Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010

No. 114, 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 (Foreign Source Income Deferral) Act (No. 1) 2010

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

[*Assented to 14 July 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 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 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 July 2010
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	14 July 2010
3. Schedule 1, Part 2	Immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.	14 September 2006
4. Schedule 1, Part 3	The day this Act receives the Royal Assent.	14 July 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeal of the FIF and deemed present entitlement rules

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

> ***approved stock exchange*** has the same meaning as in the *Income Tax Assessment Act 1997*.

2 Subsection 6(1) (paragraph (l) of the definition of *passive income*)

Omit “, 459A or 529”, substitute “or 459A”.

3 Subsection 6(1)

Insert:

> ***post FIF abolition credit*** means a post FIF abolition credit arising under:
> (a) subsection 23AK(6); and
> (b) subsection 717-220(2) of the *Income Tax Assessment Act 1997*; and
> (c) subsection 717-255(2) of that Act.

4 Subsection 6(1)

Insert:

> ***post FIF abolition debit*** means a post FIF abolition debit arising under:
> (a) subsection 23AK(2); and
> (b) subsection 23B(1); and
> (c) subsection 717-220(3) of the *Income Tax Assessment Act 1997*; and
> (d) subsection 717-255(3) of that Act.

5 Subsection 6(1)

Insert:

> ***post FIF abolition surplus*** has the meaning given by section 23AK.

6 Subsection 6AB(1)

Omit “, 459A or 529”, substitute “or 459A”.

7 Section 23AK

Repeal the section, substitute:

23AK Amounts paid out of attributed foreign investment fund income not assessable

When this section applies

(1) This section applies if:
  (a) either:
    (i) a FIF attribution account payment of a kind referred to in former paragraph 603(1)(a), (b), (c), (d), (f), (g) or (h) is made to a taxpayer (other than a partnership or taxpayer in the capacity of trustee of a trust); or
    (ii) a FIF attribution account payment of a kind referred to in former paragraph 603(1)(e) is made to a taxpayer; and
  (b) on the making of the payment, a post FIF abolition debit arises, for the FIF attribution account entity making the payment, in relation to the taxpayer.

Post FIF abolition debit arises

(2) A post FIF abolition debit arises for a FIF attribution account entity (the ***eligible entity***) in relation to a taxpayer if:
  (a) the eligible entity makes a FIF attribution account payment to the taxpayer or to a FIF attribution account entity; and
  (b) immediately before the eligible entity makes the FIF attribution account payment, there is a post FIF abolition surplus for the eligible entity in relation to the taxpayer.

Amount of post FIF abolition debit

(3) The amount of the post FIF abolition debit is the lesser of:
  (a) the post FIF abolition surplus; and
  (b) whichever of the following is applicable:
    (i) if the attribution account payment is made to the taxpayer—the FIF attribution account payment;
    (ii) in any other case—the taxpayer's FIF attribution account percentage (for the FIF attribution account entity to which the payment is made) of the FIF attribution account payment;

  reduced by any attribution debit that arises under section 372 for the entity in relation to the taxpayer as a result of the making of the payment.

When the post FIF abolition debit arises

(4) The post FIF abolition debit arises when the FIF attribution account payment is made.

When a post FIF abolition surplus exists

(5) A post FIF abolition surplus for a FIF attribution account entity in relation to a taxpayer exists at a particular time (the ***relevant time***) if the sum of:
  (a) the entity's total FIF attribution credits (within the meaning of former section 605) that arose before the commencement of Schedule 1 to the *Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010*; and
  (b) the entity's total post FIF abolition credits arising before the relevant time in relation to the taxpayer;

  exceeds the sum of:
  (c) the entity's total FIF attribution debits (within the meaning of former section 606) that arose before that commencement in relation to the taxpayer; and
  (d) the entity's total post FIF abolition debits arising before the relevant time in relation to the taxpayer.

Post FIF abolition credit arises

(6) A post FIF abolition credit arises for a FIF attribution account entity (the ***eligible entity***) in relation to a taxpayer if a FIF

attribution account payment that requires a post FIF abolition debit for another entity in relation to the taxpayer is made to the eligible entity.

