





**Tax and Superannuation Laws  
Amendment (2015 Measures No. 2) Act  
2015**

**No. 130, 2015**

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

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



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# **Tax and Superannuation Laws Amendment (2015 Measures No. 2) Act 2015**

**No. 130, 2015**

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

*[Assented to 16 September 2015]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax and Superannuation Laws  
Amendment (2015 Measures No. 2) Act 2015*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 September 2015
2. Schedule 1	The day this Act receives the Royal Assent.	16 September 2015
3. Schedule 2	1 July 2015.	1 July 2015
4. Schedule 3	The day this Act receives the Royal Assent.	16 September 2015
5. Schedule 4	The day after this Act receives the Royal Assent.	17 September 2015

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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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#### **4 Amendment of assessments**

- (1) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
  - (a) the assessment was made before the commencement of Schedule 3 to this Act (Instalment trusts); and
  - (b) the amendment is made for the purpose of giving effect to that Schedule; and
  - (c) the amendment is made within 2 years after that commencement.
  
- (2) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:
  - (a) the assessment was made before the commencement of Schedule 4 to this Act (Company losses); and
  - (b) the amendment is made for the purpose of giving effect to that Schedule; and
  - (c) the amendment is made within 4 years after that commencement.

## Schedule 1—Tax relief for certain mining arrangements

### Part 1—Interest realignment arrangements

#### *Income Tax Assessment Act 1997*

#### **1 After section 40-362**

Insert:

#### **40-363 Roll-over relief for interest realignment arrangements**

##### *Circumstances giving rise to roll-over relief*

- (1) There is roll-over relief if:
  - (a) there is a \*balancing adjustment event under section 40-295 because, in an income year, you dispose of a \*depreciating asset to another entity; and
  - (b) the asset is a \*mining, quarrying or prospecting right; and
  - (c) the disposal occurs under an \*interest realignment arrangement; and
  - (d) you choose to apply roll-over relief in relation to the asset.

##### *Choosing to apply roll-over relief*

- (2) The choice must:
  - (a) be in writing; and
  - (b) be made at or before the time you lodge your \*income tax return for the income year in which the \*balancing adjustment event occurs, or within a longer period allowed by the Commissioner.

##### *The effect of roll-over relief*

- (3) If there is roll-over relief under this section:
  - (a) section 40-285 does not apply to the \*balancing adjustment event in relation to the asset; and

- (b) an amount is included in your assessable income if such an amount (the ***non-realignment amount***) would have been included under subsection 40-285(1) if:
  - (i) paragraph (a) of this subsection did not apply; and
  - (ii) the \*adjustable value of the \*mining, quarrying or prospecting rights that you disposed of under the arrangement were taken to be the market value of the mining, quarrying or prospecting rights that you received under the arrangement; and
- (c) in working out the \*cost of a mining, quarrying or prospecting right that you receive under the arrangement, if:
  - (i) some or all of the cost consists of a \*non-cash benefit that you provide; and
  - (ii) that benefit is a mining, quarrying or prospecting right that you disposed of under the arrangement;  
the market value of the benefit is taken to be the adjustable value of the benefit.
- (4) The amount included in your assessable income under paragraph (3)(b) is the non-realignment amount, and it is included for the income year in which the balancing adjustment event occurred.

*Meaning of interest realignment arrangement etc.*

- (5) An ***interest realignment arrangement*** is an \*arrangement:
  - (a) that is entered into between entities:
    - (i) that are undertaking jointly, or propose to undertake jointly, a project for carrying out \*mining and quarrying operations; and
    - (ii) that each \*holds one or more \*mining, quarrying or prospecting rights relating to the project; and
  - (b) under which those entities exchange (or agree to exchange), with the effect set out in subsection (6), parts of those rights; and
  - (c) that does not provide for any transfer, of a mining, quarrying or prospecting right, that does not give rise to the effect referred to in subsection (6).

## Schedule 1 Tax relief for certain mining arrangements

### Part 1 Interest realignment arrangements

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Note: The parts referred to in paragraph (b) are themselves mining, quarrying or prospecting rights (see paragraph (c) of the definition of *mining, quarrying or prospecting right* in subsection 995-1(1)), and are therefore not referred to elsewhere in this Act as parts of such rights.

- (6) The effect referred to in paragraphs (5)(b) and (c) must be that, for each of those entities, the following are equal:
- (a) the entity's percentage interest in the project;
  - (b) the reserves and resources represented by the \*mining, quarrying or prospecting rights that the entity \*holds relating to the project, expressed as a percentage of the reserves and resources represented by all mining, quarrying or prospecting rights that any of the entities hold relating to the project.
- (7) For the purposes of subsection (6):
- (a) the reserves represented by a \*mining, quarrying or prospecting right are taken to be the reserves, reasonably estimated using an appropriate accepted industry practice, that are expected to be extracted from the mine, \*petroleum field or quarry to which the right relates; and
  - (b) the resources represented by a mining, quarrying or prospecting right are taken to be the resources, reasonably estimated using an appropriate accepted industry practice, that are expected to be situated in the area to which the right relates (other than those resources that are reserves referred to in paragraph (a)).

