group or acquired group were a *non-share equity interest in the subsidiary member; and

(c) the non-share equity interests (if any) mentioned in paragraph (b) were the only non-share equity interests in the subsidiary member.

212 Subsection 705-225(5)

Repeal the subsection, substitute:

Non-membership equity interests

(5) For the purposes of this section, if, on becoming a *subsidiary member, a linked entity holds a *non-membership equity interest in another linked entity, that interest is treated as if it were a *membership interest in that other linked entity.

213 Subsection 711-15(2)

Repeal the subsection, substitute:

Non-membership equity interests

(2) For the purposes of this section, if at the leaving time a *member of the old group holds a *non-membership equity interest in the leaving entity, that non-membership equity interest is treated as if:

(a) it were a *membership interest in the leaving entity; and

(b) it were of a different class than any other membership interest in the leaving entity.

214 Subsection 711-20(1) (cell at table item 4, column headed "Purpose of the step")

Omit "*market".

215 After subsection 711-45(6A)

Insert:

Increase for non-share capital account balance

(6B) The step 4 amount is increased by the amount that would be the balance of the leaving entity's *non-share capital account, assuming that:

(a) if the leaving entity is not a company—the leaving entity were a company; and

(b) each *non-membership equity interest (if any) in the leaving entity held at just before the leaving time by a person other than a *member of the old group were a *non-share equity interest in the leaving entity; and

(c) the non-share equity interests (if any) mentioned in paragraph (b) were the only non-share equity interests in the leaving entity.

216 Subsection 715-50(6)

Repeal the subsection, substitute:

Non-membership equity interests

(6) Subsection 705-65(6) (which treats *non-membership equity interests as *membership interests) also applies for the purposes of this section.

217 Subsection 715-255(6)

Repeal the subsection, substitute:

Non-membership equity interests

(6) Subsection 711-15(2) (which treats *non-membership equity interests as *membership interests) also applies for the purposes of this section, on the basis that the *consolidated group referred to in section 715-240 is the old group referred to in that subsection.

218 Subsection 715-270(10)

Repeal the subsection, substitute:

Non-membership equity interests

(10) Subsection 711-15(2) (which treats *non-membership equity interests as *membership interests) also applies for the purposes of this section, on the basis that the *consolidated group is the old group referred to in that subsection.

219 Subsection 995-1(1)

Insert:

non-membership equity interest: an interest in an entity is a ***non-membership equity interest*** in the entity at a time to the extent that it is *not* an accounting liability (within the meaning of subsection 705-70(1)) of the entity at that time, if:

(a) the interest is *not* a *membership interest in the entity at that time; and

(b) the interest is *not* a *debt interest in the entity at that time.

In determining the extent to which the interest is *not* an accounting liability at that time:

(c) treat each reference in subsection 705-70(1) to the joining entity as instead being a reference to the entity; and

(d) treat the reference in that subsection to the joining time as instead being a reference to that time.

220 Application provision

(1) The amendments made by this Part apply in relation to a consolidated group or MEC group on and after:

(a) if the head company of the group makes a choice in accordance with subitems (2) and (3)—1 July 2002; or

(b) otherwise—the day on which the Bill that became this Act was introduced into the House of Representatives.

(2) A choice mentioned in paragraph (1)(a) must be made:

(a) on or before 30 June 2011; or

(b) within a further time allowed by the Commissioner.

(3) A choice mentioned in paragraph (1)(a) must be made in writing.

Schedule 6—Miscellaneous amendments

Part 1—CGT main residence exemption for replacement dwelling

Income Tax Assessment Act 1997

1 After subsection 118-145(3)

Insert:

(3A) This section does not apply if the *dwelling was your main residence because of section 118-147 and ceases to be your main residence because of subsections 118-147(3) and (4).

2 After section 118-145

Insert:

118-147 Absence from dwelling replacing main residence that was compulsorily acquired, destroyed etc.

(1) This section applies if:

(a) a *dwelling (the ***old dwelling***) is treated as your main residence because of your choice under section 118-145; and

(b) because of an event (the ***key event***) described in subsection 124-70(1):

(i) you cease to have any *ownership interest in the old dwelling; or

(ii) the old dwelling is lost or destroyed; and

(c) after the key event you have an ownership interest (the ***substitute property interest***) in:

(i) a dwelling (the ***substitute dwelling***); or

(ii) land (the ***substitute land***) that did not have a dwelling on it at the later of the time just after the key event and the time you *acquired the interest; and

(d) you acquired the substitute property interest at a time (the ***substitute property acquisition time***) no later than one year, or within such further time as the Commissioner allows in

special circumstances, after the end of the income year in which the key event happens.

Note 1: Subsection 124-70(1) deals with compulsory acquisitions, disposals in circumstances involving powers of compulsory acquisition, expiry of leases granted by Australian government agencies and loss or destruction of a CGT asset.

Note 2: The substitute property acquisition time may be before, at or after the time the key event happened. The old dwelling and the substitute dwelling may be different or the same. The land on which the old dwelling is erected and the substitute land may be different or the same.