Amount of post FIF abolition credit

(7) The amount of the post FIF abolition credit is equal to the amount of the post FIF abolition debit for the other entity.

When the post FIF abolition credit arises

(8) The post FIF abolition credit arises when the FIF attribution account payment referred to in subsection (6) is made.

Effect of this section applying

(9) If this section applies, the following provisions have effect:

(a) if the payment is of a kind referred to in former paragraph 603(1)(a) or (b)—the payment is not assessable income, and is not exempt income, to the extent of the debit;

(b) if the payment is of a kind referred to in former paragraph 603(1)(c) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 92 in respect of an individual interest in the net income of the partnership of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

(c) if the payment is of a kind referred to in former paragraph 603(1)(d) and, apart from this section, an amount would be included in the taxpayer's assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

(d) if the payment is of a kind referred to in former paragraph 603(1)(d) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;

(e) if the payment is of a kind referred to in former paragraph 603(1)(e)—the payment is not, to the extent of the debit, assessable to the taxpayer as mentioned in that paragraph;

(f) if the payment is of a kind referred to in former paragraph 603(1)(f) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

(g) if the payment is of a kind referred to in former paragraph 603(1)(g)—the payment is not assessable income, and is not exempt income, to the extent of the debit;

(h) if the payment is of a kind referred to in former paragraph 603(1)(h)—the payment is not assessable income, and is not exempt income, to the extent of the debit.

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

(11) In this section:

FIF attribution account entity has the same meaning as in former Part XI.

FIF attribution account payment has the same meaning as in former Part XI.

FIF attribution account percentage has the same meaning as in former Part XI.

trust has the same meaning as in former Part XI, but does not include a trust covered by former subsection 605(11).

23B Reduction of disposal consideration if FIF attributed income not distributed

(1) If:

(a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in a FIF attribution account entity; and

(b) immediately before the disposal or CGT event takes place there is a post FIF abolition surplus for the FIF attribution account entity in relation to the taxpayer;

then, for the purposes of this Act:

(c) the consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is taken to be reduced by so much of the amount of the post FIF abolition surplus as does not exceed the consideration or capital proceeds; and

(d) a post FIF abolition debit arises at the time of the disposal or the CGT event under this paragraph, in relation to the taxpayer, for the FIF attribution account entity; and

(e) the amount of the post FIF abolition debit is equal to so much of the surplus as is taken into account under paragraph (c).

(2) For the purposes of paragraph (1)(c), if the disposal of the asset or the CGT event causes the taxpayer's FIF attribution account percentage for the FIF attribution account entity to be reduced by a proportion, then only that proportion of the post FIF abolition surplus for the entity is to be taken into account under that paragraph.

(3) In this section:

FIF attribution account entity has the same meaning as in former Part XI.

FIF attribution account percentage has the same meaning as in former Part XI.

8 Subsection 82KZL(1) (definition of *approved stock exchange*)

Repeal the definition.

9 Sections 96A, 96B and 96C

Repeal the sections.

10 Paragraph 102AAU(1)(b)

Repeal the paragraph, substitute:

(b) if the non-resident trust estate is a listed country trust estate in relation to the year of income—the amount that would have been the net income of the non-resident trust estate of the year of income if the exempt income of the trust estate included all income and profits of the trust estate, other than eligible designated concession income in relation to any listed country in relation to the year of income;

11 Sub-subparagraph 102AAU(1)(c)(viii)(B)

Omit "; or", substitute "; and".

12 Subparagraph 102AAU(1)(c)(ix)

Repeal the subparagraph.

13 Subsections 102AAU(7), (8) and (9)

Repeal the subsections.

14 Subsection 317(1) (definition of *FIF attribution account entity*)

Repeal the definition.

15 Subsection 317(1) (definition of *FIF attribution account payment*)

Repeal the definition.

16 Subsection 317(1) (definition of *FIF attribution debit*)

Repeal the definition.

17 Subsection 317(1) (definition of *grossed-up amount*)

Repeal the definition, substitute:

grossed-up amount, in relation to an attribution debit, has the meaning given by section 373.