#### 40-364 Interest realignment adjustments

*Effect of receiving interest realignment adjustment on assessable income*

- (1) If you receive an \*interest realignment adjustment in an income year, include in your assessable income for the year an amount (the **adjustment amount**) equal to:
- (a) the amount of the adjustment; or
  - (b) if the adjustment is not an amount—the \*market value of the adjustment.

*Effect of providing interest realignment adjustment on cost, or cost base and reduced cost base*

- (2) If an \*interest realignment adjustment is provided by you or on your behalf:
- (a) include the adjustment amount in the second element of the \*cost of a \*mining, quarrying or prospecting right that you acquired under the \*interest realignment arrangement to which the adjustment amount relates; or
  - (b) if this Division does not apply to that right—include the adjustment amount in the \*cost base and \*reduced cost base of that right.

However, if you acquired more than one such right under the arrangement, apportion the adjustment amount between the costs, or cost bases and reduced cost bases, of those rights on a reasonable basis.

Note: Subsections 40-77(1D) and (1E) of the *Income Tax (Transitional Provisions) Act 1997* set out when this Division does not apply to the right.

*Tax effects of the right to an interest realignment adjustment*

- (3) In calculating the \*termination value of a \*mining, quarrying or prospecting right that you provide under an \*interest realignment arrangement, assume to be zero the \*market value of any contractual right conferred by the arrangement to an \*interest realignment adjustment to be received by you.
- (4) In calculating the \*cost of a \*mining, quarrying or prospecting right that you receive under an \*interest realignment arrangement, assume to be zero the \*market value of any contractual right conferred by the arrangement to an \*interest realignment adjustment to be provided by you.
- (5) The creation of a right to an \*interest realignment adjustment does not cause \*CGT event D1 or CGT event D3 to happen.
- (6) Your receipt of an \*interest realignment adjustment does not cause \*CGT event C2 to happen in relation to the right to receive the adjustment.

*Meaning of interest realignment adjustment*

- (7) An **interest realignment adjustment** is an amount, or an asset (other than a \*mining, quarrying or prospecting right), that:
- (a) is provided under an \*interest realignment arrangement to a party to the arrangement by or on behalf of another party to the arrangement; and
  - (b) is provided as an adjustment, to the parties' contributions of value to the project to which the arrangement relates, that arises because information that has become available since the time the arrangement took effect indicates that the other party did not make an appropriate contribution at that time.

**2 At the end of Division 124**

Add:

**Subdivision 124-S—Interest realignment arrangements**

**Guide to Subdivision 124-S**

**124-1220 What this Subdivision is about**

There is roll-over relief if an interest in a mining, quarrying or prospecting right is disposed of under an interest realignment arrangement.

**Table of sections**

124-1225	Disposals of interests under interest realignment arrangements
124-1230	Roll-over consequences—partial roll-over
124-1235	Roll-over consequences—all original interests were post-CGT
124-1240	Roll-over consequences—all original interests were pre-CGT
124-1245	Roll-over consequences—original interests were of mixed CGT status, all were pre-UCA
124-1250	Roll-over consequences—some original interests were pre-UCA

## Operative provisions

### 124-1225 Disposals of interests under interest realignment arrangements

- (1) There is a roll-over if:
  - (a) \*CGT event A1 happens because you \*dispose of one or more assets each of which:
    - (i) is an interest (an **original interest**) in a \*mining, quarrying or prospecting right; and
    - (ii) is an interest that you started to \*hold before 1 July 2001; and
  - (b) the disposal occurs under an \*interest realignment arrangement.
- (2) The first element of the \*cost base and \*reduced cost base of an interest (a **new interest**) in a \*mining, quarrying or prospecting right that you acquire under the \*interest realignment arrangement includes any amount you paid to acquire the new interest.

Note 1: The rest of the first element is worked out under Subdivision 124-A.

Note 2: Under subsections 124-10(2) and 124-15(2), a capital gain or capital loss you make from the original interest is disregarded.
- (3) The amount can include giving property: see section 103-5. However, it does not include a \*mining, quarrying or prospecting right that you dispose of under the \*interest realignment arrangement.

### 124-1230 Roll-over consequences—partial roll-over

- (1) You can obtain only a partial roll-over in relation to an original interest if the \*capital proceeds for that interest includes something (the **ineligible proceeds**) other than a new interest or new interests. There is no roll-over for that part (the **ineligible part**) of the interest for which you received the ineligible proceeds.