(2) You may choose to treat the substitute dwelling, or a *dwelling you built on the substitute land within 4 years after the later of the time of the key event and the substitute property acquisition time, as your main residence from the later of the following times (or from either of them if they are the same):

(a) the substitute property acquisition time;

(b) the time one year before the key event happened.

(3) Subsection (4) limits the time you can treat a *dwelling as your main residence under this section if you use all or part of it or the substitute land, after the later of the key event and the substitute property acquisition time, for the *purpose of producing assessable income.

(4) The maximum period you can treat the *dwelling that way while you use it or the substitute land as described in subsection (3) is:

(a) 6 years; or

(b) if, just before the key event, you used all or part of the old dwelling for that purpose—so much of the period of 6 years described in subsection 118-145(2) in relation to the old dwelling as had not passed before the event.

(5) If you do not use the *dwelling or substitute land as described in subsection (3) you can treat the dwelling as your main residence under this section indefinitely.

(6) If you make the choice:

(a) you cannot treat any other *dwelling as your main residence while you apply this section; and

(b) section 118-140 does not apply in relation to your *acquisition, while you still have an *ownership interest in

the old dwelling, of an ownership interest in the dwelling you choose to treat as your main residence under this section; and

(c) section 118-150 does not apply after the key event to the land on which the old dwelling is erected or the substitute land; and

(d) section 118-155 does not apply after the key event in relation to the old dwelling, the substitute dwelling or a dwelling built on the substitute land.

(7) Paragraph (6)(a) does not prevent the old dwelling from being your main residence at any time before the key event happened.

3 Paragraph 118-150(3)(a)

After "residence", insert "(except because of section 118-147)".

4 After subsection 118-190(3)

Insert:

(3A) Also, you ignore any use of the *dwelling for the *purpose of producing assessable income during any period that you treat it as your main residence under section 118-147 (about absences) to the extent that any part of the old dwelling mentioned in that section was not used for that purpose just before the old dwelling last ceased to be your main residence.

5 At the end of paragraph 118-200(4)(b)

Add "or (3A)".

6 Application provision

Section 118-147 of the *Income Tax Assessment Act 1997* applies in relation to CGT events happening on or after the day this Act receives the Royal Assent in relation to dwellings described in subsection (2) of that section (whether the key events described in that section happen before, on or after that day).

Part 2—Small business retirement exemption

Division 1—Main amendment

Income Tax Assessment Act 1997

7 Paragraph 152-310(2)(a)

Omit "exempt from income tax for", substitute "not assessable income, and is not *exempt income, of".

8 Application provision

The amendment of paragraph 152-310(2)(a) of the *Income Tax Assessment Act 1997* made by this Division applies in relation to payments made after 30 June 2007.

Division 2—Related amendments

Income Tax Assessment Act 1997

9 Section 11-15 (table item headed "small business retirement exemption")

Repeal the item.

10 Section 11-55 (table item headed "capital gains tax")

Repeal the item, substitute:

capital gains tax	
small business retirement exemption, payments made directly or indirectly to CGT concession stakeholder so company or trust complies with section 152-325.....	152-310

11 Section 12-5 (table item headed "capital gains tax")

After:

no deduction for an amount that would otherwise be deductible only because a net capital gain is included in assessable income.....	**51AAA**

insert:

small business retirement exemption, no deduction for payments made directly or indirectly to CGT concession stakeholder so company or trust complies with section 152-325 152-310

Part 3—Waiver connected with proceeds of crime proceedings

Taxation Administration Act 1953

12 Division 340 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 340—Commissioner's power in cases of hardship

13 At the end of Part 4-50 in Schedule 1

Add:

Division 342—Commissioner's power relating to proceeds of crime proceedings

Table of Subdivisions

Guide to Division 342
342-A Power to waive right to payment of tax-related liabilities

Guide to Division 342

342-1 What this Division is about

To facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*, the Commissioner may waive the right to payment of certain tax-related liabilities.

Subdivision 342-A—Power to waive right to payment of tax-related liabilities

Table of sections

342-5 Object of this Subdivision
342-10 Power to waive right to payment of tax-related liability

342-5 Object of this Subdivision

The object of this Subdivision is to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002* by allowing the Commissioner to waive the right to payment of certain liabilities to the Commonwealth arising under *taxation laws.

Note: The Commissioner may also exercise other powers so as to facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*. Examples of those other powers include:

(a) the power under section 255-10 to defer the time a tax-related liability is due and payable; and

(b) the power under section 8AAG to remit general interest charge.

342-10 Power to waive right to payment of tax-related liability

(1) The Commissioner may waive the Commonwealth's right to payment of all or part of a *tax-related liability if the Commissioner is satisfied that:

(a) the waiver will facilitate the starting, conduct or ending (by settlement or otherwise) of proceedings under the *Proceeds of Crime Act 2002*; and

(b) the liability is connected with circumstances associated with the proceedings.

Note: The Commissioner may waive the right to payment only after the liability has arisen, but may do so whether or not the liability is due and payable.

Example: A liability is connected with circumstances associated with the proceedings if the liability arose because of activities constituting an offence to which the proceedings relate.