18 Subparagraph 356(4B)(b)(ii)

After “a FIF”, insert “(within the meaning of former Part XI)”.

19 Subparagraph 356(4C)(b)(ii)

After “in FIFs”, insert “(within the meaning of former Part XI)”.

20 Paragraphs 371(1)(aa) and (ab)

Repeal the paragraphs.

21 Subsection 371(2)

Omit “subsections (2A), (2B), (3) and (4)”, substitute “subsection (4)”.

22 Subsections 371(2A), (2B), (2C) and (2D)

Repeal the subsections.

23 Paragraphs 371(5)(aa) and (ab)

Repeal the paragraphs.

24 Paragraph 384(2)(ca)

Repeal the paragraph.

25 Subparagraph 384(2)(d)(iii)

Omit “; and”, substitute “.”.

26 Subparagraph 384(2)(d)(iv)

Repeal the subparagraph.

27 Paragraphs 385(2)(a) and (b)

Omit “to E”, substitute “to D”.

28 Paragraph 385(2)(ca)

Repeal the paragraph.

29 Paragraph 385(2)(d)

Omit “to E” (wherever occurring), substitute “to D”.

30 Sub-subparagraph 385(2)(d)(iv)(B)

Omit “; and”, substitute “.”.

31 Subparagraph 385(2)(d)(v)

Repeal the subparagraph.

32 Subsection 385(4)

Omit “paragraphs (2)(a) and (ca)”, substitute “paragraph (2)(a)”.

33 Paragraph 389(a)

Omit “, 461 and 605”, substitute “and 461”.

34 Subsections 402(2A), (2B) and (2C)

Repeal the subsections.

35 Subsection 402(4)

Repeal the subsection, substitute:

(4) If:

(a) a FIF attribution account entity (within the meaning of former Part XI) makes a FIF attribution account payment (within the meaning of former Part XI) to the eligible CFC in the eligible period; and

(b) apart from this subsection, the whole or part of the FIF attribution account payment would be included in the notional assessable income of the eligible CFC in relation to the eligible taxpayer for the eligible period; and

(c) on the making of the FIF attribution account payment, a post FIF abolition debit arises under section 23AK for the FIF attribution account entity in relation to the eligible taxpayer;

so much (if any) of the whole or the part of the FIF attribution account payment as does not exceed the grossed-up amount of the post FIF abolition debit is notional exempt income of the eligible CFC for the eligible period.

(5) For the purposes of subsection (4), the grossed-up amount of the post FIF abolition debit is:

(a) where subparagraph 23AK(3)(b)(i) applied in relation to the debit—the amount of the debit; or

(b) where subparagraph 23AK(3)(b)(ii) applied in relation to the debit—the amount of the debit, divided by the FIF attribution account percentage referred to in that subparagraph.

36 Subdivision E of Division 7 of Part X

Repeal the Subdivision.

37 Part XI

Repeal the Part.

38 Subsection 272-140(1) in Schedule 2F (definition of *approved stock exchange*)

Repeal the definition.

39 Schedules 3, 4 and 5

Repeal the Schedules.

Income Tax Assessment Act 1997

40 Section 10-5 (table item headed "attributable income")

Omit "*and foreign investment funds*".

41 Section 10-5 (table item headed "FIFs")

Repeal the item.

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

Repeal the item.

43 Section 10-5 (table item headed "insurance")

Omit:

foreign life assurance policy **529**

44 Section 11-55 (table item headed "foreign aspects of income taxation")

Omit:

attributed controlled foreign company income **23AI**
attributed foreign investment fund income **23AK**

Substitute:

attributed controlled foreign company income, amounts paid out of **23AI**

attributed foreign investment fund income, amounts paid out of **23AK**

45 Section 12-5 (table item headed "foreign investment funds (FIFs)")

Repeal the item.

46 Section 12-5 (table item headed "foreign life assurance policies")

Repeal the item.

47 Section 70-70

Repeal the section.

