Tax Laws Amendment (2011 Measures No. 5) Act 2011

No. 62, 2011

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/)

Contents

1 Short title 1
2 Commencement 2
3 Schedule(s) 2

Schedule 1—Primary producers' income averaging and farm management deposits 4

Part 1—Primary producers' income averaging 4

Income Tax Assessment Act 1997 4

Part 2—Farm management deposits 7

Income Tax Assessment Act 1936 7

Income Tax Assessment Act 1997 7

Income Tax (Transitional Provisions) Act 1997 10

Part 3—Application provision 11

Schedule 2—Interim changes to the taxation of trust income 12

Part 1—Main amendments 12

Income Tax Assessment Act 1936 12

Income Tax Assessment Act 1997 21

Part 2—Consequential amendments 34

Income Tax Assessment Act 1936 34

Income Tax Assessment Act 1997 36

Part 3—Application provision 38

Schedule 3—National Rental Affordability Scheme 40

Part 1—National Rental Affordability Scheme Tax Offset 40

Division 1—NRAS consortiums 40

Income Tax Assessment Act 1997 40

Division 2—Elections by NRAS approved participants 45

Income Tax Assessment Act 1997 45

Part 2—Other incentives 53

Income Tax Assessment Act 1997 53

Part 3—Definitions 54
Income Tax Assessment Act 1997 54
Schedule 4—Phasing out the dependent spouse tax offset 56
Income Tax Assessment Act 1936 56
Income Tax Assessment Act 1997 62
Schedule 5—Car fringe benefits 63
Part 1—Amendments commencing on Royal Assent 63
Fringe Benefits Tax Assessment Act 1986 63
Part 2—Amendments commencing on 1 April 2016 66
Fringe Benefits Tax Assessment Act 1986 66

Tax Laws Amendment (2011 Measures No. 5) Act 2011

No. 62, 2011

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

[*Assented to 29 June 2011*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

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.	29 June 2011
2. Schedules 1 and 2	The day this Act receives the Royal Assent.	29 June 2011
3. Schedule 3, Part 1, Division 1	The day this Act receives the Royal Assent.	29 June 2011
4. Schedule 3, Part 1, Division 2	The day after this Act receives the Royal Assent.	30 June 2011
5. Schedule 3, Parts 2 and 3	The day this Act receives the Royal Assent.	29 June 2011
6. Schedule 4	The day this Act receives the Royal Assent.	29 June 2011
7. Schedule 5, Part 1	The day this Act receives the Royal Assent.	29 June 2011
8. Schedule 5, Part 2	1 April 2016.	1 April 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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—Primary producers' income averaging and farm management deposits

Part 1—Primary producers' income averaging

Income Tax Assessment Act 1997

1 Subsection 392-20(1)

Omit "if you are a beneficiary presently entitled to all or part of the trust income for the income year", substitute "if you satisfy the requirements in subsection (2), (3) or (4)".

2 Subsections 392-20(2) and (3)

Repeal the subsections, substitute:

Primary production business carried on by a trust with beneficiary presently entitled to income of the trust

(2) You satisfy the requirements in this subsection if:
- (a) you are a beneficiary of the trust referred to in subsection (1); and
- (b) you are presently entitled to a share of the income of the trust for the income year; and
- (c) if you are presently entitled to less than $1,040 of the income of the trust for the income year—the Commissioner is satisfied that your interest in the trust was not acquired or granted wholly or primarily to enable your income tax to be adjusted under this Division.

Primary production business carried on by a fixed trust with no income of the trust

(3) You satisfy the requirements in this subsection if:
- (a) you are a beneficiary of the trust referred to in subsection (1); and
- (b) at all times during the income year, the manner or extent to which each beneficiary of the trust can benefit from the trust

is not capable of being significantly affected by the exercise, or non-exercise, of a power; and

(c) the trust does not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled; and

(d) if the trust had income of the trust for the income year, you would have been presently entitled to a share of the income of the trust.

Primary production business carried on by a non-fixed trust with no income of the trust

(4) You satisfy the requirements in this subsection if you do not satisfy the requirements in subsection (3) and you are a chosen beneficiary of the trust referred to in subsection (1) for the purposes of section 392-22 for the income year.

Corporate unit trusts and public trading trusts

(5) You are not taken to carry on a *primary production business carried on by the trustee of:

(a) a corporate unit trust (as defined in section 102J of the *Income Tax Assessment Act 1936*, which deals with corporate unit trusts); or

(b) a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

3 After section 392-20

Insert:

392-22 Trustee may choose that a beneficiary is a chosen beneficiary of the trust

(1) The trustee of a trust may choose that a beneficiary of the trust is a chosen beneficiary of the trust for an income year if the trust does not have income of the trust for the income year to which a beneficiary of the trust could be presently entitled.

(2) The maximum number of choices that the trustee may make in respect of the trust for an income year is the higher of:

(a) the number of individuals that were taken to be carrying on a *primary production business carried on by the trust under subsection 392-20(1) in the income year immediately before the current income year; and

(b) 12.

(3) A choice made under subsection (1) must be:

(a) in writing; and

(b) signed by the trustee and the person chosen.

(4) The trustee can make the choice no later than the time it lodges the trust's *income tax return for the income year to which the choice relates. However, the Commissioner can allow the trustee to make a choice at a later time.

(5) A choice cannot be revoked or varied.

Part 2—Farm management deposits

Income Tax Assessment Act 1936

4 Section 97A (note)

Omit "subsection 393-25(3)", substitute "subsections 393-25(3), (4), (5) and (6)".

5 Section 202DL (note)

Omit "subsection 393-25(4)", substitute "section 393-28".

Income Tax Assessment Act 1997

6 Subsection 393-5(1) (note 2)

Omit "subsections 393-25(2) and (3)", substitute "subsections 393-25(2), (3), (4), (5) and (6)".

7 Subsection 393-25(2) (heading)

Repeal the heading, substitute:

Primary production business carried on by a partnership

8 Before subsection 393-25(3)

Insert:

Primary production business carried on by a trust

9 Subsection 393-25(3)

Omit "trustee, if you are an individual who is a beneficiary presently entitled to a share of the income of the trust", substitute "trust, if you satisfy the requirements in subsection (4), (5) or (6)".

10 Subsection 393-25(4)

Repeal the subsection, substitute:

Primary production business carried on by a trust with beneficiary presently entitled to income of the trust

(4) You satisfy the requirements in this subsection if:
  (a) you are an individual and a beneficiary of the trust referred to in subsection (3); and
  (b) you are presently entitled to a share of the income of the trust for the income year.

Primary production business carried on by a fixed trust with no income of the trust

(5) You satisfy the requirements in this subsection if:
  (a) you are an individual and a beneficiary of the trust referred to in subsection (3); and
  (b) at all times during the income year, the manner or extent to which each beneficiary of the trust can benefit from the trust is not capable of being significantly affected by the exercise, or non-exercise, of a power; and
  (c) the trust does not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled; and
  (d) if the trust had income of the trust for the income year, you would have been presently entitled to a share of the income of the trust.

Primary production business carried on by a non-fixed trust with no income of the trust

(6) You satisfy the requirements in this subsection if you do not satisfy the requirements in subsection (5) and you are an individual and a chosen beneficiary of the trust referred to in subsection (3) for the purposes of section 393-27 for the income year.

11 After section 393-25

Insert:

393-27 Trustee may choose that a beneficiary is a chosen beneficiary of the trust

(1) The trustee of a trust may choose that a beneficiary of the trust is a chosen beneficiary of the trust for an income year if the trust does

not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled.

(2) The maximum number of choices that the trustee may make in respect of the trust for an income year is the higher of:
  (a) the number of individuals to which subsection 393-25(3) applied in the income year immediately before the current income year; and
  (b) 12.

(3) A choice made under subsection (1) must be:
  (a) in writing; and
  (b) signed by the trustee and the person chosen.

(4) The trustee can make the choice no later than the time it lodges the trust's *income tax return for the income year to which the choice relates. However, the Commissioner can allow the trustee to make a choice at a later time.

(5) A choice cannot be revoked or varied.

393-28 Application of Division to beneficiary no longer under legal disability

If:
  (a) a *farm management deposit was made by a trustee on behalf of a beneficiary of a trust; and
  (b) the beneficiary was under a legal disability when the deposit was made; and
  (c) the beneficiary is no longer under a legal disability;

then this Division, and Division 4A of Part VA of the *Income Tax Assessment Act 1936*, apply as if the beneficiary had made the deposit.

Note: Division 4A of Part VA of the *Income Tax Assessment Act 1936* is about quotation of tax file numbers in connection with farm management deposits.

12 Section 393-35 (note to table item 1)

Omit "subsections 393-25(2) and (3)", substitute "subsections 393-25(2), (3), (4), (5) and (6)".

Income Tax (Transitional Provisions) Act 1997

13 After section 393-10

Insert:

393-27 Trustee may choose that a beneficiary is a chosen beneficiary of the trust

If a beneficiary of a trust was covered by paragraph (c) of the definition of ***primary producer*** in section 393-25 in Schedule 2G to the *Income Tax Assessment Act 1936* in the 2009-10 income year, treat subsection 393-25(3) of the *Income Tax Assessment Act 1997* as having applied to the beneficiary for the purpose of determining the maximum number of choices that the trustee may make under subsection 393-27(2) of that Act for the 2010-11 income year.