Note: If there is more than one original interest, some or all of those original interests may each have an ineligible part.

- (2) The \*cost base of the ineligible part is that part of the cost base of the original interest as is reasonably attributable to the ineligible part.
- (3) The \*reduced cost base of the ineligible part is that part of the reduced cost base of the original interest as is reasonably attributable to the ineligible part.
- (4) For the purposes of sections 124-1235 and 124-1245, for each original interest that has an ineligible part:
  - (a) reduce the \*cost base of that interest (just before the \*CGT event that happened in relation to it) by so much of that cost base as is attributable to that ineligible part; and
  - (b) reduce the \*reduced cost base of that interest (just before the CGT event that happened in relation to it) by so much of that reduced cost base as is attributable to that ineligible part.

**124-1235 Roll-over consequences—all original interests were post-CGT and pre-UCA**

- (1) If you acquire the new interest in exchange for:
  - (a) one original interest that you started to \*hold on or after 20 September 1985 and before 1 July 2001; or
  - (b) 2 or more original interests, each of which you started to hold on or after 20 September 1985 and before 1 July 2001;you are taken to have started to hold the new interest (or all of the new interests) on or after 20 September 1985 and before 1 July 2001.
- (2) The first element of the \*cost base of the new interest (or of each of the new interests) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of all the original interests; and
  - (b) the number, \*market value and character of the original interests; and
  - (c) the number, market value and character of the new interests.
- (3) The first element of the \*reduced cost base of the new interest (or of each of the new interests) is such amount as is reasonable having regard to:

- (a) the total of the reduced cost bases of all the original interests;  
and
- (b) the number, \*market value and character of the original  
interests; and
- (c) the number, market value and character of the new interests.

**124-1240 Roll-over consequences—all original interests were  
pre-CGT**

If you acquire the new interest in exchange for:

- (a) one original interest that you started to \*hold before  
20 September 1985; or
- (b) 2 or more original interests, each of which you started to hold  
before 20 September 1985;

you are taken to have started to hold the new interest (or all of the  
new interests) before that day.

**124-1245 Roll-over consequences—original interests were of mixed  
CGT status, all were pre-UCA**

- (1) This section applies if:
  - (a) you acquire the new interest in exchange for more than one  
original interest; and
  - (b) you started to \*hold one or more of the original interests  
before 20 September 1985; and
  - (c) you started to hold one or more of the original interests on or  
after that day; and
  - (d) you did not start to hold any of the original interests on or  
after 1 July 2001.
- (2) Each new interest is taken to be 2 separate \*CGT assets that are  
both new interests:
  - (a) one (which you are taken to have started to \*hold on or after  
20 September 1985 and before 1 July 2001) representing the  
extent to which you started to hold the original interests on or  
after 20 September 1985 and before 1 July 2001; and
  - (b) another (which you are taken to have started to hold before  
20 September 1985) representing the extent to which you  
started to hold the original interests before that day.

- (3) The first element of the \*cost base and \*reduced cost base of the \*CGT asset mentioned in paragraph (2)(a) in relation to a new interest is worked out under the formula:

$$\text{Total post-CGT cost base} \times \frac{\text{Market value of new interest}}{\text{Market value of all new interests}}$$

where:

**market value of all new interests** is the total of the \*market values of all of the new interests.

**market value of new interest** is the \*market value of the new interest to which the \*CGT asset mentioned in paragraph (2)(a) relates.

**total post-CGT cost base** is the total of the \*cost bases of all the original interests that you started to \*hold on or after 20 September 1985.

#### **124-1250 Roll-over consequences—some original interests were pre-UCA**

- (1) This section applies if:
- (a) you acquire the new interest in exchange for more than one original interest; and
  - (b) you started to \*hold one or more of the original interests (**pre-UCA interests**) before 1 July 2001; and
  - (c) you started to hold one or more of the original interests (**post-UCA interests**) on or after that day.
- (2) If you started to \*hold all of the pre-UCA interests on or after 20 September 1985, each new interest is taken to be 2 separate assets that are both new interests:
- (a) one (which you are taken to have started to hold on or after that day and before 1 July 2001) representing the extent to which the original interests are pre-UCA interests; and
  - (b) another (which you are taken to have started to hold on or after 1 July 2001) representing the extent to which the original interests are post-UCA interests.

Apply section 124-1235 to the interest referred to in paragraph (a) as if the pre-UCA interests were the only original interests. Apply Division 40 to the interests referred to in paragraph (b).

- (3) If you started to \*hold all of the pre-UCA interests before 20 September 1985, each new interest is taken to be 2 separate assets that are both new interests:
- (a) one (which you are taken to have started to hold before that day) representing the extent to which the original interests are pre-UCA interests; and
  - (b) another (which you are taken to have started to hold on or after 1 July 2001) representing the extent to which the original interests are post-UCA interests.