48 Subsection 116-10(7) (note 1)

Repeal the note, substitute:

Note 1: Also, these provisions of the *Income Tax Assessment Act 1936* modify capital proceeds:

(a) section 23B (undistributed FIF attribution income on disposal of an interest in a FIF);

(b) sections 159GZZZF and 159GZZZG (cancellation of shares in a holding company);

(c) sections 159GZZZQ and 159GZZZS (buy-backs of shares);

(d) sections 401, 422, 423 and 461 (CFCs).

49 Subsection 230-460(12)

Repeal the subsection, substitute:

Interest in controlled foreign companies

(12) A right or obligation that arises under a *direct participation interest of an *attributable taxpayer in a *controlled foreign company is the subject of an exception.

50 Subsection 703-75(4) (note)

Omit "and FIF rules in Parts X and XI", substitute "rules in Part X".

51 Subsection 715-660(1) (table items 1 and 2)

Repeal the table items, substitute:

1	A provision of Part X of the	Attribution of income in respect of controlled

Income Tax Assessment Act 1936 for an irrevocable declaration, election, choice or selection	foreign companies

52 Subdivision 717-D of Division 717 of Part 3-90 (heading)

Repeal the heading, substitute:

Subdivision 717-D—Transfer of certain surpluses under CFC provisions and former FIF and FLP provisions: entry rules

53 Section 717-200

Omit "FIF attribution", substitute "post FIF abolition".

54 Paragraph 717-205(c)

Repeal the paragraph, substitute:

(b) the post FIF abolition surplus (if any) (within the meaning of the *Income Tax Assessment Act 1936*) for a FIF attribution account entity (within the meaning of former Part XI of that Act) in relation to the joining company just before the joining time.

55 Section 717-220

Repeal the section, substitute:

717-220 FIF surpluses

(1) This section operates for the purposes of sections 23AK and 23B of the *Income Tax Assessment Act 1936* if:

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

(b) just before the joining time there was a post FIF abolition surplus for a FIF attribution account entity in relation to the joining company for the purposes of those sections; and

(c) just before the joining time, the joining company's FIF attribution account percentage in relation to the FIF attribution account entity for the purposes of those sections was more than nil.

Credit in relation to the head company

(2) A post FIF abolition credit arises at the joining time for the FIF attribution account entity in relation to the *head company of the group. The credit is equal to the post FIF abolition surplus.

Debit in relation to the joining company

(3) A post FIF abolition debit arises at the joining time for the FIF attribution account entity in relation to the joining company. The debit is equal to the post FIF abolition surplus.

Definitions

(4) In this section:

FIF attribution account entity has the same meaning as in former Part XI of the *Income Tax Assessment Act 1936*.

FIF attribution account percentage has the same meaning as in former Part XI of the *Income Tax Assessment Act 1936*.

post FIF abolition credit has the same meaning as in the *Income Tax Assessment Act 1936*.

post FIF abolition debit has the same meaning as in the *Income Tax Assessment Act 1936*.

post FIF abolition surplus has the same meaning as in the *Income Tax Assessment Act 1936*.

56 Section 717-230

Repeal the section.

57 Subdivision 717-E of Division 717 of Part 3-90 (heading)

Repeal the heading, substitute:

Subdivision 717-E—Transfer of certain surpluses under CFC provisions and former FIF and FLP provisions: exit rules

58 Section 717-235

Omit “FIF attribution”, substitute “post FIF abolition”.

59 Paragraph 717-240(c)

Repeal the paragraph, substitute:

(b) the post FIF abolition surplus (if any) (within the meaning of the *Income Tax Assessment Act 1936*) for a FIF attribution account entity (within the meaning of former Part XI of that Act) in relation to the head company just before the leaving time.

60 Section 717-255

Repeal the section, substitute:

717-255 FIF surpluses

(1) This section operates for the purposes of sections 23AK and 23B of the *Income Tax Assessment Act 1936* (the ***1936 Act***) if:

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

(b) just before the leaving time, there was a post FIF abolition surplus for a FIF attribution account entity in relation to the *head company of the group for the purposes of those sections; and

(c) at the leaving time, the leaving company's FIF attribution account percentage in relation to the FIF attribution account entity for the purposes of those sections is more than nil.