Part 3—Application provision

14 Application provision

The amendments made by this Schedule apply to:

(a) assessments for the trustee of a trust for an income year that is the 2010-11 income year or a later income year; or

(b) assessments for a beneficiary of a trust that relate to the 2010-11 income year or a later income year of the trust.

Schedule 2—Interim changes to the taxation of trust income

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Before section 95

Insert:

95AAA Simplified outline of the relationship between this Division, Division 6E and Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*

The following is a simplified outline of the relationship between this Division, Division 6E and Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*.

> This Division sets out the basic income tax treatment of the net income of the trust estate. Generally:
>
> (a) it has the result of assessing beneficiaries on a share of the net income of the trust estate based on their present entitlement to a share of the income of the trust estate; and
>
> (b) it has the result of assessing the trustee directly on any residual net income; and
>
> (c) as a collection mechanism, it has the result of assessing the trustee in respect of some beneficiaries, such as non-residents or those under a legal disability.
>
> If the trust estate has capital gains, franked distributions or franking credits, this basic treatment is modified as described below.

Division 6E modifies the operation of this Division for the purpose of excluding amounts relevant to capital gains, franked distributions and franking credits from the calculations of assessable amounts under sections 97, 98, 99, 99A and 100.

Division 6E does not modify the operation of this Division (or any other provision of this Act) for any other purpose. For example:

(a) it does not modify the operation of this Division for the purposes of applying section 100A; and

(b) it does not modify amounts taxed in the hands of the trustee under Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*.

Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997* provide the corresponding taxation treatment for those capital gains, franked distributions and franking credits. Specifically:

(a) Subdivision 115-C of that Act has the effect that an amount corresponding to each of those capital gains is taxed in the hands of the beneficiaries of the trust (as a capital gain) and, if necessary, assessed to the trustee.

(b) Subdivision 207-B of that Act has the effect that an amount corresponding to each of those franked distributions is taxed in the hands of the beneficiaries of the trust and, if necessary, the trustee. It also has the effect that the entity in whose hands those distributions are taxed can take advantage of the relevant amount of related franking credits.

95AAB Adjustments under Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*—references in this Act to assessable income under section 97, 98A or 100

(1) Subsection (2) applies if an amount is included in the assessable income of a beneficiary of a trust estate because of

Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*.

(2) For the purposes of a provision of this Act (other than a provision mentioned in subsection (3)), treat the amount as being included in the beneficiary's assessable income in relation to the net income of the trust estate under section 97, 98A or 100 (as the case requires).

(3) The provisions are as follows:
  (a) sections 97, 98A (other than subsection 98A(2)) and 100 (other than subsections 100(2) and (3));
  (b) sections 98, 99 and 99A;
  (c) Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*.

(4) To avoid doubt, subsection (2) applies despite subsection 6(1AA).

95AAC Adjustments under Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*—references in this Act to liabilities under section 98, 99 or 99A

(1) Subsection (2) applies if an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 98 in respect of the beneficiary is increased because of Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*.

(2) For the purposes of a provision of this Act (other than a provision mentioned in subsection (5)), treat the amount of the increase as being an amount in respect of which the trustee is liable to be assessed (and pay tax) under section 98 in respect of the beneficiary's interest in or share of the net income of the trust estate.

(3) Subsection (4) applies if an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 99 or 99A is increased because of Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*.

(4) For the purposes of a provision of this Act (other than a provision mentioned in subsection (5)), treat the amount of the increase as being an amount in respect of which the trustee is liable to be

assessed (and pay tax) under section 99 or 99A in respect of the net income of the trust estate.

(5) The provisions are as follows:
  (a) sections 97, 98A (other than subsection 98A(2)) and 100 (other than subsections 100(2) and (3));
  (b) sections 98, 99 and 99A;
  (c) Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*.

(6) To avoid doubt, subsections (2) and (4) apply despite subsection 6(1AA).

2 Subsection 95(1)

Insert:

adjusted Division 6 percentage, of an entity that is a beneficiary or trustee of a trust estate, means the entity's Division 6 percentage of the income of the trust estate calculated on the assumption that the amount of a capital gain or franked distribution to which any beneficiary or the trustee of the trust estate is specifically entitled were disregarded in working out the income of the trust estate.

3 Subsection 95(1)

Insert:

adjusted net income, in relation to a trust estate, has the meaning given by subsection 100AB(4).

4 Subsection 95(1)

Insert:

Division 6 percentage:
  (a) a beneficiary of a trust estate has a ***Division 6 percentage*** of the income of the trust estate equal to the share (expressed as a percentage) of the income of the trust estate to which the beneficiary is presently entitled; and
  (b) the trustee of a trust estate has a ***Division 6 percentage*** of the income of the trust estate equal to the share (expressed as a percentage) of the income of the trust estate to which no beneficiary is presently entitled.

However, if the income of a trust estate is nil:

(c) a beneficiary of a trust estate has a ***Division 6 percentage*** of the income of the trust estate of 0%; and

(d) the trustee of a trust estate has a ***Division 6 percentage*** of the income of the trust estate of 100%.

5 Subsection 95(1)

Insert:

specifically entitled has the same meaning as in the *Income Tax Assessment Act 1997*.

6 After section 100

Insert:

100AA Failure to pay or notify present entitlement of exempt entity

(1) Subsection (3) applies if:

(a) an exempt entity is presently entitled to an amount of the income of a trust estate; and

(b) the exempt entity is not an exempt Australian government agency (within the meaning of the *Income Tax Assessment Act 1997*); and

(c) at the end of 2 months after the end of the relevant income year, the trustee has failed to notify the exempt entity in writing of the present entitlement.

(2) For the purposes of this section, treat the trustee as giving the exempt entity notice in writing of the present entitlement at a time to the extent that the trustee pays the exempt entity the amount of the present entitlement at that time.

(3) For the purposes of this Act, treat the exempt entity as *not* being presently entitled, and having never been presently entitled, to the amount mentioned in paragraph (1)(a) of the income of the trust estate, to the extent that the trustee failed to notify the exempt entity of that amount as mentioned in paragraph (1)(c).

(4) However, subsection (3) does not apply if the Commissioner decides that the failure mentioned in paragraph (1)(c) of the trustee should be disregarded.

(5) In making a decision under subsection (4) (or refusing to make such a decision), the Commissioner must have regard to the following:
  (a) the circumstances that led to the failure mentioned in paragraph (1)(c);
  (b) the extent to which the trustee has taken action to try to correct the failure and if so, how quickly that action was taken;
  (c) whether this section has operated previously in relation to the trustee, and if so, the circumstances in which this occurred;
  (d) any other matters that the Commissioner considers relevant.

(6) If subsection (3) applies, for the purposes of any application of section 99A in relation to the trust estate in relation to the relevant year of income, treat the trust estate as a resident trust estate.

(7) This section does not apply in relation to a trust estate that:
  (a) is a managed investment trust (within the meaning of the *Income Tax Assessment Act 1997*) in relation to a year of income; or
  (b) is treated in the same way as a managed investment trust in relation to a year of income for the purposes of Division 275 of that Act.

100AB Adjusted Division 6 percentage exceeding benchmark percentage: present entitlement of exempt entity

(1) Subsection (2) applies if:
  (a) an exempt entity is presently entitled to an amount of the income of a trust estate; and
  (b) the exempt entity is not an exempt Australian government agency (within the meaning of the *Income Tax Assessment Act 1997*); and
  (c) the exempt entity's adjusted Division 6 percentage of the income of the trust estate exceeds the benchmark percentage determined under subsection (3).

(2) Subject to subsection 100AA(3), for the purposes of this Act, treat the exempt entity as *not* being presently entitled, and having never been presently entitled, to the amount of the income of the trust estate mentioned in paragraph (1)(a) of this section, to the extent

that ensures that the exempt entity's adjusted Division 6 percentage of the income of the trust estate equals the benchmark percentage determined under subsection (3) of this section.

(3) Determine the benchmark percentage by working out the following fraction (expressed as a percentage):

$$\frac{\text{The amount to which the exempt entity is presently entitled from the trust estate, to the extent that the amount forms part of the trust estate's adjusted net income for the year of income}}{\text{The trust estate's adjusted net income for the year of income}}$$

(4) A trust estate's ***adjusted net income*** for a year of income is its net income for that year of income, with the following adjustments:

(a) firstly, in determining that net income, disregard any capital gain or franked distribution to the extent to which a beneficiary of the trust estate or the trustee is specifically entitled to that gain or distribution;

(b) next, in determining the net capital gain (if any) of the trust for the year of income, disregard steps 3 and 4 of the method statement in subsection 102-5(1) (CGT discount and small business concessions);

(c) next, reduce that net income by amounts (if any) that do not represent net accretions of value to the trust estate in that year of income (other than amounts included in that net income under Part IVA).

(5) Subsection (2) does not apply in relation to a trust estate in relation to a year of income if the Commissioner is of the opinion that it would be unreasonable that the subsection should apply in relation to that trust estate in relation to that year of income.