(2) In deciding whether to waive the right, the Commissioner must consider:

(a) the amount the Commonwealth will forgo as a result of the waiver and the time the Commonwealth could reasonably be expected to receive that amount apart from the waiver; and

(b) the amount the Commonwealth could reasonably be expected to receive as a result of the proceedings and the time the Commonwealth could reasonably be expected to receive that amount.

(3) Subsection (2) does not limit the matters that the Commissioner may consider in making the decision.

Extended operation of this section

(4) This section (except this subsection) applies in relation to a pecuniary liability to the Commonwealth that arises directly under a *taxation law, but is not a *tax-related liability, in the same way as this section applies in relation to a tax-related liability.

Example: This section applies to a civil penalty under Division 290 (which penalises certain conduct involving promotion of schemes) in the same way as this section applies to a tax-related liability.

14 Application provision

(1) Division 342 in Schedule 1 to the *Taxation Administration Act 1953* applies in relation to:

(a) proceedings started, or proposed to be started, on or after the commencement of that Division; and

(b) proceedings started, and not ended, before that commencement.

That Division applies whether the liability was incurred before, on or after that commencement.

(2) For the purposes of paragraph (1)(b), proceedings are taken not to have ended before that commencement if any appeal relating to the proceedings has not ended, or a period for lodging an appeal relating to the proceedings has not ended, before that commencement.

Part 4—Amendments relating to higher education

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

15 Section 195-1 (definition of *higher education institution*)

Repeal the definition, substitute:

> ***higher education institution*** means an entity that is a higher education provider as defined in section 16-1 of the *Higher Education Support Act 2003*.

Fringe Benefits Tax Assessment Act 1986

16 Section 135M (first paragraph)

Omit "the *Higher Education Funding Act 1988* or".

Income Tax Assessment Act 1936

17 Subsection 82A(2) (paragraphs (a), (ab) and (b) of the definition of *expenses of self-education*)

Repeal the paragraphs.

18 Application provision

The amendment of section 82A of the *Income Tax Assessment Act 1936* made by this Part applies in relation to assessments for the income year in which this Act receives the Royal Assent and later income years.

Income Tax Assessment Act 1997

19 Paragraphs 26-20(1)(a), (b) and (c)

Repeal the paragraphs.

20 Application provision

The amendment of subsection 26-20(1) of the *Income Tax Assessment Act 1997* made by this Part applies in relation to assessments for the income year in which this Act receives the Royal Assent and later income years.

21 Subsection 30-25(1) (cell at table item 2.1.3, column headed "Fund, authority or institution")

Repeal the cell, substitute:

a charitable or public institution that is a higher education provider within the meaning of the *Higher Education Support Act 2003*

22 Subsection 30-25(1) (cell at table item 2.1.6, column headed "Fund, authority or institution")

Repeal the cell, substitute:

a residential educational institution that is affiliated with a charitable or public institution that is a higher education provider within the meaning of the *Higher Education Support Act 2003*

23 Application provision

The amendments of subsection 30-25(1) of the *Income Tax Assessment Act 1997* made by this Part apply in relation to gifts made on or after the day this Act receives the Royal Assent.

24 Subparagraph 52-132(a)(x)

Repeal the subparagraph.

25 Subparagraph 52-140(3)(a)(x)

Repeal the subparagraph.

26 Application provision

The amendments of sections 52-132 and 52-140 of the *Income Tax Assessment Act 1997* made by this Part apply in relation to payments received on or after the day this Act receives the Royal Assent.

Taxation Administration Act 1953

27 Section 8AAZA (definition of *HEC assessment debt*)

Repeal the definition.

28 Paragraph 8AAZLD(a)

Repeal the paragraph.

Note: The heading to section 8AAZLD is altered by omitting "**HEC and**".

29 Paragraph 8AAZLD(aa)

Omit "secondly,", substitute "first,".

30 Paragraph 11-1(c) in Schedule 1

Repeal the paragraph.

31 Subsection 15-25(1) in Schedule 1

Omit "(c),".

32 Paragraph 15-30(c) in Schedule 1

Repeal the paragraph.

33 Paragraph 15-50(1)(b) in Schedule 1

Omit "(c),".

34 Paragraph 45-5(1)(c) in Schedule 1

Repeal the paragraph.

35 Section 45-340 in Schedule 1 (method statement, step 3)

Omit "an accumulated HEC debt under the *Higher Education Funding Act 1988*, or an *accumulated HELP debt under the *Higher Education Support Act 2003*,", substitute "an *accumulated HELP debt".

36 Section 45-375 in Schedule 1 (method statement, step 3)

Omit "an accumulated HEC debt under the *Higher Education Funding Act 1988*, or an *accumulated HELP debt under the *Higher Education Support Act 2003*,", substitute "an *accumulated HELP debt".

Taxation (Interest on Overpayments and Early Payments) Act 1983

37 Subsection 3(1) (definition of *HEC assessment debt*)

Repeal the definition.

38 Section 3C (table item 40)

Repeal the item.

39 Subparagraph 8A(1)(a)(ii)

Repeal the subparagraph.

40 Paragraph 8A(2)(b)

Repeal the paragraph.

41 Subparagraphs 8E(1)(d)(iii) and (2)(d)(iii)

Omit "an HEC assessment debt or", substitute "a".