Apply section 124-1240 to the new interest referred to in paragraph (a) as if the pre-UCA interests were the only original interests. Apply Division 40 to the new interest referred to in paragraph (b).

- (4) If you started to \*hold one or more of the pre-UCA interests before 20 September 1985 and one or more of the pre-UCA interests on or after that day, each new interest is taken to be 3 separate assets that are all new interests:
- (a) one (which you are taken to have started to hold on or after 20 September 1985 and before 1 July 2001) representing the extent to which the original interests that you started to hold on or after 20 September 1985 are pre-UCA interests; and
  - (b) another (which you are taken to have started to hold before 20 September 1985) representing the extent to which the original interests that you started to hold before 20 September 1985 are pre-UCA interests; and
  - (c) another (which you are taken to have started to hold on or after 1 July 2001) representing the extent to which the original interests are post-UCA interests.

Apply section 124-1245 to the new interests referred to in paragraphs (a) and (b) as if the pre-UCA interests were the only original interests. Apply Division 40 to the new interest referred to in paragraph (c).

### 3 Subsection 995-1(1)

Insert:

*interest realignment adjustment* has the meaning given by subsection 40-364(7).

*interest realignment arrangement* has the meaning given by subsection 40-363(5).

## *Income Tax (Transitional Provisions) Act 1997*

### 4 After subsection 40-77(1C)

Insert:

(1D) Division 40 of the new Act does not apply to an interest in a mining, quarrying or prospecting right that you started to hold on or after 1 July 2001 if:

- (a) you acquired the interest under an interest realignment arrangement; and
- (b) the interest was acquired in exchange for one or more other interests in other mining, quarrying or prospecting rights all of which you had started to hold before 1 July 2001.

(1E) If:

- (a) you acquired, under an interest realignment arrangement, an interest (a *new interest*) in a mining, quarrying or prospecting right; and
- (b) the interest was acquired in exchange for one or more other interests (*old interests*) in other mining, quarrying or prospecting rights; and
- (c) you started to hold some of the old interests before 1 July 2001;

Division 40 of the new Act applies to the new interest only to the extent that the new interest was acquired in exchange for the old interests that you started to hold on or after 1 July 2001.

## **5 Application of amendments**

The amendments made by this Part apply in relation to interest realignment arrangements entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

## Part 2—Farm-in farm-out arrangements

### *Income Tax Assessment Act 1997*

#### **6 Section 11-55 (after table item headed “environment”)**

Insert:

**farm-in farm-out arrangements**

rewards for providing exploration benefits ..... 40-1135

#### **7 Section 40-175 (note)**

After:

- paragraph 40-365(5)(a);

insert:

- section 40-1110;

#### **8 At the end of subsection 40-180(4)**

Add:

Note: The first element of cost may be reduced under section 40-1105 to account for exploration benefits received under farm-in farm-out arrangements.

#### **9 Subsection 40-300(3) (note)**

Repeal the note, substitute:

Note 1: Termination value may be adjusted under Subdivision 27-B so that any GST consequences are accounted for.

Note 2: Termination value may be reduced under section 40-1105 to account for exploration benefits received under farm-in farm-out arrangements.

#### **10 At the end of Division 40**

Add:

## Subdivision 40-K—Farm-in farm-out arrangements

### Guide to Subdivision 40-K

#### 40-1095 What this Subdivision is about

The costs and termination values of parts of interests in mining, quarrying or prospecting rights that are transferred under farm-in farm-out arrangements are reduced by the market value of the exploration benefits conferred under the arrangements.

#### Table of sections

##### Farm-in farm-out arrangements and exploration benefits

40-1100 Meaning of *farm-in farm-out arrangement* and *exploration benefit*

##### Consequences for transferors

40-1105 Treatment of certain exploration benefits received under farm-in farm-out arrangements

40-1110 Cost of split interests resulting from farm-in farm-out arrangements

40-1115 Deductions for certain expenditure covered by exploration benefits

40-1120 Cost base and reduced cost base of exploration benefits etc.

40-1125 Effect of exploration benefits on the cost of mining, quarrying or prospecting information

##### Consequences for transferees

40-1130 Consequences of certain exploration benefits provided under farm-in farm-out arrangements

## Farm-in farm-out arrangements and exploration benefits

### 40-1100 Meaning of *farm-in farm-out arrangement* and *exploration benefit*

- (1) A *farm-in farm-out arrangement* is an \*arrangement under which:
- (a) an entity (the *transferor*) transfers, or agrees to transfer, part of the entity's interest in a \*mining, quarrying or prospecting right to another entity (the *transferee*); and
  - (b) in exchange for the transfer, the transferee provides to the transferor one or more \*exploration benefits.