(6) In forming an opinion for the purposes of subsection (5), the Commissioner must consider the following matters:

(a) the circumstances that led to the exempt entity's adjusted Division 6 percentage exceeding the benchmark percentage determined under subsection (3);

(b) the extent to which the exempt entity's adjusted Division 6 percentage exceeds that benchmark percentage;

(c) the extent to which the exempt entity actually received distributions from the trust estate in respect of the year of income;

(d) the extent to which other beneficiaries of the trust estate were entitled to receive distributions of, or otherwise benefit from, amounts representing the adjusted net income of the trust estate;

(e) any other matters that the Commissioner considers relevant.

(7) If subsection (2) applies, for the purposes of any application of section 99A in relation to the trust estate in relation to the relevant year of income, treat the trust estate as a resident trust estate.

(8) This section does not apply in relation to a trust estate that:

(a) is a managed investment trust (within the meaning of the *Income Tax Assessment Act 1997*) in relation to a year of income; or

(b) is treated in the same way as a managed investment trust in relation to a year of income for the purposes of Division 275 of that Act.

7 After Division 6D of Part I

Insert:

Division 6E—Adjustment of Division 6 assessable amount in relation to capital gains, franked distributions and franking credits

102UW Application of Division

This Division applies if:

(a) the net income of a trust estate exceeds nil; and

(b) any of the following things are taken into account in working out the net income of the trust estate:

(i) a capital gain (to the extent that an amount of the capital gain remained after applying steps 1 to 4 of the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997*);

(ii) a franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it);

(iii) a franking credit.

102UX Adjustment of Division 6 assessable amount in relation to capital gains, franked distributions and franking credits

(1) Make the assumptions in the following subsections for the purposes of working out in accordance with Division 6 an amount:

(a) included in the assessable income of a beneficiary of a trust estate under section 97, 98A or 100; or

(b) in respect of which a trustee of a trust estate is liable to pay tax under section 98, in relation to a beneficiary of the trust estate; or

(c) in respect of which a trustee of a trust estate is liable to pay tax under section 99 or 99A.

Note: Those assumptions are made only for the purposes of working out the amounts mentioned in paragraphs (a), (b) and (c). They are not made for any other purposes (for example, determining the income of a trust estate, the net income of a trust estate, or the amount of a present entitlement of a beneficiary of a trust estate to the income of the trust estate).

(2) Assume that the income of the trust estate were equal to the Division 6E income of the trust estate.

(3) Assume that the net income of the trust estate were equal to the Division 6E net income of the trust estate.

(4) Assume that the amount of a present entitlement of a beneficiary of the trust estate to the income of the trust estate were equal to the amount of the beneficiary's Division 6E present entitlement to the income of the trust estate.

102UY Interpretation

(1) Expressions used in this Division have the same meaning as in Division 6.

(2) The ***Division 6E income***, of the trust estate, is the income of the trust estate worked out on the assumption that amounts attributable

to the things mentioned in paragraph 102UW(b) were disregarded. The Division 6E income of the trust estate cannot be less than nil.

(3) The ***Division 6E net income***, of the trust estate, is the net income of the trust estate worked out on the assumption that the things mentioned in paragraph 102UW(b) were disregarded. The Division 6E net income of the trust estate cannot be less than nil.

(4) A beneficiary of the trust estate has an amount of a ***Division 6E present entitlement to the income of the trust estate*** that is equal to the amount of the beneficiary's present entitlement to the income of the trust estate, decreased by:

(a) for each capital gain taken into account as mentioned in paragraph 102UW(b)—so much of the beneficiary's share of the capital gain as was included in the income of the trust estate; and

(b) for each franked distribution taken into account as mentioned in paragraph 102UW(b)—so much of the beneficiary's share of the franked distribution as was included in the income of the trust estate.

(5) The following expressions in this Division have the same meaning as in the *Income Tax Assessment Act 1997*:

(a) ***share*** of a capital gain (see section 115-227 of that Act);

(b) ***share*** of a franked distribution (see section 207-55 of that Act).

Income Tax Assessment Act 1997

8 Section 115-200

Omit "The rules also give the beneficiary a deduction if necessary to prevent it from being taxed twice on the same parts of the trust's net income.", substitute "Division 6E of Part III of the *Income Tax Assessment Act 1936* will exclude amounts from the beneficiary's assessable income if necessary to prevent it from being taxed twice on the same parts of the trust's net income.".

9 Subsections 115-215(2) and (3)

Repeal the subsections, substitute:

Extra capital gains

(3) If you are a beneficiary of the trust estate, for each *capital gain of the trust estate, Division 102 applies to you as if you had:

(a) if the capital gain was not reduced under either step 3 of the method statement in subsection 102-5(1) (discount capital gains) or Subdivision 152-C (small business 50% reduction)—a capital gain equal to the amount mentioned in subsection 115-225(1); and

(b) if the capital gain was reduced under either step 3 of the method statement or Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—a capital gain equal to twice the amount mentioned in subsection 115-225(1); and

(c) if the capital gain was reduced under both step 3 of the method statement and Subdivision 152-C (even if it was further reduced by the other small business concessions)—a capital gain equal to 4 times the amount mentioned in subsection 115-225(1).

Note: This subsection does not affect the amount (if any) included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936* because of the capital gain of the trust estate. However, Division 6E of that Part may have the effect of reducing the amount included in your assessable income under Division 6 of that Part by an amount related to the capital gain you have under this subsection.

10 Subsection 115-215(6)

Repeal the subsection.

11 Sections 115-220, 115-222 and 115-225

Repeal the sections, substitute:

115-220 Assessing trustees under section 98 of the *Income Tax Assessment Act 1936*

(1) This section applies if:

(a) you are the trustee of the trust estate; and

(b) on the assumption that there is a share of the income of the trust to which a beneficiary of the trust is presently entitled, you would be liable to be assessed (and pay tax) under

section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of the beneficiary.

(2) For each *capital gain of the trust estate, increase the amount (the ***assessable amount***) in respect of which you are actually liable to be assessed (and pay tax) under section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of the beneficiary by:

(a) unless paragraph (b) applies—the amount mentioned in subsection 115-225(1) in relation to the beneficiary; or

(b) if the liability is under paragraph 98(3)(b) or subsection 98(4), and the capital gain was reduced under step 3 of the method statement in subsection 102-5(1) (discount capital gains)—twice the amount mentioned in subsection 115-225(1) in relation to the beneficiary.

(3) To avoid doubt, increase the assessable amount under subsection (2) even if the assessable amount is nil.

115-222 Assessing trustees under section 99 or 99A of the *Income Tax Assessment Act 1936*

(1) Subsection (2) applies if:

(a) you are the trustee of the trust estate; and

(b) section 99A of the *Income Tax Assessment Act 1936* does not apply in relation to the trust estate in relation to the relevant income year.

(2) For each *capital gain of the trust estate, increase the amount (the ***assessable amount***) in respect of which you are liable to be assessed (and pay tax) under section 99 of the *Income Tax Assessment Act 1936* in relation to the trust estate by the amount mentioned in subsection 115-225(1).

(3) Subsection (4) applies if:

(a) you are the trustee of the trust estate; and

(b) subsection (2) does not apply.

(4) For each *capital gain of the trust estate, increase the amount (the ***assessable amount***) in respect of which you are liable to be assessed (and pay tax) under section 99A of the *Income Tax Assessment Act 1936* in relation to the trust estate by:

(a) if the capital gain was not reduced under either step 3 of the method statement in subsection 102-5(1) (discount capital gains) or Subdivision 152-C (small business 50% reduction)—the amount mentioned in subsection 115-225(1); and

(b) if the capital gain was reduced under either step 3 of the method statement or Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—twice the amount mentioned in subsection 115-225(1); and

(c) if the capital gain was reduced under both step 3 of the method statement and Subdivision 152-C (even if it was further reduced by the other small business concessions)—4 times the amount mentioned in subsection 115-225(1).

(5) To avoid doubt, increase the assessable amount under subsection (2) or (4) even if the assessable amount is nil.

115-225 Attributable gain

(1) The amount is the product of:

(a) the amount of the *capital gain remaining after applying steps 1 to 4 of the method statement in subsection 102-5(1); and

(b) your *share of the capital gain (see section 115-227), divided by the amount of the capital gain.

(2) Subsection (3) applies if the net income of the trust estate (disregarding the amount of any *franking credits) for the relevant income year falls short of the sum of:

(a) the *net capital gain (if any) of the trust estate for the income year; and

(b) the total of all *franked distributions (if any) included in the assessable income of the trust estate for the income year (to the extent that an amount of the franked distributions remained after reducing them by deductions that were directly relevant to them).

(3) For the purposes of subsection (1), replace paragraph (a) of that subsection with the following paragraph:

(a) the product of:

(i) the amount of the *capital gain remaining after applying steps 1 to 4 of the method statement in subsection 102-5(1); and

(ii) the *net income of the trust estate for that income year (disregarding the amount of any *franking credits), divided by the sum mentioned in subsection (2); and

115-227 *Share* of a capital gain

An entity that is a beneficiary or the trustee of a trust estate has a ***share*** of a *capital gain that is the sum of:

(a) the amount of the capital gain to which the entity is *specifically entitled; and

(b) if there is an amount of the capital gain to which no beneficiary of the trust estate is specifically entitled, and to which the trustee is not specifically entitled—that amount multiplied by the entity's *adjusted Division 6 percentage of the income of the trust estate for the relevant income year.