42 Sub-subparagraph 12A(1)(a)(iv)(B)

Repeal the sub-subparagraph.

43 Paragraph 12A(2)(b)

Repeal the paragraph.

Part 5—PAYG withholding from delayed payments for termination of employment

Division 1—Main amendments

Taxation Administration Act 1953

44 Subsection 10-5(1) in Schedule 1 (table item 8)

Omit "an *employment termination payment", substitute "a payment for termination of employment".

45 Subsection 12-5(2) in Schedule 1 (table item 2)

Omit "an *employment termination payment", substitute "a payment for termination of employment".

46 Subdivision 12-C in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 12-C—Payments for retirement or because of termination of employment

47 Section 12-85 in Schedule 1 (heading)

Repeal the heading, substitute:

12-85 Superannuation lump sums and payments for termination of employment

48 Paragraph 12-85(b) in Schedule 1

Repeal the paragraph, substitute:

(b) a payment that is an *employment termination payment or would be one except that it is received more than 12 months after termination of employment.

49 Section 16-165 in Schedule 1 (heading)

Repeal the heading, substitute:

16-165 Payment summaries for superannuation lump sums and payments for termination of employment

50 Paragraph 16-165(2)(b) in Schedule 1

Omit "an *employment termination payment,", substitute "a payment that is an *employment termination payment or would be one except that it is received more than 12 months after termination of employment,".

51 Subparagraph 18-65(3)(d)(ii) in Schedule 1

Omit "(*superannuation benefits, annuities, *employment termination payments and unused leave payments)", substitute "(Payments for retirement or because of termination of employment)".

52 Section 390-1 in Schedule 1 (note)

Omit "and employment termination payments".

53 Application provision

The amendments made by this Division apply in relation to payments made on or after the later of the following days (or either of them if they are the same):

(a) the day this Division commences;

(b) 1 July 2010.

Division 2—Related amendments

Child Support (Registration and Collection) Act 1988

54 Subsection 4(1) (note at the end of the definition of *work and income support related withholding payments*)

Omit "employment termination payments,", substitute "payments for termination of employment,".

Income Tax Assessment Act 1936

55 Subsection 6(1) (note at the end of the definition of *work and income support related withholding payments and benefits*)

Omit "employment termination payments,", substitute "payments for termination of employment,".

Income Tax Assessment Act 1997

56 Subsection 28-185(3) (cell at table item 5, column headed "Subject matter")

Repeal the cell, substitute:

Payments for retirement or because of termination of employment

57 Subsection 900-12(3) (cell at table item 5, column headed "Subject matter")

Repeal the cell, substitute:

Payments for retirement or because of termination of employment

Part 6—Administrative penalties for false or misleading statements

Division 1—Main amendments

Taxation Administration Act 1953

58 Section 284-25 in Schedule 1

Omit "in an *approved form".

59 Paragraph 284-75(1)(a) in Schedule 1

Omit "or your agent makes", substitute "make".

60 Paragraph 284-75(1)(b) in Schedule 1

Omit "it; and", substitute "it.".

61 Paragraph 284-75(1)(c) in Schedule 1

Repeal the paragraph.

62 Subsection 284-75(1) in Schedule 1 (note)

Omit "Note:", substitute "Note 1:".

63 At the end of subsection 284-75(1) in Schedule 1

Add:

Note 2: This section applies to a statement made by your agent as if it had been made by you: see section 284-25.

64 Paragraph 284-75(2)(a) in Schedule 1

Omit "or your agent makes", substitute "make".

65 Paragraph 284-75(2)(b) in Schedule 1

Omit "or your agent".

66 Paragraph 284-75(2)(c) in Schedule 1

Repeal the paragraph.

67 At the end of section 284-75 in Schedule 1

Add:

(4) You are liable to an administrative penalty if:

(a) you make a statement to an entity other than:

(i) the Commissioner; and

(ii) an entity exercising powers or performing functions under a *taxation law; and

(b) the statement is, or purports to be, one required or permitted by a taxation law; and

(c) the statement is false or misleading in a material particular, whether because of things in it or omitted from it.

(5) You are not liable to an administrative penalty under subsection (1) or (4) for a statement that is false or misleading in a material particular if you, and your *agent (if relevant), took reasonable care in connection with the making of the statement.

68 Subsection 284-80(1) in Schedule 1 (note)

Repeal the note.

69 Subsection 284-90(1) in Schedule 1

After "this table", insert "and section 284-224 if relevant".

70 Subsection 284-90(1) in Schedule 1 (table items 1, 2 and 3)

Omit "Your *shortfall amount or part of it", substitute "You have a *shortfall amount as a result of a statement described in subsection 284-75(1) or (4) and the amount, or part of the amount,".

71 Subsection 284-90(1) in Schedule 1 (after table item 3)

Insert:

3A	A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law by you or your *agent but did not result in you having a *shortfall amount	60 penalty units
3B	A statement described in subsection 284-75(1) or (4) was false or misleading because of recklessness by you or your *agent as to the operation of a *taxation law but did not result in you having a *shortfall amount	40 penalty units

3C	A statement described in subsection 284-75(1) or (4) was false or misleading because of a failure by you or your *agent to take reasonable care to comply with a *taxation law but did not result in you having a *shortfall amount	20 penalty units

72 Subsection 284-90(1) in Schedule 1 (table item 4)

Omit "Your *shortfall amount or part of it", substitute "You have a *shortfall amount, all or part of which".