Credit in relation to the leaving company

(2) A post FIF abolition credit arises at the leaving time for the FIF attribution account entity in relation to the leaving company. The credit is the amount worked out under subsection (4).

Debit in relation to head company

(3) A post FIF abolition debit arises at the leaving time for the FIF attribution account entity in relation to the company that was the *head company of the group just before the leaving time. The debit is the amount worked out under subsection (4).

Amount of credit and debit

(4) The amount of the credit and debit is worked out using the formula:

$$\frac{\text{Leaving company's FIF attribution account percentage in relation to the FIF attribution account entity at the leaving time}}{\text{*Head company's FIF attribution account percentage in relation to the FIF attribution account entity just before the leaving time}} \times \text{Post FIF abolition surplus for the FIF attribution account entity in relation to the *head company just before the leaving time}$$

Definitions

(5) In this section:

FIF attribution account entity has the same meaning as in former Part XI of the *Income Tax Assessment Act 1936*.

FIF attribution account percentage has the same meaning as in former Part XI of the *Income Tax Assessment Act 1936*.

post FIF abolition credit has the same meaning as in the *Income Tax Assessment Act 1936*.

post FIF abolition debit has the same meaning as in the *Income Tax Assessment Act 1936*.

post FIF abolition surplus has the same meaning as in the *Income Tax Assessment Act 1936*.

61 Section 717-265

Repeal the section.

62 Subsection 768-533(1)

Repeal the subsection, substitute:

(1) This section applies if:
  (a) the foreign company is a FIF (within the meaning of former section 481 of the *Income Tax Assessment Act 1936*); and
  (b) the holding company has made a choice under former subsection 559A(1) of the *Income Tax Assessment Act 1936*

in relation to the foreign company in respect of a notional accounting period (within the meaning of former section 486 of that Act) of the foreign company that ends in the 2009-10 income year; and

(c) because of the choice, the foreign company has been treated under former paragraph 559A(3)(c) of that Act as an AFI subsidiary (within the meaning of that Act) in relation to that holding company; and

(d) the holding company makes a choice under subsection (1A) in relation to the foreign company; and

(e) the holding company has not failed to make a choice under that subsection for the 2010-11 income year or any later income year.

(1A) A holding company may make a choice under this subsection in relation to a foreign company if the holding company could have made a choice in relation to the foreign company under former section 559A of the *Income Tax Assessment Act 1936* if it had not been repealed by item 37 of Schedule 1 to the *Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010*.

63 Section 768-900

Omit “controlled foreign company and foreign investment fund rules”, substitute “controlled foreign company rules”.

64 Section 768-965

Repeal the section.

65 Section 768-975

Repeal the section.

66 Section 770-135 (heading)

Repeal the heading, substitute:

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

67 Subsection 770-135(1)

Omit “or a *FIF”.

68 Subsection 770-135(2)

Repeal the subsection, substitute:

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

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

(b) section 457 (a ***section 457 case***) of that Act in relation to a CFC.

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

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

69 Paragraph 770-135(3)(b)

Omit "; or", substitute ".".

70 Paragraph 770-135(3)(c)

Repeal the paragraph.

71 Paragraph 770-135(5)(b)

Omit "; or", substitute ".".

72 Paragraph 770-135(5)(c)

Repeal the paragraph.

73 Subsection 770-135(5) (note)

Repeal the note.

74 Subsections 770-135(6), (7) and (8)

Repeal the subsections, substitute:

Amount of foreign income tax

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

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

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

Grossing-up of attributed amount

(8) For the purposes of this Act except this section and section 371 of the 1936 Act (for a section 456 case or a section 457 case), the amount included in the entity's assessable income as described in subsection (2) is taken to be increased by the amount of tax worked out under subsection (7).

Note: Section 371 of the 1936 Act records an amount in an attribution account when the amount is included in the assessable income of an attributable taxpayer in relation to a CFC.

75 Subsection 830-10(1)

Omit "A *limited", substitute "Subject to subsection (2), a *limited".