115-228 *Specifically entitled* to an amount of a capital gain

(1) A beneficiary of a trust estate is ***specifically entitled*** to an amount of a *capital gain made by the trust estate in an income year equal to the amount calculated under the following formula:

$$\text{*Capital gain} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

where:

net financial benefit means an amount equal to the *financial benefit that is referable to the capital gain (after any application by the trustee of losses, to the extent that the application is consistent with the application of capital losses against the capital gain in accordance with the method statement in subsection 102-5(1)).

share of net financial benefit means an amount equal to the *financial benefit that, in accordance with the terms of the trust:

(a) the beneficiary has received, or can be reasonably expected to receive; and

(b) is referable to the *capital gain (after application by the trustee of any losses, to the extent that the application is

consistent with the application of capital losses against the capital gain in accordance with the method statement in subsection 102-5(1)); and

(c) is recorded, in its character as referable to the capital gain, in the accounts or records of the trust no later than 2 months after the end of the income year.

Note: A trustee of a trust estate that makes a choice under section 115-230 is taken to be specifically entitled to a capital gain.

(2) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

(3) For the purposes of this section, in calculating the amount of the *capital gain, disregard sections 112-20 and 116-30 (Market value substitution rule) to the extent that those sections have the effect of increasing the amount of the capital gain.

12 Section 115-230 (heading)

Repeal the heading, substitute:

115-230 Choice for resident trustee to be specifically entitled to capital gain

13 Subsection 115-230(1)

Repeal the subsection, substitute:

Purpose

(1) The purpose of this section is to allow a trustee of a resident trust to make a choice that has the effect that the trustee will be assessed on a *capital gain of the trust if no trust property representing the capital gain has been paid to or applied for the benefit of a beneficiary of the trust.

14 Subsection 115-230(2)

Repeal the subsection, substitute:

Trusts for which choice can be made

(2) A trustee can only make a choice under this section in relation to a trust estate that is, in the income year in respect of which the choice is made, a resident trust estate (within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*).

15 Paragraphs 115-230(3)(a), (b) and (c)

Repeal the paragraphs, substitute:

(a) a *capital gain is taken into account in working out the *net capital gain of a trust for an income year; and

(b) trust property representing all or part of that capital gain has not been paid to or applied for the benefit of a beneficiary of the trust by the end of 2 months after the end of the income year;

16 Subsection 115-230(3)

Omit "beneficiary's share", substitute "capital gain".

17 Subsection 115-230(4)

Repeal the subsection, substitute:

Consequences if trustee makes choice

(4) These are the consequences if the trustee makes a choice that this subsection applies in respect of a *capital gain:

(a) sections 115-215 and 115-220 do not apply in relation to the capital gain;

(b) for the purposes of this Act, the trustee is taken to be *specifically entitled to all of the capital gain.

18 Subsection 207-35(3)

Repeal the subsection, substitute:

(3) Subsection (4) applies if:

(a) a *franked distribution is made, or *flows indirectly, to a partnership or the trustee of a trust in an income year; and

(b) the assessable income of the partnership or trust for that year includes an amount (the ***franking credit amount***) that is all or a part of the additional amount of assessable income

included under subsection (1) in relation to the distribution; and

(c) the distribution flows indirectly to an entity that is a partner in the partnership, or a beneficiary or the trustee of the trust; and

(d) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the entity has an amount of assessable income for that year that is attributable to all or a part of the distribution.

(4) Despite any provisions in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*, the entity's assessable income for that year also includes:

(a) in the case of an entity that is a partner in a partnership—so much of the franking credit amount as is equal to the entity's *share of the *franking credit on the distribution; and

(b) in the case of an entity that is a beneficiary of a trust:

(i) so much of the franking credit amount as is equal to the entity's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

Example: A franked distribution of $70 is made to the trustee of a trust in an income year. The trust also has $100 of assessable income from other sources. Under subsection (1), the trust's assessable income includes an additional amount of $30 (which is the franking credit on the distribution). The trust has a net income of $200 for that income year.

There are 2 beneficiaries of the trust, P and Q, who are presently entitled to the trust's income. Under the trust deed, P is entitled to all of the franked distribution and Q is entitled to all other income.

The distribution flows indirectly to P (as P has a share of the trust's net income that is covered by paragraph 97(1)(a) and has a share of the distribution under section 207-55 equal to 100% of the distribution).

Under this subsection, P's assessable income includes $70 (the amount mentioned in section 207-37 (attributable franked distribution)) and also includes the full amount of the franking credit (as P's share of the franking credit on the distribution is $30 under section 207-57). Q's assessable income does not include any of the amount of the franked distribution or the franking credit.

(5) Subsection (6) applies if:

(a) a *franked distribution is made, or *flows indirectly, to the trustee of a trust in an income year; and

(b) the assessable income of the trust for that year includes an amount (the ***franking credit amount***) that is all or a part of the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the trustee of the trust is liable to be assessed (and pay tax) in respect of an amount (the ***assessable amount***) under section 98, 99 or 99A of that Act in relation to the trust.

(6) Despite any provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936*, for the purposes of that Division, increase the assessable amount by so much of the franking credit amount as is equal to:

(a) if the trustee of the trust is liable to be assessed (and pay tax) under section 98 of that Act—the sum of:

(i) the trustee's *share of the *franking credit on the distribution in respect of the beneficiary; and

(ii) the amount mentioned in section 207-37; or

(b) if the trustee of the trust is liable to be assessed (and pay tax) under section 99 or 99A of that Act—the sum of:

(i) the trustee's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

19 After section 207-35

Insert:

207-37 Attributable franked distribution—trusts

(1) The amount is the product of:

(a) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(b) the beneficiary's or the trustee's (as the case requires) *share of the franked distribution (see section 207-55), divided by the amount of the franked distribution.

(2) Subsection (3) applies if the net income of the trust estate (disregarding the amount of any *franking credits) for the relevant income year falls short of the sum of:

(a) the *net capital gain (if any) of the trust estate for the income year; and

(b) the total of all *franked distributions (if any) included in the assessable income of the trust estate for the income year (to the extent that an amount of the franked distributions remained after reducing them by deductions that were directly relevant to them).

(3) For the purposes of subsection (1), replace paragraph (a) of that subsection with the following paragraph:

(a) the product of:

(i) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(ii) the *net income of the trust estate for that income year (disregarding the amount of any *franking credits), divided by the sum mentioned in subsection (2); and

20 Subsection 207-50(5) (example)

Omit "is $70", substitute "is therefore $70".

21 Subsection 207-50(5) (example)

Omit "The beneficiary is therefore allowed a tax offset of $30", substitute "The beneficiary is also allowed a tax offset of $30".

22 Subsection 207-55(3) (cell at table item 3, column 3)

Repeal the cell, substitute:

the amount mentioned in subsection (4)

23 At the end of section 207-55

Add:

(4) For the purposes of column 3 of item 3 of the table in subsection (3), the amount is the sum of:

(a) so much of the amount worked out under column 2 of item 3 of the table in subsection (3) to which:

(i) unless subparagraph (ii) applies—the focal entity is *specifically entitled; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see subparagraph 207-50(4)(b)(i))—the beneficiary is specifically entitled; and

(b) if there is an amount of the *franked distribution to which no beneficiary is specifically entitled—that amount multiplied by:

(i) unless subparagraph (ii) applies—the focal entity's *adjusted Division 6 percentage of the income of the trust for the relevant income year; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see subparagraph 207-50(4)(b)(i))—the beneficiary's adjusted Division 6 percentage of the income of the trust for the relevant income year.

24 At the end of Subdivision 207-B

Add:

207-58 *Specifically entitled* to an amount of a franked distribution

(1) A beneficiary of a trust estate is ***specifically entitled*** to an amount of a *franked distribution made to the trust estate in an income year equal to the amount calculated under the following formula:

$$\text{*Franked distribution} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

where:

net financial benefit means an amount equal to the *financial benefit that is referable to the *franked distribution (after any application by the trustee of expenses that are directly relevant to the franked distribution).

share of net financial benefit means an amount equal to the *financial benefit that, in accordance with the terms of the trust:

(a) the beneficiary has received, or can be reasonably expected to receive; and

(b) is referable to the *franked distribution (after application by the trustee of any expenses that are directly relevant to the franked distribution); and

(c) is recorded, in its character as referable to the franked distribution, in the accounts or records of the trust no later than the end of the income year.

(2) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

207-59 Franked distributions within class treated as single franked distribution

(1) Subsection (3) applies if:

(a) a trust receives 2 or more *franked distributions in an income year; and

(b) all of the franked distributions that the trust receives in the income year are, in accordance with the terms of the trust, to the extent that they are distributed in that income year, distributed within a single class.

(2) For the purposes of this Subdivision and Division 6E of Part III of the *Income Tax Assessment Act 1936*, treat all of the *franked distributions that the trust receives in the income year as one single franked distribution.

(3) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

25 Subsection 995-1(1)

Insert:

adjusted Division 6 percentage, in relation to a trust estate, has the same meaning as in Division 6 of Part III of the *Income Tax Assessment Act 1936*.