73 Subsection 284-90(1) in Schedule 1 (note)

Repeal the note.

74 Subsection 284-90(2) in Schedule 1

Omit "to you for your *shortfall amount or a part of it".

75 At the end of Subdivision 284-B in Schedule 1

Add:

284-95 Joint and several liability of directors of corporate trustee that makes a false or misleading statement

(1) This section applies if a trustee of a *self managed superannuation fund, or of a fund that is treated as a self managed superannuation fund under subsection 10(4) of the *Superannuation Industry (Supervision) Act 1993*:

(a) is liable to an administrative penalty under subsection 284-75(1) or (4); and

(b) is a body corporate.

(2) The directors of the body corporate at the time it becomes liable to the penalty are jointly and severally liable to pay the amount of the *tax-related liability in respect of the penalty.

Note: See section 265-45 for rules on joint liability.

76 Subsection 284-150(2) in Schedule 1 (note)

Repeal the note.

77 Section 284-160 in Schedule 1

After "*scheme is", insert ", subject to section 284-224".

78 Section 284-160 in Schedule 1 (note)

Repeal the note.

79 Section 284-215 in Schedule 1

Repeal the section.

80 Subsection 284-220(1) in Schedule 1

Omit "for an accounting period".

81 Paragraph 284-220(1)(a) in Schedule 1

After "*shortfall amount", insert ", or the false or misleading nature of a statement,".

82 Paragraph 284-220(1)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) you:

(i) became aware of such a shortfall amount after a statement had been made to the Commissioner about the relevant *tax-related liability; or

(ii) became aware of the false or misleading nature of a statement made to the Commissioner or another entity after the statement had been made;

and you did not tell the Commissioner or other entity about it within a reasonable time; or

83 Paragraph 284-220(1)(c) in Schedule 1

Omit "for a previous accounting period", substitute "previously".

84 After paragraph 284-220(1)(c) in Schedule 1

Insert:

(ca) the base penalty amount was worked out using item 3A, 3B or 3C of the table in subsection 284-90(1) and a base penalty amount for you was worked out under one of those items previously; or

85 Paragraph 284-220(1)(d) in Schedule 1

Omit "for a previous accounting period", substitute "previously".

86 Paragraph 284-220(1)(e) in Schedule 1

After "you were", insert "previously".

87 Paragraph 284-220(1)(e) in Schedule 1

Omit "for a previous accounting period".

88 After section 284-220 in Schedule 1

Insert:

284-224 Reduction of base penalty amount if law was applied in an accepted way

(1) If, apart from this section, you would have a *base penalty amount because you or your *agent treated a *taxation law as applying in a particular way, and that way agreed with:

(a) advice given to you or your agent by or on behalf of the Commissioner; or

(b) general administrative practice under that law; or

(c) a statement in a publication approved in writing by the Commissioner;

your base penalty amount is reduced to the extent that it was caused by that treatment.

(2) For the purposes of subsection (1) it does not matter whether the *base penalty amount also relates to:

(a) a statement; or

(b) a failure to give the Commissioner a return, notice or other document when required; or

(c) a *scheme.

89 Section 284-225 in Schedule 1 (heading)

Repeal the heading, substitute:

284-225 Reduction of base penalty amount if you voluntarily tell the Commissioner

90 Subsections 284-225(1) and (2) in Schedule 1

Repeal the subsections, substitute:

(1) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced by 20% if:

(a) the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; and

(b) *after* that time, you voluntarily tell the Commissioner, in the *approved form, about the shortfall, the part of it or the false or misleading nature of the statement; and

(c) telling the Commissioner can reasonably be estimated to have saved the Commissioner a significant amount of time or significant resources in the examination.

(2) The *base penalty amount for your *shortfall amount or *scheme shortfall amount, for part of it or for your false or misleading statement is reduced under subsection (3), (4) or (4A) if you voluntarily tell the Commissioner, in the *approved form, about the shortfall amount, the part of it or the false or misleading nature of the statement *before*:

(a) the day the Commissioner tells you that an examination is to be made of your affairs relating to a *taxation law for a relevant period; or

(b) if the Commissioner makes a public statement requesting entities to make a voluntary disclosure by a particular earlier day about a *scheme or transaction that applies to your affairs—that earlier day.

91 After subsection 284-225(4) in Schedule 1

Insert:

(4A) The *base penalty amount for your false or misleading statement that does not result in you having a *shortfall amount is reduced to nil.

92 Subsection 284-225(5) in Schedule 1

Omit "or part of it, *after* the Commissioner tells you that a *tax audit is to be conducted of your financial affairs", substitute "part of it or the false or misleading nature of the statement *after* the Commissioner tells you that an examination is to be conducted of your affairs relating to a *taxation law for a relevant period".

93 Subsection 284-225(5) in Schedule 1

Omit "the audit", substitute "the examination".