76 Subsection 830-10(2)

Repeal the subsection, substitute:

(2) If a partner is not an *attributable taxpayer in relation to a *limited partnership, then, for the purposes of applying the *Income Tax Assessment Act 1936* and this Act in relation to the partner's interest in the limited partnership, the limited partnership is a ***foreign hybrid limited partnership*** in relation to an income year for the partner if, and only if, the partner:

(a) has made an election under former subsection 485AA(1) of the *Income Tax Assessment Act 1936*; or

(b) makes an election under this paragraph;

in relation to the partner's interest in the partnership.

(3) For the purposes of subsection (2), the limited partnership is a ***foreign hybrid limited partnership*** in relation to any income year during which an election referred to in paragraph (2)(a) or (2)(b) is in force.

(4) An election can only be made under paragraph (2)(b) if:

(a) disregarding subsection 94D(6) of the *Income Tax Assessment Act 1936*:

(i) at the end of the income year in which the election is made, the partner has an interest in a FIF (within the meaning of former Part XI of that Act) that is a *corporate limited partnership; and

(ii) the interest consists of a *share in the FIF; and

(b) the limited partnership satisfies paragraphs (1)(a) to (d) in relation to the income year in which the election is made.

(5) An election under paragraph (2)(b) must be made:

(a) on or before the day on which the partner lodges the partner's income tax return for the income year; or

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

(6) The election:

(a) is in force during the income year and all later income years; and

(b) is irrevocable.

77 Subsection 830-15(1)

Omit "A company", substitute "Subject to subsection (5), a company".

78 Subsection 830-15(5)

Repeal the subsection, substitute:

(5) If a shareholder is not an *attributable taxpayer in relation to a company, then, for the purposes of applying the *Income Tax Assessment Act 1936* and this Act in relation to the shareholder's *share or shares in the company, the company is a ***foreign hybrid company*** in relation to an income year for the shareholder if, and only if, the shareholder:

(a) has made an election under former subsection 485AA(1) of the *Income Tax Assessment Act 1936*; or

(b) makes an election under this paragraph;

in relation to the shareholder's share or shares in the company.

(6) For the purposes of subsection (5), the company is a ***foreign hybrid company*** in relation to any income year during which the election referred to in paragraph (5)(a) or (5)(b) is in force.

(7) An election can only be made under paragraph (5)(b) if:

(a) in relation to the income year in which the election is made, the company:
  (i) is a FIF (within the meaning of former Part XI of the *Income Tax Assessment Act 1936*); and
  (ii) satisfies paragraphs (1)(a) to (c); and
(b) at the end of the income year in which the election is made, the shareholder's interest in the FIF consists of one or more *shares in the FIF.

(8) An election under paragraph (5)(b) must be made:
  (a) on or before the day on which the shareholder lodges the shareholder's income tax return for the income year; or
  (b) within a further time allowed by the Commissioner.

(9) The election:
  (a) is in force during the income year and all later income years; and
  (b) is irrevocable.

79 Paragraph 960-50(10)(c)

Omit ";", substitute ".".

80 Paragraph 960-50(10)(d)

Repeal the paragraph.

81 Subsection 995-1(1) (definition of *approved stock exchange*)

Repeal the definition, substitute:

approved stock exchange means a stock exchange named in regulations made for the purposes of this definition.

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

Repeal the definition, substitute:

attribution percentage, in relation to a *CFC or a *CFT, has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

83 Subsection 995-1(1) (definition of *FIF*)

Repeal the definition.

84 Subsection 995-1(1) (definition of *FLP*)

Repeal the definition.

85 Subsection 995-1(1) (definition of *foreign investment fund*)

Repeal the definition.

86 Subsection 995-1(1) (definition of *notional accounting period*)

Repeal the definition.

Superannuation Industry (Supervision) Act 1993

87 Subsection 66(5) (paragraph (b) of the definition of *listed security*)

Omit "section 470 of the *Income Tax Assessment Act 1936*", substitute "the *Income Tax Assessment Act 1997*".