- (2) The transferee provides an *exploration benefit* to the transferor if:
- (a) the transferee:
    - (i) conducts \*exploration or prospecting for \*minerals, or quarry materials, obtainable by \*mining and quarrying operations; or
    - (ii) undertakes to conduct exploration or prospecting for minerals, or quarry materials, obtainable by mining and quarrying operations; or
    - (iii) funds, on the transferor's behalf, expenditure that the transferor incurs in relation to exploration or prospecting by the transferor or another entity (other than the transferee); or
    - (iv) undertakes to fund, on the transferor's behalf, expenditure that the transferor incurs in relation to exploration or prospecting by the transferor or another entity (other than the transferee); and
  - (b) the exploration or prospecting relates to the part of the transferor's interest in the \*mining, quarrying or prospecting right that the transferor does not transfer, or agree to transfer, under the arrangement; and
  - (c) in a case where the transferor conducts the exploration or prospecting—expenditure incurred by the transferor relating to the exploration or prospecting is:
    - (i) included in the \*cost of \*mining, quarrying or prospecting information \*held by the transferor; or
    - (ii) included in any other \*depreciating asset, held by the transferor, for which the decline in value is provided under section 40-80; or
    - (iii) expenditure, of a kind referred to in subsection 40-730(1), that meets the requirements of subsection (3) of this section; and
  - (d) in a case where the transferor does not conduct the exploration or prospecting—were the transferor to conduct the exploration or prospecting, expenditure incurred by the transferor relating to the exploration or prospecting would:
    - (i) be included in the cost of mining, quarrying or prospecting information held by the transferor; or
-

- (ii) be included in any other depreciating asset, held by the transferor, for which the decline in value is provided under section 40-80; or
  - (iii) be expenditure, of a kind referred to in subsection 40-730(1), that meets the requirements of subsection (3) of this section.
- (3) Expenditure meets the requirements of this subsection if:
- (a) for that expenditure, the transferor satisfies, or would satisfy, one or more of paragraphs 40-730(1)(a) to (c); and
  - (b) the expenditure is not of a kind referred to in subsection 40-730(2) or (3); and
  - (c) the expenditure is not of a kind that another provision of this Act provides is not deductible.

## **Consequences for transferors**

### **40-1105 Treatment of certain exploration benefits received under farm-in farm-out arrangements**

If, under a \*farm-in farm-out arrangement, you receive an \*exploration benefit in relation to the transfer of part of your interest in a \*mining, quarrying or prospecting right, the \*termination value of the part of the interest is reduced by the \*market value of the exploration benefit.

### **40-1110 Cost of split interests resulting from farm-in farm-out arrangements**

Despite section 40-205, if:

- (a) under a \*farm-in farm-out arrangement, you provide a part of your interest in a \*mining, quarrying or prospecting right; and
- (b) because of subsection 40-115(2), this Division applies as if you had split your interest into the part you stopped \*holding and the rest of your interest;

then:

- (c) the first element of the \*cost of the asset that consists of the part you stopped holding is a reasonable proportion of the

- amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting your interest; and
- (d) the first element of the cost of the asset that consists of the rest of your interest is the sum of:
- (i) the \*adjustable value of your interest just before it was split; and
  - (ii) a reasonable proportion of the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting your interest.

#### **40-1115 Deductions relating to receipt of exploration benefits**

- (1) If:
- (a) under a \*farm-in farm-out arrangement, you receive an \*exploration benefit in exchange for providing a part of your interest in a \*mining, quarrying or prospecting right; and
  - (b) because of section 40-1105, the \*termination value of the interest you provide is reduced (including reduced to nil);
- you are not entitled to a deduction under a provision of this Act in relation to your expenditure consisting of the provision of that part.
- (2) If:
- (a) under a \*farm-in farm-out arrangement, you receive an \*exploration benefit in exchange for providing a part of your interest in a \*mining, quarrying or prospecting right; and
  - (b) because of section 40-1105, the \*termination value of the interest you provide is reduced (including reduced to nil); and
  - (c) the exploration benefit consists of another party to the arrangement funding on your behalf, or undertaking to fund on your behalf, expenditure that you incur in relation to exploration or prospecting;
- your entitlement (if any) to a deduction under a provision of this Act in relation to that expenditure is reduced to the same extent as the extent to which the expenditure is reasonably attributable to the exploration benefit.

#### **40-1120 Cost base and reduced cost base of exploration benefits etc.**

If:

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- (a) under a \*farm-in farm-out arrangement, you receive an \*exploration benefit; and
  - (b) the benefit involves one or more undertakings of the kinds referred to in subparagraphs 40-1100(2)(a)(ii) and (iv);
- the first element of the \*cost base and the \*reduced cost base of the benefit are reduced by the \*market value of the undertakings.