94 Section 288-85 in Schedule 1

Repeal the section.

95 Subsection 361-5(1) in Schedule 1 (note 1)

Omit "1".

96 Subsection 361-5(1) in Schedule 1 (note 2)

Repeal the note.

97 Subsection 361-5(3) in Schedule 1

Repeal the subsection.

Division 2—Consequential amendments

Product Grants and Benefits Administration Act 2000

98 Paragraph 35(1)(b)

After "subsection 284-75(1)", insert "or (4)".

Superannuation Industry (Supervision) Act 1993

99 Section 38A (subparagraph (ab)(i) of the definition of *regulatory provision*)

Repeal the subparagraph, substitute:

(i) subsections 284-75(1) and (4) and section 284-95;

100 Subsection 39(1B)

Omit "section 288-85 in Schedule 1 to the *Taxation Administration Act 1953* as a contravention of that section", substitute "subsection 284-75(1) or (4) in Schedule 1 to the *Taxation Administration Act 1953* as a contravention of that subsection".

Division 3—Application provision

101 Application provision—Divisions 1 and 2

The amendments made by Divisions 1 and 2 apply in relation to things done on or after the commencement of those Divisions.

Division 4—Amendments with contingent commencement

Taxation Administration Act 1953

102 Subsections 284-75(1A) and (1B) in Schedule 1

Repeal the subsections.

103 Before subsection 284-75(5) in Schedule 1

Insert:

Exceptions to subsections (1) and (4)

104 At the end of section 284-75 in Schedule 1

Add:

(6) You are not liable to an administrative penalty under subsection (1) or (4) if:

(a) you engage a *registered tax agent or BAS agent; and

(b) you give the registered tax agent or BAS agent all relevant taxation information; and

(c) the registered tax agent or BAS agent makes the statement; and

(d) the false or misleading nature of the statement did not result from:

(i) intentional disregard by the registered tax agent or BAS agent of a *taxation law; or

(ii) recklessness by the agent as to the operation of a taxation law.

(7) If you wish to rely on subsection (6), you bear an evidential burden in relation to paragraph (6)(b).

105 Application provision

The amendments made by this Division apply in relation to statements made on or after the commencement of this Division.

Part 7—Offsets against superannuation guarantee charge

Tax Laws Amendment (2008 Measures No. 2) Act 2008

106 After item 7 of Schedule 2

Insert:

7A Application of section 23A of the *Superannuation Guarantee (Administration) Act 1992* as amended

(1) Section 23A of the *Superannuation Guarantee (Administration) Act 1992*, as amended by this Schedule, applies to:

(a) contributions made before, on or after 1 January 2006; and

(b) elections made on or after 24 June 2008.

Note: The amendments of that section made by this Schedule commenced on 24 June 2008.

(2) This item has effect subject to items 8 and 9.

(3) To avoid doubt, this item:

(a) has effect despite subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*; and

(b) does not affect the application of amendments of section 23A of the *Superannuation Guarantee (Administration) Act 1992* commencing after the commencement of the amendments of that section made by this Schedule.

Note: Subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005* applied the amendment inserting section 23A in the *Superannuation Guarantee (Administration) Act 1992* to contributions made on or after 1 January 2006.

107 Paragraphs 8(1)(a) and 9(a) of Schedule 2

After "this Schedule", insert "(apart from item 7A)".

Part 8—Status of certain superannuation funds

Income Tax Assessment Act 1936

108 Subsection 267(1) (at the end of the definition of *constitutionally protected fund*)

Add "and is not established under Schedule 3 to the *Superannuation Act 1988* of South Australia".

Part 9—Technical corrections

A New Tax System (Luxury Car Tax) Act 1999

109 Section 9-20

Omit “from”, substitute “form”.

Note: This item corrects a misspelling.

Taxation Administration Act 1953

110 Section 363-35 in Schedule 1

Renumber as section 263-35.

Note: This item corrects a numbering error.

111 Subparagraphs 426-165(1)(b)(a) and (b) in Schedule 1

Renumber as subparagraphs (i) and (ii).

Note: This item corrects a numbering error.

Tax Laws Amendment (2009 Measures No. 4) Act 2009

112 Item 132 of Schedule 5

Omit “the Arts”, substitute “Arts”.

Note: This item corrects a misdescribed amendment.

113 Item 133 of Schedule 5

Omit “and Arts”, substitute “and the Arts”.

Note: This item corrects a misdescribed amendment.

Part 10—Repeal of redundant material

Income Tax Assessment Act 1936

114 Subsection 6(1) (definition of *accrued leave transfer payment*)

Repeal the definition.

Note: This repeals a definition that is not used any more and defines ***accrued leave transfer payment*** by reference to a repealed provision.

Income Tax Assessment Act 1997

115 Subsection 116-30(1) (note)

Repeal the note.

Note: This repeals a note that merely refers to 2 sections that have been repealed.

Taxation Administration Act 1953

116 Subsection 16-150(1) in Schedule 1

Omit "(1) An", substitute "An".

Note: This omits a subsection number from a section that is no longer divided into subsections.