26 Subsection 995-1(1) (after paragraph (a) of the definition of *share*)

Insert:

(aa) of a *capital gain has the meaning given by section 115-227; and

27 Subsection 995-1(1)

Insert:

specifically entitled:

(a) ***specifically entitled*** to a *capital gain has the meaning given by section 115-228; and

Note: A trustee of a trust estate that makes a choice under section 115-230 is taken to be specifically entitled to a capital gain.

(b) ***specifically entitled*** to a *franked distribution has the meaning given by section 207-58.

Part 2—Consequential amendments

Income Tax Assessment Act 1936

28 Subsection 97(1) (note)

Repeal the note.

29 Subsection 98A(1) (note)

Repeal the note.

30 Subsection 98A(2)

Omit "Where subsection (1) applies in relation to a beneficiary in relation to a year of income", substitute "Where the trustee of a trust estate is assessed and is liable to pay tax in respect of the whole or a part of a share of the net income of a trust estate of a year of income in pursuance of subsection 98(3)".

31 Paragraph 98A(2)(a)

Omit "(including, for a beneficiary that is a company, any tax paid in respect of that interest because of section 115-220 of the *Income Tax Assessment Act 1997*)".

32 Subsection 98A(3) (note)

Repeal the note.

33 Paragraph 98B(2)(c)

Omit "(including any tax paid under subsection 98(4) in respect of the taxed net income because of section 115-222 of the *Income Tax Assessment Act 1997*)".

34 Subsection 100(1) (note 1)

Repeal the note.

35 Subsection 100(1) (note 2)

Omit "Note 2", substitute "Note".

36 After subsection 100(1)

Insert:

(1AA) If an amount is included in the assessable income of a beneficiary of a trust estate because of Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*, for the purposes of paragraph (1)(b), treat the beneficiary as deriving income from another source.

37 Subsection 100(1B) (note 1)

Repeal the note.

38 Subsection 100(2)

After "subsection (1) or (1A) applies", insert "(or a beneficiary under a legal disability whose assessable income is increased as a result of Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*)".

39 Subparagraph 102AAU(1)(c)(iv)

Repeal the subparagraph.

40 Paragraph 159H(b)

Repeal the paragraph, substitute:

(b) both of the following requirements are satisfied:

(i) the taxpayer is a trustee who is liable to be assessed under section 98 in respect of a share of the net income of a trust estate in respect of a beneficiary;

(ii) the beneficiary is a resident and is not a company.

41 Paragraph 160AAAA(4)(c)

Repeal the paragraph, substitute:

(c) an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 98 in respect of the taxpayer's spouse.

42 Paragraph 160AAAB(5)(c)

Repeal the paragraph, substitute:

(c) an amount in respect of which a trustee of a trust estate is liable to be assessed (and pay tax) under section 98 in respect of the taxpayer's spouse.

43 After paragraph 365(1)(c)

Insert:

(ca) where a beneficiary of a trust is specifically entitled to an amount of a capital gain or a franked distribution of the trust for a year of income:

(i) in the case of a capital gain—the amount mentioned in subsection 115-225(1) in respect of the beneficiary; or

(ii) in the case of a franked distribution—the amount mentioned in subsection 207-37(1) in respect of the beneficiary;

to the extent that it is not covered under paragraph (c);

44 Paragraph 460(3)(c)

Repeal the paragraph, substitute:

(c) the tax detriment would be reduced by an amount if it were recalculated on the following assumptions:

(i) sections 97, 98A and 100 applied only to so much of the beneficiary's share of the net income of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;

(ii) Subdivision 115-C of the *Income Tax Assessment Act 1997* applied only to so much of the beneficiary's share of each capital gain of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;

(iii) Subdivision 207-B of the *Income Tax Assessment Act 1997* applied only to so much of the beneficiary's share of each franked distribution of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;

Income Tax Assessment Act 1997

45 Section 12-5 (table item headed "capital gains")

Omit:

beneficiary whose assessable income includes share of net income of trust with net capital gain	115-215

46 Section 102-30 (table item 2AA)

Repeal the item, substitute:

2AA	Beneficiary of trust that makes a capital gain taken into account in working out the net income of the trust	The beneficiary is treated as having an extra capital gain corresponding to the beneficiary's share of the capital gain (taking into account adjustments in respect of the CGT discount and small business concessions).	Subdivision 115-C

47 Subsection 315-155(2)

Repeal the subsection, substitute:

(2) If this section applies:

(a) sections 115-215 and 115-220 do not apply in relation to the *capital gain; and

(b) for the purposes of this Act, the trustee is taken to be *specifically entitled to all of the capital gain.

48 Subsections 316-175(2) and (3)

Repeal the subsections, substitute:

(2) If this section applies:

(a) sections 115-215 and 115-220 do not apply in relation to the *capital gain; and

(b) for the purposes of this Act, the trustee is taken to be *specifically entitled to all of the capital gain.

49 Paragraph 320-137(4)(d)

Omit "subsection 115-280(1);", substitute "subsection 115-280(1).".

50 Paragraph 320-137(4)(e)

Repeal the paragraph.

Part 3—Application provision

51 Application provision

(1) Subject to this item, the amendments made by this Schedule apply to assessments for the 2010-11 income year and later income years.

Early balancers and the 2010-11 income year

(2) Subitems (3) and (4) apply in relation to a trust whose 2010-11 income year started before 1 July 2010.

(3) The amendments made by this Schedule do not apply to an assessment for the 2010-11 income year unless the trustee of the trust makes a choice in accordance with subitem (4).

(4) A choice mentioned in subitem (3):
- (a) can only be made before the end of 2 months after the commencement of this item; and
- (b) can only be made in writing.

MITs and the 2010-11 and 2011-12 income years

(5) Subitems (6) and (7) apply in relation to an entity that:
- (a) is a managed investment trust in relation to an income year; or
- (b) is treated in the same way as a managed investment trust in relation to an income year for the purposes of Division 275 of the *Income Tax Assessment Act 1997*.

(6) If the income year is the 2010-11 or 2011-12 income year, the amendments made by this Schedule do not apply to an assessment for the income year unless:
- (a) the trustee of the entity makes a choice in accordance with subitem (7) in relation to the income year; or
- (b) in the case of the 2011-12 income year—the trustee of the entity made a choice in accordance with subitem (7) in relation to the 2010-11 income year.

(7) A choice mentioned in subitem (6):

(a) can only be made before the end of 2 months after the later of:
  (i) the end of the income year in relation to which the choice is made; and
  (ii) the commencement of this item; and
(b) can only be made in writing.

Schedule 3—National Rental Affordability Scheme

Part 1—National Rental Affordability Scheme Tax Offset

Division 1—NRAS consortiums

Income Tax Assessment Act 1997

1 Sections 380-5 to 380-20

Repeal the sections, substitute:

NRAS certificates issued to individuals, corporate tax entities and superannuation funds

380-5 Claims by individuals, corporate tax entities and superannuation funds

Entitlement

(1) An entity is entitled to a *tax offset for an income year if:
  (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the entity (other than in the entity's capacity (if any) as the *NRAS approved participant of an *NRAS consortium); and
  (b) the income year begins in the NRAS year; and
  (c) the entity is an individual, a *corporate tax entity or a *superannuation fund.

Amount

(2) The amount of the entity's *tax offset is the amount stated in the *NRAS certificate.

NRAS certificates issued to NRAS approved participants

380-10 Members of NRAS consortiums—individuals, corporate tax entities and superannuation funds

Entitlement

(1) A *member of an *NRAS consortium is entitled to a *tax offset for an income year if:

(a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the *NRAS approved participant of the NRAS consortium; and

(b) the income year commences in the NRAS year; and

(c) the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount

(2) The amount of the *tax offset is the total of the amounts worked out using the following formula for each *NRAS dwelling:

(a) covered by the *NRAS certificate; and

(b) from which the *member *derives *NRAS rent during the *NRAS year:

$$\text{Amount stated in the *NRAS certificate for the *NRAS dwelling} \times \frac{\text{*NRAS rent *derived by the *member from the *NRAS dwelling during the *NRAS year}}{\text{Total *NRAS rent *derived from the *NRAS dwelling during the *NRAS year}}$$

(3) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

380-14 Members of NRAS consortiums—partnerships and trustees

(1) This section applies if:

(a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the *NRAS approved participant of an *NRAS consortium; and

(b) the NRAS certificate covers one or more *NRAS dwellings; and

(c) a *member of the NRAS consortium, other than the NRAS approved participant, *derives *NRAS rent during the NRAS year from any of those NRAS dwellings; and

(d) the member is a partnership or a trustee of a trust.

(2) For the purposes of sections 380-15 and 380-20, assume that:

(a) the *member has been issued with an *NRAS certificate in relation to the *NRAS year; and

(b) the NRAS certificate covers each *NRAS dwelling:

(i) covered by the NRAS certificate mentioned in paragraph (1)(b) of this section; and

(ii) from which the member *derives *NRAS rent during the NRAS year; and

(c) the amount stated in the NRAS certificate for each of those NRAS dwellings is the amount worked out using the formula in subsection 380-10(2) in relation to the NRAS dwelling for the NRAS year for the member.