#### **40-1125 Effect of exploration benefits on the cost of mining, quarrying or prospecting information**

If:

- (a) you \*hold a \*depreciating asset that is \*mining, quarrying or prospecting information; and
  - (b) under a \*farm-in farm-out arrangement, you receive an \*exploration benefit; and
  - (c) an amount or expenditure would, apart from this section, be included in the second element of the \*cost of the asset;
- do not include that amount or expenditure in the second element to the extent (if any) that it is reasonably attributable to the exploration benefit.

#### **Consequences for transferees**

#### **40-1130 Consequences of certain exploration benefits provided under farm-in farm-out arrangements**

- (1) If, under a \*farm-in farm-out arrangement, you provide an \*exploration benefit in relation to the transfer to you of part of another entity's interest in a \*mining, quarrying or prospecting right:
  - (a) the first element of the \*cost of the part of the interest is reduced by the \*market value of the exploration benefit; and
  - (b) if, for providing the exploration benefit, you receive a reward as a result of which an amount would, apart from this paragraph, be included in your assessable income—the entire amount of the reward is not assessable income and is not \*exempt income; and
  - (c) subsection 40-730(3) does not apply in relation to expenditure that you incur under the arrangement if the

reduction in market value under paragraph (a) took into account your liability to incur that expenditure.

(2) A reduction under paragraph(1)(a) may be a reduction to nil.

**11 Paragraph 104-35(5)(f)**

Omit “the trust.”, substitute “the trust; or”.

**12 After paragraph 104-35(5)(f)**

Insert:

(g) you created the right by creating in another entity a right to receive an \*exploration benefit under a \*farm-in farm-out arrangement.

**13 Section 112-97 (before table item 1)**

Insert:

1A	You receive, under a *farm-in farm-out arrangement, an *exploration benefit or an entitlement to an exploration benefit	First element of cost base and reduced cost base	Section 40-1120
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**14 Section 116-25 (at the end of the cell at table item A1, column headed “Special rules:”)**

Add:

If the disposal is a disposal of part of an interest in a \*mining, quarrying or prospecting right under a \*farm-in farm-out arrangement: see section 116-115

**15 Section 116-25 (cell at table item C2, column headed “Special rules:”)**

Omit “and 116-110”, substitute “, 116-110 and 116-115”.

**16 After section 116-110**

Insert:

## **116-115 Farm-in farm-out arrangements**

(1) If:

- (a) \*CGT event A1 is the \*disposal of part of your interest in a \*mining, quarrying or prospecting right; and
- (b) the part is disposed of under a \*farm-in farm-out arrangement; and
- (c) you have received an \*exploration benefit in respect of the event happening;

in working out the \*capital proceeds for the CGT event, treat as zero the \*market value of the exploration benefit.

(2) If:

- (a) \*CGT event C2 arises as a result of an \*exploration benefit being provided to you; and
- (b) the exploration benefit is provided under a \*farm-in farm-out arrangement;

in working out the \*capital proceeds for the CGT event, treat as zero the \*market value of the exploration benefit.

## **17 After subsection 230-460(17)**

Insert:

### *Exploration benefits*

- (17A) A right or obligation that arises because of the provision of an \*exploration benefit under a \*farm-in farm-out arrangement is the subject of an exception.

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

Insert:

*exploration benefit* has the meaning given by subsection 40-1100(2).

*farm-in farm-out arrangement* has the meaning given by subsection 40-1100(1).

## **19 Application of amendments**

The amendments made by this Part apply in relation to farm-in farm-out arrangements entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

## **Part 3—Mining, quarrying or prospecting information**

### ***Income Tax Assessment Act 1997***

#### **20 Paragraph 40-80(1AB)(d)**

Repeal the paragraph, substitute:

- (d) if the amount relates to \*mining, quarrying or prospecting information—after the inclusion of the amount in the second element:
  - (i) you satisfy paragraph (1)(e) in relation to the information; or
  - (ii) you would satisfy that paragraph, in relation to the economic benefit that resulted in the inclusion of the amount in the second element, if that economic benefit were the asset referred to in that paragraph.

#### **21 Application of amendment**

The amendment made by this Part applies to any mining, quarrying or prospecting information to which item 16 of Schedule 1 to the *Tax and Superannuation Laws Amendment (2014 Measures No. 3) Act 2014* applies.