Part 11—Other minor changes

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

117 Section 195-1

Insert:

> ***luxury car*** has the same meaning as in section 25-1 of the *A New Tax System (Luxury Car Tax) Act 1999*.

Income Tax Assessment Act 1936

118 Subsection 6(1) (definition of *agent*)

Repeal the definition, substitute:

> ***agent***: this Act applies to some entities (within the meaning of the *Income Tax Assessment Act 1997*) that are not agents in the same way as it applies to agents: see section 960-105 of the *Income Tax Assessment Act 1997*.

119 Transitional provision relating to agents

A declaration in force for the purposes of paragraph (b) of the definition of ***agent*** in subsection 6(1) of the *Income Tax Assessment Act 1936* immediately before the repeal of that definition by this Part continues to have effect on and after that repeal as if it were a determination under subsection 960-105(2) of the *Income Tax Assessment Act 1997*.

120 Subsection 6(1) (definition of *allowable deduction*)

Repeal the definition, substitute:

> ***allowable deduction*** has the same meaning as ***deduction*** has in the *Income Tax Assessment Act 1997*.

121 Subsection 6(1) (definition of *friendly society dispensary*)

Repeal the definition, substitute:

> ***friendly society dispensary*** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

122 Subsection 6(1) (definition of *paid-up share capital*)

Repeal the definition, substitute:

> ***paid-up share capital*** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

123 Subsection 6(1) (definition of *person*)

Repeal the definition, substitute:

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

124 Subsection 45B(9)

Omit "a dividend.", substitute "an assessable dividend.".

125 Application provision

(1) The amendment of subsection 45B(9) of the *Income Tax Assessment Act 1936* made by this Part applies to capital benefits provided on or after 30 November 2009.

(2) The amendment is to be disregarded for the purposes of interpreting that subsection as in force before the commencement of the amendment.

126 Subsection 45B(10)

Repeal the subsection, substitute:

(10) In this section:

> ***scheme*** has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997

127 Section 12-5 (table item headed "family tax benefit")

Repeal the item.

128 Section 25-7

Repeal the section.

129 Section 67-23 (after table item 10)

Insert:

12	education expenses	the *tax offset available under Subdivision 61-M

130 Application provision

Item 12 of the table in section 67-23 of the *Income Tax Assessment Act 1997* applies to tax offsets for the 2009-2010 income year and later income years.

131 Section 67-23 (after table item 20)

Insert:

23	National Rental Affordability Scheme	the *tax offsets available under Division 380

132 Application provision

Item 23 of the table in section 67-23 of the *Income Tax Assessment Act 1997* applies to tax offsets for the 2008-09 income year and later income years.

133 Subsection 67-25(7)

Repeal the subsection.

134 Application provision

The repeal of subsection 67-25(7) of the *Income Tax Assessment Act 1997* by this Part applies to tax offsets for the 2009-2010 income year and later income years.

135 Section 109-55 (table item 8C)

After "replacement-asset roll-over", insert "(other than a roll-over covered by section 115-34)".

136 At the end of section 109-55

Add:

Note: Section 115-34 sets out other acquisition rules for certain cases involving replacement-asset roll-overs covered by that section.

137 Section 112-97 (cell at table item 21, column headed "See:")

Repeal the cell, substitute:

subsection
320-200(2)

138 Section 112-97 (cell at table item 22, column headed "See:")

Repeal the cell, substitute:

subsection
320-255(2)

139 Subsection 115-25(1) (note)

Omit "Note", substitute "Note 1".

140 At the end of subsection 115-25(1)

Add:

Note 2: Section 115-30 or 115-34 may affect the time when the entity is treated as having acquired the CGT asset.

141 Subsection 115-30(1) (table item 2)

Repeal the item, substitute:

2	A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c))	(a) when the acquirer acquired the original asset involved in the roll-over; or (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs (other than roll-overs covered by paragraph 115-34(1)(c))—when the acquirer acquired the original asset involved in the first roll-over in the series

142 After section 115-30

Insert:

115-32 Special rule about time of acquisition for certain replacement-asset roll-overs

(1) This section applies if:

(a) a *CGT event happens to:

(i) your *share in a company; or

(ii) your *trust voting interest, unit or other fixed interest in a trust; and

(b) you *acquired the share or interest as a replacement asset for a *replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c)); and

(c) at the time of the CGT event, the company or trust:

(i) owns a *membership interest in an entity (the ***original entity***); and

(ii) has owned that membership interest for less than 12 months; and

(d) that membership interest is the original asset for the roll-over.

Note: This section does not affect the time when you are treated as having acquired the replacement asset. That time is worked out under item 2 of the table in subsection 115-30(1).

Application of tests about the assets of the company or trust

(2) Subsection 115-45(4) applies as if the company or trust had *acquired the original asset at least 12 months before the *CGT event, if the condition in that subsection would not be met were it to be applied to the original entity and the CGT event.

(3) Subsection 115-45(6) applies as if the company or trust had *acquired the original asset at least 12 months before the *CGT event, if the condition in subsection 115-45(5) would not be met were it to be applied to the original entity and the CGT event.