NRAS certificates issued to partnerships and trustees

380-15 Entities to whom NRAS rent flows indirectly

(1) An entity is entitled to a *tax offset for an income year (the ***offset year***) if:

(a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to a partnership or a trustee of a trust; and

(b) *NRAS rent *derived:

(i) from any of the *NRAS dwellings covered by the NRAS certificate; and

(ii) during the NRAS year;

*flows indirectly to the entity in any income year; and

(c) the offset year of the partnership or trustee begins in the NRAS year; and

(d) the entity is:

(i) an individual; or

(ii) a *corporate tax entity when the NRAS rent flows indirectly to it; or

(iii) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for the offset year; or

(iv) the trustee of an *FHSA; or

(v) a *superannuation fund, an *approved deposit fund or a *pooled superannuation trust.

Note: The entities covered by this section are the ultimate recipients of the NRAS rent because the NRAS rent does not flow indirectly through them to other entities.

(2) The amount of the *tax offset is the sum of the amounts worked out using the following formula for each *NRAS dwelling from which there is *NRAS rent covered by paragraph (1)(b):

$$\text{Amount stated in the *NRAS certificate} \times \frac{\text{The entity's *share of the *NRAS rent for the *NRAS dwelling *derived during the *NRAS year}}{\text{Total *NRAS rent *derived during the *NRAS year from *NRAS dwellings covered by the *NRAS certificate}}$$

(3) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

380-20 Trustee of a trust that does not have net income for an income year

(1) An entity is entitled to a *tax offset for an income year (the ***offset year***) if:

(a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to a partnership or a trustee of a trust; and

(b) the entity is a trustee of a trust; and

(c) the trust mentioned in paragraph (b) does not have a *net income for an income year; and

(d) *NRAS rent *derived during the NRAS year from an *NRAS dwelling covered by the NRAS certificate would otherwise

*flow indirectly to the entity in the income year mentioned in paragraph (c) as if:

(i) the trust did have a net income for the income year; and

(ii) for the purposes of paragraph 380-25(4)(b), the entity has a share amount, being the net income referred to in subparagraph (i) of this paragraph; and

(iii) the entity's *share of the NRAS rent under section 380-30 was a positive amount; and

(e) the offset year of the partnership or trustee begins in the NRAS year.

(2) The amount of the *tax offset is the amount worked out in accordance with subsection 380-15(2), as if the reference in the formula to the *NRAS certificate were a reference to the NRAS certificate mentioned in paragraph (1)(a) of this section.

(3) For the purposes of working out the entity's *share of *NRAS rent for an *NRAS dwelling, assume subparagraphs (1)(d)(i), (ii) and (iii) of this section apply.

(4) If the trustee of a trust is entitled to a *tax offset under this section:

(a) a beneficiary of the trust; or

(b) a subsequent entity to whom *NRAS rent for an *NRAS dwelling mentioned in paragraph (1)(d) *flows indirectly;

is not entitled to a tax offset under this Subdivision in relation to the NRAS rent *derived during the *NRAS year from for the NRAS dwelling.

2 At the end of Subdivision 380-A

Add:

Miscellaneous

380-32 Amended certificates

A reference in this Subdivision to an *NRAS certificate in relation to an *NRAS year is to be treated as a reference to an amended NRAS certificate in relation to the NRAS year, if the *Housing Secretary issues such an amended certificate.

3 Application provision

The amendments made by this Division apply to NRAS rent derived during the 2009-10 NRAS year or later NRAS years.

Division 2—Elections by NRAS approved participants

Income Tax Assessment Act 1997

4 After section 380-10

Insert:

380-11 Elections by NRAS approved participants

Scope

(1) This section and sections 380-12 and 380-13 apply if:
  (a) a *member (the ***electing member***) of an *NRAS consortium would, apart from subsection 380-12(3), be entitled to a *tax offset under section 380-10 for an income year because of:
    (i) an *NRAS certificate in relation to an *NRAS year; and
    (ii) an *NRAS dwelling covered by the NRAS certificate; and
  (b) the electing member was the *NRAS approved participant of the NRAS consortium at any time during the NRAS year; and
  (c) the electing member elects to have this section apply to the NRAS certificate and NRAS dwelling for the income year.

Requirements for an election

(2) The election must be made:
  (a) in the *approved form; and
  (b) within 30 days after the day the *Housing Secretary issues the *NRAS certificate.

(3) The Commissioner may require a copy or copies of the election to be given, within the 30 day period mentioned in paragraph (2)(b):
  (a) to the Commissioner; or
  (b) to each *member of the *NRAS consortium who may be entitled to a *tax offset under section 380-12 as a result of the election; or

(c) both to the Commissioner and to each such member.

(4) The election may not be revoked.

380-12 Elections by NRAS approved participants—tax offsets

Entitlement to tax offset

(1) A *member of the *NRAS consortium (other than the electing member) is entitled to a *tax offset for the income year if the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount of tax offset

(2) The amount of the *tax offset is the amount worked out using the following formula:

$$\text{Amount of the *tax offset to which the electing member would be entitled under section 380-10 because of the *NRAS certificate and the *NRAS dwelling, if the election were disregarded} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent means:

(a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived by the *member from the NRAS dwelling during the NRAS year; or

(b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived by the member from the NRAS dwelling during that part of the NRAS year.

total rent means:

(a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived from the NRAS dwelling during the NRAS year; or

(b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived from the NRAS dwelling during that part of the NRAS year.

(3) The *tax offset to which the electing member would otherwise be entitled under section 380-10 for the income year because of the *NRAS certificate and the *NRAS dwelling is reduced by the same amount.

(4) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

Amount of tax offset—rent that passes through NRAS approved participant

(5) For the purposes of the references in the definitions in subsection (2) to rent *derived from the *NRAS dwelling during the *NRAS year, disregard *NRAS rent derived by a *member of the *NRAS consortium from the NRAS dwelling during a period in the NRAS year, to the extent that another member derives rent from the NRAS dwelling during the period because:

(a) the first member is the *NRAS approved participant of the NRAS consortium throughout the period; and

(b) the first member, in accordance with the contractual *arrangements that established the NRAS consortium, passes the NRAS rent on to the other member.

Note: There may be more than one NRAS approved participant during an NRAS year. The electing member may be the NRAS approved participant for only part of the NRAS year.

(6) For the purposes of paragraph (5)(b), treat any *NRAS rent retained by the first *member under the *arrangements as management fees or commission as having been passed on to the other member.

380-13 Elections by NRAS approved participants—special rule for partnerships and trustees

For the purposes of sections 380-14 to 380-30 (which apply if a partnership or the trustee of a trust derives NRAS rent), for each *NRAS dwelling:

(a) from which the electing member *derived *NRAS rent during the *NRAS year; and

(b) that is covered by the *NRAS certificate; and

(c) from which a partnership, or the trustee of a trust, that is a *member of the *NRAS consortium derived rent during the NRAS year;

treat the following proportion of the NRAS rent as being NRAS rent derived during the NRAS year by the member mentioned in paragraph (c):

$$\frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent has the same meaning as in subsection 380-12(2).

total rent has the same meaning as in subsection 380-12(2).

5 Subsection 380-14(2)

Omit "sections 380-15 and 380-20", substitute "sections 380-15 to 380-20".

6 After section 380-15

Insert:

380-16 Elections by NRAS approved participants that are partnerships or trustees

Scope

(1) This section and sections 380-17 and 380-18 apply if:

(a) an entity (the ***indirect entity***) is entitled to a *tax offset under section 380-15 or 380-20 for an income year because *NRAS rent *derived:

(i) from any of the *NRAS dwellings covered by an *NRAS certificate issued by the *Housing Secretary in relation to an *NRAS year to a *member (the ***electing member***) of an *NRAS consortium; and

(ii) during the NRAS year;

*flows indirectly to the indirect entity in any income year (or would otherwise flow indirectly to the indirect entity, as mentioned in paragraph 380-20(1)(d)); and

(b) the electing member was the *NRAS approved participant of the NRAS consortium at any time during the NRAS year; and

(c) the electing member elects to have this section apply to the NRAS certificate and NRAS dwelling for the income year.

Requirements for an election

(2) The election must be made:

(a) in the *approved form; and

(b) within 30 days after the day the *Housing Secretary issues the *NRAS certificate.

(3) The Commissioner may require a copy or copies of the election to be given, within the 30 day period mentioned in paragraph (2)(b):

(a) to the Commissioner; or

(b) to each *member of the *NRAS consortium who may be entitled to a *tax offset under section 380-17 as a result of the election; or

(c) both to the Commissioner and to each such member.

(4) The election may not be revoked.

380-17 Elections by NRAS approved participants that are partnerships or trustees—tax offsets

Entitlement to tax offset

(1) A *member of the *NRAS consortium (other than the electing member) is entitled to a *tax offset for the income year if the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount of tax offset

(2) The amount of the *tax offset is the amount worked out using the following formula:

$$\text{Total tax offsets} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent means:

(a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived by the *member from the NRAS dwelling during the NRAS year; or

(b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived by the member from the NRAS dwelling during that part of the NRAS year.

total rent means:

(a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived from the NRAS dwelling during the NRAS year; or

(b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived from the NRAS dwelling during that part of the NRAS year.

total tax offsets means the total of the *tax offsets to which entities would be entitled under section 380-15 or 380-20 because of *NRAS rent *derived:

(a) from any of the *NRAS dwellings covered by the *NRAS certificate; and

(b) during the *NRAS year;

that *flows indirectly to them from the electing member (or would otherwise flow indirectly to them from the electing member, as mentioned in paragraph 380-20(1)(d)).