## Schedule 2—In-house software

### *Income Tax Assessment Act 1997*

#### **1 Subsection 40-95(7) (cell at table item 8, column headed “The effective life is:”)**

Repeal the cell, substitute:

5 years

#### **2 Section 40-455 (table)**

Repeal the table, substitute:

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<b>Deductions allowed for software development pool</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Income year</b>	<b>Amount of expenditure you can deduct for that year</b>
1	Year 1	Nil
2	Year 2	30%
3	Year 3	30%
4	Year 4	30%
5	Year 5	10%

---

#### **3 Application of amendments**

- (1) The amendment made by item 1 applies to in-house software if its start time occurs on or after 1 July 2015.
- (2) The amendment made by item 2 applies to expenditure incurred in an income year starting on or after 1 July 2015.

## **Schedule 3—Instalment trusts**

### ***Income Tax Assessment Act 1997***

#### **1 After Division 230**

Insert:

### **Division 235—Particular financial transactions**

#### **Table of Subdivisions**

Guide to Division 235

235-I Instalment trusts

#### **Guide to Division 235**

##### **235-1 What this Division is about**

This Division is about the tax treatment of particular kinds of financial transactions.

##### **Subdivision 235-I—Instalment trusts**

#### **Guide to Subdivision 235-I**

##### **235-805 What this Subdivision is about**

An entity that invests in an asset through an instalment warrant, instalment receipt, or other similar arrangement, is treated for most income tax purposes as if it had invested in the asset directly.

A regulated superannuation fund that invests in an asset through a limited recourse borrowing is treated in the same way.

#### **Table of sections**

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**Operative provisions**

- 235-810 Object of this Subdivision
- 235-815 Application of Subdivision
- 235-820 Look-through treatment for instalment trusts
- 235-825 Meaning of *instalment trust* and *instalment trust asset*
- 235-830 What trusts are covered—instalment trust arrangements
- 235-835 Requirement for underlying investments to be listed or widely held
- 235-840 What trusts are covered—limited recourse borrowings by regulated superannuation funds
- 235-845 Interactions with other provisions

**Operative provisions**

**235-810 Object of this Subdivision**

The object of this Subdivision is to ensure that, for most income tax purposes, the consequences of ownership of an \*instalment trust asset flow to the entity that has the beneficial interest in the asset, instead of to the trustee.

**235-815 Application of Subdivision**

- (1) This Subdivision applies to:
  - (a) the entity that has the beneficial interest in an \*instalment trust asset as the beneficiary of an \*instalment trust; and
  - (b) the trustee of the instalment trust.
- (2) This Subdivision applies for the purposes of this Act, apart from:
  - (a) Part VA of the *Income Tax Assessment Act 1936* (which is about tax file numbers); and
  - (b) Subdivisions 12-E, 12-F and 12-H in Schedule 1 to the *Taxation Administration Act 1953* (which are about PAYG withholding).

*Joint investments*

- (3) This Subdivision applies in relation to 2 or more entities that hold an interest in a trust as joint tenants, or as tenants in common, in the same way it applies in relation to a single entity that holds such an interest.

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Note: Each investor that is treated by this Subdivision as jointly owning an instalment trust asset is treated for CGT purposes as owning a separate asset: see section 108-7.

### **235-820 Look-through treatment for instalment trusts**

- (1) If an entity (the *investor*) has a beneficial interest in an \*instalment trust asset under an \*instalment trust, the asset is treated as being the investor's asset (instead of being an asset of the trust).

Example: A dividend in respect of the asset is paid to the trustee. It is treated (but not for the purposes of the PAYG withholding provisions mentioned in paragraph 235-815(2)(b)) as if it had been paid directly to the investor.

- (2) An act done in relation to an \*instalment trust asset of an \*instalment trust by the trustee of the trust is treated as if the act had been done by the investor (instead of by the trustee).

Example: A trustee disposes of the asset. Any capital gain or loss is made by the investor, not by the trustee.

- (3) The investor is treated as having the \*instalment trust asset in the same circumstances as the investor actually has the interest in the \*instalment trust.

- (4) Without limiting subsection (3), the circumstances include:

- (a) whether the interest is held on capital account or on revenue account; and
- (b) whether the interest is held as a joint tenant or tenant in common.

- (5) Any consequence arising under the \*GST Act for the trustee of the \*instalment trust, as a result of anything done in relation to the \*instalment trust asset, is treated as if it had arisen for the investor (instead of for the trustee), even if that consequence would not have arisen had the thing been done by or to the investor.

Example: If the trustee has a net input tax credit under the GST Act, the investor must apply the credit to reduce the investor's cost base for the instalment trust asset (even if the investor is not registered or required to be registered for GST purposes): see section 103-30.

### 235-825 Meaning of *instalment trust* and *instalment trust asset*

- (1) A trust is an *instalment trust* if:
  - (a) the trust is covered by section 235-830 (about instalment trust arrangements) and satisfies the requirements in section 235-835 (about requirements for underlying investments to be listed or widely held); or
  - (b) the trust is covered by section 235-840 (about limited recourse borrowings by \*regulated superannuation funds).
- (2) An *instalment trust asset* is an asset that is, or is part of, the underlying investment of an \*instalment trust (as mentioned in section 235-830 or 235-840, as the case requires).