115-34 Further special rule about time of acquisition for certain replacement-asset roll-overs

(1) This section applies if:

(a) a *CGT event happens to your *share in a company; and

(b) at the time of the CGT event, you had owned the share for less than 12 months; and

(c) you *acquired the share as a replacement asset for:

(i) a *replacement-asset roll-over under Subdivision 122-A (disposal of assets by individuals or trustees to a wholly-owned company) for which you *disposed of a

*CGT asset, or all the assets of a *business, to the company; or

(ii) a replacement-asset roll-over under Subdivision 122-B (disposal of assets by partners to a wholly-owned company) for which you disposed of your interests in a CGT asset, or your interests in all the assets of a business, to the company; or

(iii) a replacement-asset roll-over under Subdivision 124-N (disposal of assets by trusts to a company) for which a trust of which you were a beneficiary disposed of all of its CGT assets to the company.

Application of tests about when you acquired the share

(2) Sections 115-25 and 115-40 apply as if you had *acquired the *share at least 12 months before the *CGT event.

Application of tests about the company's assets

(3) For each asset mentioned in subparagraph (1)(c)(i), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when you acquired it.

(4) For each asset mentioned in subparagraph (1)(c)(ii), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when you acquired your interests in it.

(5) For each asset mentioned in subparagraph (1)(c)(iii), subsections 115-45(4) and (6) apply as if the company had *acquired that asset when the trust acquired it.

Relationship with Subdivision 109-A

(6) This section has effect despite Subdivision 109-A (which contains rules about the time of acquisition of CGT assets).

143 Section 115-40 (note)

After "Section 115-30", insert "or 115-34".

144 Subsection 115-45(4) (note)

Omit "Section 115-30", substitute "Sections 115-30 and 115-32, or section 115-34,".

145 Subsection 115-45(6) (note)

Omit "Section 115-30", substitute "Sections 115-30 and 115-32, or section 115-34,".

146 Application provision

The amendments made by items 135, 136 and 139 to 145 apply to assessments for the income year including 21 September 1999 and for later income years, in relation to CGT events happening after 11.45 am (by legal time in the Australian Capital Territory) on that day.

147 At the end of subsection 152-320(1)

Add:

Note: The $500,000 is also reduced by any reduction under old provisions about reduction of the CGT retirement exemption limit: see item 62 of Schedule 1 to the *New Business Tax System (Capital Gains Tax) Act 1999*.

148 Paragraph 974-110(1)(b)

After "subsequently changed", insert ", including where one or more (but not all) of the schemes cease to exist".

149 Application provision

The amendment of paragraph 974-110(1)(b) of the *Income Tax Assessment Act 1997* made by this Part applies in relation to changes occurring on or after the day this Act receives the Royal Assent.

150 Subsection 995-1(1)

Insert:

common stake has the meaning given by section 124-783.

151 Subsection 995-1(1)

Insert:

common stakeholder has the meaning given by section 124-783.

152 Subsection 995-1(1) (definition of *quote*)

Repeal the definition, substitute:

quote:

(a) ***quote*** an entity's *ABN means quote in a form and manner approved by the Commissioner;

(b) ***quote*** a *tax file number in connection with a *Part VA investment: you ***quote*** your tax file number in connection with the investment if you are taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have quoted the number in connection with the investment.

153 Subsection 995-1(1) (definition of *quoted*)

Repeal the definition.

154 Subsection 995-1(1)

Insert:

significant stake has the meaning given by section 124-783.

155 Subsection 995-1(1)

Insert:

significant stakeholder has the meaning given by section 124-783.

Income Tax (Transitional Provisions) Act 1997

156 Section 1-10

Repeal the section, substitute:

1-10 Definitions and rules for interpreting this Act

(1) In this Act, an expression has the same meaning as in the *Income Tax Assessment Act 1997*.

(2) Division 950 of the *Income Tax Assessment Act 1997* (which contains rules for interpreting that Act) applies to this Act as if the provisions of this Act were provisions of that Act.

157 Subsection 770-230(5)

Omit "limit".

158 Application provision—amendment of subsection 770-230(5)

The amendment of subsection 770-230(5) of the *Income Tax (Transitional Provisions) Act 1997* made by this Part applies in relation to income years, statutory accounting periods and notional accounting periods starting on or after 1 July 2008.

Taxation Administration Act 1953

159 Paragraph 45-288(a) in Schedule 1

After "resident", insert "unit".

160 At the end of Chapter 2 in Schedule 1

Add:

Part 2-30—Collecting Medicare levy with income tax

Division 90—Medicare levy and Medicare levy surcharge

Table of Subdivisions

90-A Treatment like income tax

Subdivision 90-A—Treatment like income tax

Table of sections

90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as they apply in relation to income tax

90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as they apply in relation to income tax

Except so far as the contrary intention appears, this Schedule and the *Income Tax Assessment Act 1997* apply, and are taken always to have applied, in relation to the following in the same way as they apply in relation to income tax and *tax:

(a) Medicare levy (as defined in section 251R of the *Income Tax Assessment Act 1936*);

(b) *Medicare levy surcharge.

[*Minister's second reading speech made in—*
House of Representatives on 10 February 2010
Senate on 11 March 2010]

(36/10)