Part 2—Other amendments

Income Tax Assessment Act 1936

88 Subsection 401(1)

Repeal the subsection, substitute:

(1) If:

(a) it is necessary, for the purposes of applying a provision of this Act in calculating the attributable income of the eligible CFC in relation to the eligible taxpayer, to take into account:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the eligible CFC in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in an attribution account entity (the ***disposal entity***); and

(b) immediately before the disposal or CGT event takes place, either or both of the following conditions are satisfied:

(i) there is an attribution surplus for the disposal entity in relation to the eligible taxpayer;

(ii) there is an attribution surplus for one or more other attribution account entities in relation to the eligible taxpayer, where each such entity is one in which the eligible taxpayer has an indirect attribution account interest held through the disposal entity;

then:

(c) for the purpose of calculating the attributable income, the consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is, subject to subsection (3), taken to be reduced by the grossed-up amount of the attribution surplus, or the sum of the grossed-up amounts of the attribution surpluses, as the case requires; and

(d) for the purposes of this Act, attribution debits and credits arise in accordance with subsection (5).

Note: The heading to section 401 is replaced by the heading "**Reduction of disposal consideration or capital proceeds if attributed income not distributed**".

89 Subsection 401(3)

Repeal the subsection, substitute:

(3) For the purposes of paragraph (1)(c):

(a) a reference to the grossed-up amount of an attribution surplus is a reference to the amount of the surplus divided by the eligible taxpayer's attribution account percentage for the eligible CFC; and

(b) where the disposal of the asset, or the CGT event, causes the eligible taxpayer's attribution account percentage for an attribution account entity in relation to which there is an attribution surplus to be reduced by a proportion, then only that proportion of the attribution surplus is, subject to this subsection, to be taken into account under that paragraph; and

(c) where there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (b) of this subsection) its grossed-up amount exceeds the consideration in respect of the disposal or the capital proceeds from the CGT event, then the surplus is only to be taken into account to the extent that its grossed-up amount equals the consideration or those capital proceeds; and

(d) where there are 2 or more attribution surpluses referred to in paragraph (1)(c) and (after any application of paragraph (b) of this subsection) the sum of their grossed-up amounts exceeds the consideration in respect of the disposal or the capital proceeds from the CGT event, then:

(i) if the taxpayer makes an election that for the purposes of this paragraph, a part of each surplus (after any application of paragraph (b)) such that the sum of the grossed-up amounts of the parts to which the election relates equals the consideration or those capital proceeds—only the part to which the election relates of each surplus is to be taken into account under paragraph (1)(c); or

(ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (b)) is

to be taken into account under paragraph (1)(c), being the proportion calculated using the formula:

$$\frac{\text{Consideration}}{\text{Total grossed-up surplus}}$$

where:

consideration means the amount of the consideration or the capital proceeds.

total grossed-up surplus means the sum of the grossed-up amounts of the attribution surpluses (after any application of paragraph (b)).

90 Subsection 461(1)

Repeal the subsection, substitute:

(1) If:

(a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in an attribution account entity (the ***disposal entity***); and

(b) immediately before the disposal or CGT event takes place, either or both of the following conditions are satisfied:

(i) there is an attribution surplus for the disposal entity in relation to the taxpayer;

(ii) there is an attribution surplus for one or more other attribution account entities in relation to the taxpayer, where each such entity is one in which the taxpayer has an indirect attribution account interest held through the disposal entity;

then, for the purposes of this Act:

(c) the consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is, subject to subsection (3), taken to be reduced by so

much of the amount of the attribution surplus, or sum of the attribution surpluses, as the case requires; and

(d) an attribution debit is taken to arise at the time of the disposal or the CGT event under section 372, in relation to the taxpayer, for each attribution account entity (the ***surplus entity***) in relation to which there is a surplus to which paragraph (c) applies; and

(e) the amount of the attribution debit is equal to so much of the surplus as is taken into account under paragraph (c); and

(f) there is no grossed-up amount in relation to the attribution debit under section 373.

Note: The heading to section 461 is replaced by the heading "**Reduction of disposal consideration or capital proceeds if attributed income not distributed**".