(3) The *tax offset to which the indirect entity would otherwise be entitled under section 380-15 for the income year because of the *NRAS certificate and the *NRAS dwelling is reduced by the amount worked out using the following formula:

$$\text{Amount worked out under subsection (2)} \times \frac{\text{Amount of the *tax offset to which the indirect entity would otherwise be entitled under section 380-15}}{\text{Total tax offsets}}$$

where:

total tax offsets has the same meaning as in subsection (2).

(4) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

Amount of tax offset—rent that passes through NRAS approved participant

(5) For the purposes of the references in the definitions in subsection (2) to rent *derived from the *NRAS dwelling during the *NRAS year, disregard *NRAS rent derived by a *member of the *NRAS consortium from the NRAS dwelling during a period in the NRAS year, to the extent that another member derives rent from the NRAS dwelling during the period because:

(a) the first member is the *NRAS approved participant of the NRAS consortium throughout the period; and

(b) the first member, in accordance with the contractual *arrangements that established the NRAS consortium, passes the NRAS rent on to the other member.

Note: There may be more than one NRAS approved participant during an NRAS year. The electing member may be the NRAS approved participant for only part of the NRAS year.

(6) For the purposes of paragraph (5)(b), treat any *NRAS rent retained by the first *member under the *arrangements as management fees or commission as having been passed on to the other member.

380-18 Elections by NRAS approved participants that are partnerships or trustees—special rule for partnerships and trustees

For the purposes of sections 380-15 and 380-20 to 380-30 (which apply if a partnership or the trustee of a trust derives NRAS rent), for each *NRAS dwelling:

(a) from which the electing member *derived *NRAS rent during the *NRAS year; and

(b) that is covered by the *NRAS certificate; and

(c) from which a partnership or trust that is a *member of the *NRAS consortium derived rent during the NRAS year;

treat the following proportion of the NRAS rent as being NRAS rent derived during the NRAS year by the member mentioned in paragraph (c):

$$\frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent has the same meaning as in subsection 380-14B(2).

total rent has the same meaning as in subsection 380-14B(2).

7 Application provision

The amendment made by this Division applies to assessments for:

(a) the 2010-11 income year; and

(b) later income years.

8 Transitional provision—elections

An election in relation to an NRAS certificate under section 380-11 or 380-16 of the *Income Tax Assessment Act 1997*, inserted by this Division, may be made within 30 days after the day this item commences, if the Housing Secretary issues the NRAS certificate before that commencement.

Part 2—Other incentives

Income Tax Assessment Act 1997

9 Paragraph 118-37(1)(j)

After "to you", insert "(whether directly or indirectly, such as through an *NRAS consortium of which you are a *member)".

10 Section 380-35

Omit "or a *non-cash benefit provided to you", substitute ", or a *non-cash benefit provided to you, (whether directly or indirectly, such as through an *NRAS consortium of which you are a *member)".

11 Application provision

The amendments made by this Part apply to assessments for:

(a) the 2008-09 income year; and

(b) later income years.

Part 3—Definitions

Income Tax Assessment Act 1997

12 Paragraph 118-37(1)(j)

Omit "National Rental Affordability Scheme", substitute "*National Rental Affordability Scheme".

13 Section 380-35

Omit "National Rental Affordability Scheme", substitute "*National Rental Affordability Scheme".

14 Subsection 995-1(1) (at the end of the definition of *member*)

Add:

; and (e) in relation to an *NRAS consortium—means:

(i) an entity (other than in the capacity as a partner of a partnership) that is a party to the contractual *arrangement, or to one of the contractual arrangements, that established the NRAS consortium (whether or not the entity was a party to the arrangement when the NRAS consortium was established); or

(ii) a partnership, if all of the partners of the partnership are parties to the contractual arrangement, or to one of the contractual arrangements, that established the NRAS consortium (whether or not the partners were parties to the arrangement when the NRAS consortium was established).

15 Subsection 995-1(1)

Insert:

NRAS approved participant (short for National Rental Affordability Scheme approved participant), of an *NRAS consortium, means a *member of the NRAS consortium who is the approved participant (within the meaning of the regulations made for the purposes of the *National Rental Affordability Scheme Act 2008*) for the NRAS consortium.

16 Subsection 995-1(1)

Insert:

> ***NRAS certificate*** (short for National Rental Affordability Scheme certificate) means a certificate issued by the *Housing Secretary under the *National Rental Affordability Scheme.

17 Subsection 995-1(1)

Insert:

> ***NRAS consortium*** (short for National Rental Affordability Scheme consortium) means a consortium, joint venture or *non-entity joint venture:
>
> (a) established by one or more contractual *arrangements, the purpose of which are to facilitate the leasing of *NRAS dwellings; and
>
> (b) that is not a *corporate tax entity, a *superannuation fund, a trust or a partnership.

18 Subsection 995-1(1)

Insert:

> ***NRAS dwelling*** (short for National Rental Affordability Scheme dwelling) means an approved rental dwelling (within the meaning of the regulations made for the purposes of the *National Rental Affordability Scheme Act 2008*).

19 Subsection 995-1(1) (definition of *NRAS rent*)

Omit "rental dwelling under the National Rental Affordability Scheme", substitute "*NRAS dwelling under the *National Rental Affordability Scheme".

Schedule 4—Phasing out the dependent spouse tax offset

Income Tax Assessment Act 1936

1 Sub-subparagraph 23AB(7)(a)(ii)(D)

Repeal the sub-subparagraph, substitute:

(D) any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if the assumptions in subsection (7A) of this section were made; and

2 At the end of paragraph 23AB(7)(a)

Add:

(iii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—an amount equal to any rebate to which the taxpayer would be entitled under that section in respect of a dependant included in class 1 in the table if it were assumed that subsection 159J(1C) did not apply;

3 After subsection 23AB(7)

Insert:

(7A) The assumptions for the purposes of sub-subparagraph (7)(a)(ii)(D) are that:

(a) subsection 159J(1B) also included a reference to any dependant included in class 1 in the table in subsection 159J(2) and the amount applicable to class 1 in that table was $2,440; and

(b) subsection 159J(1C) did not apply; and

(c) section 159JA did not apply.

4 Paragraphs 79A(2)(a), (d) and (e)

Repeal the paragraphs, substitute:

(a) if the taxpayer is a resident of the special area in Zone A, or of the special area in Zone B, in the year of income—an amount equal to the sum of:

(i) $1,173 increased by 50% of the relevant rebate amount in relation to the taxpayer in relation to the year of income; and

(ii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—the dependent spouse relevant rebate amount in relation to the taxpayer in relation to the income year; or

(d) if the taxpayer is a resident of Zone A in the year of income but has not resided or actually been in the special area in Zone A or the special area in Zone B during any part of the year of income—an amount equal to the sum of:

(i) $338 increased by 50% of the relevant rebate amount in relation to the taxpayer in relation to the year of income; and

(ii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—the dependent spouse relevant rebate amount in relation to the taxpayer in relation to the income year; or

(e) if the taxpayer is a resident of Zone B in the year of income but has not resided or actually been in Zone A or the special area in Zone B during any part of the year of income—an amount equal to the sum of:

(i) $57 increased by 20% of the relevant rebate amount in relation to the taxpayer in relation to the year of income; and

(ii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—the dependent spouse relevant rebate amount in relation to the taxpayer in relation to the income year; or

5 Subsection 79A(4)

Insert:

dependent spouse relevant rebate amount means the amount of any rebate to which the taxpayer would be entitled under

section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if it were assumed that subsection 159J(1C) did not apply.

6 Subsection 79A(4) (paragraph (d) of the definition of *relevant rebate amount*)

Omit "ignoring", substitute "ignoring subsection 159J(1C) and".

7 Subparagraph 79B(2)(a)(ii)

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

8 At the end of paragraph 79B(2)(a)

Add:

(iii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—an amount equal to the dependent spouse concessional rebate amount in relation to the taxpayer in relation to the income year; or

9 Paragraph 79B(4)(b)

Omit "amount.", substitute "amount; and".

10 At the end of subsection 79B(4)

Add:

(c) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—an amount equal to the dependent spouse concessional rebate amount in relation to the taxpayer in relation to the income year.

11 At the end of paragraph 79B(4A)(b)

Add:

and (iii) if the taxpayer was not entitled to a rebate under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2)—an amount equal to the dependent spouse concessional rebate amount in relation to the taxpayer in relation to the income year;

12 Subsection 79B(6) (paragraph (d) of the definition of *concessional rebate amount*)

Omit “ignoring”, substitute “ignoring subsection 159J(1C) and”.

13 Subsection 79B(6)

Insert:

dependent spouse concessional rebate amount means any rebate to which the taxpayer would be entitled under section 159J in respect of a dependant included in class 1 in the table in subsection 159J(2) if it were assumed that subsection 159J(1C) did not apply.

14 Subsection 159HA(7) (subparagraph (c)(i) of the definition of *indexable amount*)

Repeal the subparagraph, substitute:

(i) paragraph 23AB(7A)(a); or

15 After subsection 159J(1B)

Insert:

(1C) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant included in class 1 in the table in subsection (2) if the dependant was born on or after 1 July 1971.

(1D) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant who is an invalid spouse or a carer spouse for the purpose of class 5 in the table in subsection (2) if the taxpayer is also entitled to a rebate in respect of the dependant being included in class 1 in the table.

(1E) If a taxpayer is entitled, in his or her assessment in respect of a year of income, to a rebate under this section in respect of a dependant who is an invalid spouse included in class 5 in the table in subsection (2), the taxpayer is not also entitled to a rebate in respect of that dependant being included as a carer spouse in class 5 in the table.

16 Subsection 159J(2) (table item 5)

Repeal the item, substitute:

5	Invalid relative, invalid spouse or carer spouse	In respect of an invalid relative—$770

	In respect of an invalid spouse—$2,100
	In respect of a carer spouse—$2,100

17 At the end of paragraphs 159J(3)(a), (aa), (b), (c) and (e)

Add “or”.

18 After paragraph 159J(3)(e)

Insert:

(f) a dependant, being a spouse of the taxpayer, is an invalid spouse or a carer spouse during part only of the income year;

19 Subsection 159J(3A)

Omit “child of the taxpayer being a dependant”, substitute “child, invalid spouse or carer spouse of the taxpayer being a dependant”.

20 After subsection 159J(5C)

Insert:

(5CA) For the purposes of subsections (5A), (5B) and (5C), treat a dependant that is an invalid spouse or a carer spouse for the purpose of class 5 in the table in subsection (2) as a dependant included in class 1 in the table.

21 Subsection 159J(5D)

Omit “subsection (2), the taxpayer is entitled, or would, but for subsection (4) be entitled,”, substitute “subsection (2) or a dependant that is an invalid spouse or a carer spouse for the purpose of class 5 in the table in subsection (2), the taxpayer is entitled, or would, but for subsection (1C) or (4), be entitled,”.

22 Subsection 159J(6)

Insert:

carer spouse means a person who is a spouse of the taxpayer, being a person:

(a) who is wholly engaged in providing care to an invalid relative; or

(b) to whom a carer allowance or carer payment is being paid pursuant to the *Social Security Act 1991* or to whom a carer service pension is being paid pursuant to the *Veterans' Entitlements Act 1986*.

23 Subsection 159J(6) (definition of *invalid relative*)

Omit "sister of the taxpayer", substitute "sister of the taxpayer or of the taxpayer's spouse".

24 Subsection 159J(6)

Insert:

invalid spouse means a person that is a spouse of the taxpayer, being a person who satisfies the requirements in paragraph (a) or (c) of the definition of ***invalid relative***.

25 Paragraph 159JA(1)(a)

Omit "subsection 159J(2)", substitute "subsection 159J(2) or is an invalid spouse or a carer spouse for the purpose of class 5 in the table in subsection 159J(2)".

26 Paragraph 159JA(3)(b)

Omit "subsection 159J(2)", substitute "subsection 159J(2) or is an invalid spouse or a carer spouse for the purpose of class 5 in the table in subsection 159J(2)".

27 At the end of paragraphs 159L(1)(a) and (b)

Add "or".

28 Paragraph 159L(1)(ba)

Omit "included in class 5 in", substitute "who is an invalid relative for the purpose of class 5 in".

29 Paragraph 159L(1)(c)

Repeal the paragraph, substitute:

(c) an invalid spouse (within the meaning of subsection 159J(6));

30 Subsection 159L(3)

Omit "subsection 159J(2),", substitute "subsection 159J(2) or a carer spouse for the purpose of class 5 in the table in subsection 159J(2)".

31 Subsection 159L(4)

Omit "Where a taxpayer has a spouse and the housekeeper is not, during the year of income, engaged in caring for the spouse of the taxpayer, being a spouse in receipt of a disability support pension under the *Social Security Act 1991*:", substitute "If a taxpayer has an invalid spouse (within the meaning of subsection 159J(6)) and the housekeeper is not, during the year of income, engaged in caring for the invalid spouse of the taxpayer:".

32 Subsection 159P(4) (paragraph (ca) of the definition of *dependant*)

Omit ", class 5 or class 6 in the table in subsection 159J(2)", substitute "or class 6 in the table in subsection 159J(2) or a person who is an invalid relative for the purpose of class 5 in the table in subsection (2)".

Income Tax Assessment Act 1997

33 Section 13-1 (table item headed "dependants")

Omit:

invalid relative	**159J**

substitute:

invalid relative, invalid spouse or carer spouse	**159J**

34 Application provision

The amendments made by this Schedule apply to assessments for the 2011-12 income year and later income years.

Schedule 5—Car fringe benefits

Part 1—Amendments commencing on Royal Assent

Fringe Benefits Tax Assessment Act 1986

1 Subsection 9(1) (formula and definitions)

Repeal the formula and definitions, substitute:

$$\left(0.2 \times \begin{array}{c}\text{Base value}\\ \text{of the car}\end{array} \times \frac{\begin{array}{c}\text{Number of days}\\ \text{during that year of tax}\\ \text{on which the car fringe benefits}\\ \text{were provided by the provider}\end{array}}{\begin{array}{c}\text{Number of days}\\ \text{in that year of tax}\end{array}}\right) - \begin{array}{c}\text{Amount}\\ \text{(if any)}\\ \text{of the}\\ \text{recipient's}\\ \text{payment}\end{array}$$

Note: For special rules for the years of tax starting on 1 April 2011, 1 April 2012 and 1 April 2013, see item 9 of Schedule 5 to the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

2 At the end of subparagraph 9(2)(a)(i)

Add "and".

3 At the end of paragraph 9(2)(b)

Add "and".

4 Paragraphs 9(2)(c) and (d)

Repeal the paragraphs.

5 At the end of subparagraph 9(2)(e)(i)

Add "and".

6 At the end of subsection 9(2)

Add:

; and (f) the holding period is the period in the year of tax when the car was held by the provider.

7 Subsection 136(1)

Insert:

annualised number of whole kilometres travelled during an FBT year, by a car in respect of which a car fringe benefit is provided during the FBT year, is the number calculated in accordance with the following formula:

$$\text{Number of whole kilometres travelled by the car during the period in the FBT year when the car was held by the provider of the car fringe benefit} \times \frac{\text{Number of days in the FBT year}}{\text{Number of days in the period in the FBT year when the car was held by the provider of the car fringe benefit}}$$

8 Application provision

(1) The amendments made by this Part apply to a car fringe benefit in relation to a year of tax beginning on or after 1 April 2011, whether the car fringe benefit is provided before, on or after the commencement of this item.

(2) Despite subitem (1), the amendments do not apply to a car fringe benefit, in relation to an employer in relation to a year of tax, that relates to a car, if:

(a) any car fringe benefit, in relation to the employer in relation to the year of tax in respect of employment of an employee by the employer, that relates to the car is constituted by the application or availability of the car for a period; and

(b) the last time at which:

(i) the employer, or an associate of the employer; or

(ii) the employee, or an associate of the employee;

committed to the application or availability of the car for that period, in respect of the employment, occurred before 7.30 pm Australian Eastern Standard Time on 10 May 2011.

Note: The effect of subitem (2) is that the amendments will not apply until the first year of tax starting after the employer, employee or associate first commits, after 7.30 pm Australian Eastern Standard Time on 10 May 2011, to the application or availability of the car.

9 Transitional provision

(1) The following table has effect:

Transitional provision				
Item	**Column 1**	**Column 2**	**Column 3**	**Column 4**
	The formula in subsection 9(1) of the *Fringe Benefits Tax Assessment Act 1986* (as amended by this Part) applies in relation to a car fringe benefit in relation to an employer in relation to the year of tax starting on …	**in relation to a car that, during the year of tax, travelled more than the following annualised number of whole kilometres:**	**but not more than the following annualised number of whole kilometres (if applicable):**	**as if the reference in the formula to 0.2 were a reference to …**
1	1 April 2011	25,000	40,000	0.14
2	1 April 2011	40,000	not applicable	0.10
3	1 April 2012	25,000	40,000	0.17
4	1 April 2012	40,000	not applicable	0.13
5	1 April 2013	40,000	not applicable	0.17

(2) Subitem (1) applies to a car fringe benefit to which the amendments made by this Schedule apply (see item 8), unless:

(a) the employer chooses to have the subitem not apply to car fringe benefits in relation to the employer in relation to the car; and

(b) if the car fringe benefit is in respect of employment of an employee by the employer, and the employee would be worse off as a result of the subitem not applying to car fringe benefits in relation to the employer in relation to the car—the employee consents to the employer's choice.

(3) The way the employer's return under the *Fringe Benefits Tax Assessment Act 1986* for the relevant year of tax is prepared is sufficient evidence of the making of the choice.

Part 2—Amendments commencing on 1 April 2016

Fringe Benefits Tax Assessment Act 1986

10 Subsection 9(1) (note)

Repeal the note.

11 Subsection 135K(4)

Repeal the subsection.

12 Subsection 136(1) (definition of *annualised number of whole kilometres*)

Repeal the definition.

[*Minister's second reading speech made in—*
House of Representatives on 2 June 2011
Senate on 22 June 2011]