91 Subsection 461(3)

Repeal the subsection, substitute:

(3) For the purposes of paragraph (1)(c):

(a) if the disposal of the asset or the CGT event causes the taxpayer's attribution account percentage for a surplus entity to be reduced by a proportion, then only that proportion of the attribution surplus for the entity is, subject to this subsection, to be taken into account under that paragraph; and

(b) if there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (a) of this subsection) it exceeds the consideration from the disposal or the capital proceeds from the CGT event, then only so much of the surplus as does not exceed that consideration or those capital proceeds is to be taken into account under paragraph (1)(c); and

(c) where there are 2 or more attribution surpluses referred to in paragraph (1)(c) and (after any application of paragraph (a) of this subsection) their sum exceeds the consideration from the disposal or the capital proceeds from the CGT event, then:

(i) if the taxpayer makes an election that, for the purposes of this paragraph, a part of each surplus (after any application of paragraph (a)) such that the sum of the amounts to which the election relates equals that consideration or those capital proceeds—only the part to

which the election relates of each surplus is to be taken into account under paragraph (1)(c); or

(ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (a)) is to be taken into account under paragraph (1)(c), being the proportion calculated using the formula:

$$\frac{\text{Consideration}}{\text{Total surplus}}$$

where:

consideration means the amount of the consideration or the capital proceeds.

total surplus means the sum of the attribution surpluses (after any application of paragraph (a)).

92 Section 613

Repeal the section, substitute:

613 Reduction of disposal consideration or capital proceeds if FIF attributed income not distributed

(1) If:

(a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account:

(i) the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset; or

(ii) the capital proceeds from a CGT event happening in relation to a CGT asset;

being an asset that is an interest in a FIF attribution account entity; and

(b) immediately before the disposal or CGT event takes place there is a FIF attribution surplus for the FIF attribution account entity in relation to the taxpayer;

then, for the purposes of this Act:

(c) the consideration or capital proceeds that, apart from this section, would be taken into account under the provision

referred to in paragraph (a) in respect of the disposal or CGT event is taken to be reduced by so much of the amount of the FIF attribution surplus as does not exceed the consideration or capital proceeds; and

(d) a FIF attribution debit is taken to arise at the time of the disposal or the CGT event under section 606, in relation to the taxpayer, for the FIF attribution account entity; and

(e) the amount of the FIF attribution debit is equal to so much of the surplus as is taken into account under paragraph (c).

(2) For the purposes of paragraph (1)(c), if the disposal of the asset or the CGT event causes the taxpayer's FIF attribution account percentage for the FIF attribution account entity to be reduced by a proportion, then only that proportion of the FIF attribution surplus for the entity is to be taken into account under that paragraph.

Part 3—Application and saving provisions

93 Application of Part 1 amendments

(1) The amendments made by items 2 to 7, 9, 37, 39, 47 to 49, 51, 54 to 56, 59 to 80, and 82 to 87 of this Schedule apply in relation to the 2010-11 year of income for a taxpayer and later years of income.

(2) The amendments made by items 10 to 13 of this Schedule apply in relation to the 2010-11 year of income for a trust estate and later years of income.

(3) The amendments made by items 14 to 36 of this Schedule apply in relation to statutory accounting periods ending in the 2010-11 year of income and later years of income.

94 Application of Part 2 amendments

The amendments made by Part 2 of this Schedule apply to assessments for the 2006-07 income year and later income years.

95 Saving of regulations relating to stock exchanges

Despite the repeal of the definition of ***approved stock exchange*** in section 470 of the *Income Tax Assessment Act 1936* by item 37 of this Schedule, regulations made for the purposes of that definition that were in force immediately before this item commences continue in force on and after that commencement as if those regulations had been made for the purposes of the definition of ***approved stock exchange*** in the *Income Tax Assessment Act 1997* as inserted by item 81 of this Schedule.

96 Saving of elections relating to foreign hybrids

Despite the repeal of subsection 485AA(1) of the *Income Tax Assessment Act 1936* by item 37 of this Schedule, elections made under that subsection continue to have effect on and after the commencement of this Schedule as if that repeal had not happened.

[*Minister's second reading speech made in—*
House of Representatives on 13 May 2010
Senate on 24 June 2010]

(64/10)