### 235-830 What trusts are covered—instalment trust arrangements

- (1) This section covers a trust if, under an \*arrangement:
  - (a) an entity (the *investor*) makes a \*borrowing, or is provided with credit; and
  - (b) to secure the borrowing or provision of credit, the trustee of the trust acquires an asset or assets (the *underlying investment*); and
  - (c) the investor has a beneficial interest in the underlying investment as the sole beneficiary of the trust; and
  - (d) for a provision of credit—the credit was provided to the investor to acquire the asset, or one of the assets, that comprises the underlying investment; and
  - (e) the investor is entitled to the benefit of all income from the underlying investment; and
  - (f) the investor is entitled to acquire legal ownership of the underlying investment on discharging its obligations relating to the borrowing or provision of credit.

Note: For paragraph (c), the sole beneficiary of the trust may be 2 or more entities that have an interest in the trust as joint tenants or tenants in common: see subsection 235-815(3).

- (2) However, this section does not cover a trust if the investor is a trustee of a \*regulated superannuation fund and the \*arrangement includes a \*borrowing.

- (3) This section does not cover a trust if the underlying investment is subject to any charge, security or other encumbrance (apart from any charge securing the obligations relating to the \*borrowing or provision of credit).

### **235-835 Requirement for underlying investments to be listed or widely held**

- (1) A trust satisfies the requirements in this section if:
- (a) each asset that is, or is part of, the underlying investment is:
    - (i) a \*share, a unit in a unit trust or a stapled security; or
    - (ii) an interest in an entity that holds an interest in a share, a unit in a unit trust or a stapled security either directly, or indirectly through one or more interposed entities; and
  - (b) each such share, unit or stapled security:
    - (i) is listed for quotation in the official list of an \*approved stock exchange; or
    - (ii) meets the widely held requirement set out in the applicable item of the following table.

<b>Widely held requirements</b>		
<b>Item</b>	<b>Column 1 Type of asset</b>	<b>Column 2 Widely held requirement</b>
1	A *share in a company	The company is a *widely held company
2	A unit in a unit trust	The unit trust is a widely held unit trust as defined in section 272-105 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>
3	A stapled security	All companies involved are *widely held companies and all trusts involved are such widely held unit trusts

- (2) A \*share, unit in a unit trust or a stapled security that fails the widely held requirement set out in the table in subsection (1) is treated as satisfying that requirement if the failure:
- (a) is of a temporary nature only; and
  - (b) is caused by circumstances outside the investor's control.

- (3) In applying subsection (1), disregard an asset, or the cash proceeds from disposing of an asset, if:
- (a) the trustee became entitled to the asset in respect of a \*share, unit or stapled security that was, or was part of, the underlying investment just before the entitlement arose; and
  - (b) the asset is not a \*share, unit in a unit trust, or stapled security; and
  - (c) if the asset is an interest in an entity, or a right, option or similar interest that gives the holder an entitlement to acquire an interest in an entity:
    - (i) an interest in the entity is listed for quotation in the official list of an \*approved stock exchange; or
    - (ii) the entity meets a widely held requirement set out in column 2 of item 1 or 2 of the table in subsection (1); and
  - (d) the underlying investment comprises one or more other assets that are not disregarded under this subsection.

Example: Examples of the types of assets disregarded by this subsection are:

- (a) assets that represent distributions and capital payments in respect of the underlying investment; and
  - (b) bonus rights issued in respect of the underlying investment.
- (4) Despite subsections (1) to (3), the underlying investment does not satisfy the requirement in this section if an asset that is, or is part of, the underlying investment is an \*ESS interest to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

### **235-840 What trusts are covered—limited recourse borrowings by regulated superannuation funds**

This section covers a trust if:

- (a) under an \*arrangement, an asset or assets (the *underlying investment*) is acquired by the trustee of the trust for the benefit of a trustee of a \*regulated superannuation fund to secure a \*borrowing; and
- (b) until the borrowing is repaid, the arrangement is covered by:

- (i) the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (which is about limited recourse borrowing arrangements); or
- (ii) the exception in former subsection 67(4A) of that Act (which was about instalment warrants).

### **235-845 Interactions with other provisions**

- (1) Section 106-50 (about absolutely entitled beneficiaries) does not apply to an \*instalment trust asset.
- (2) Section 106-60 (about securities, charges and encumbrances) does not apply to an \*instalment trust asset.
- (3) Nothing in this Subdivision limits Division 247 (which is about capital protected borrowings).

Note: Division 247 may apply to an arrangement to which this Subdivision applies.

### **2 Subsections 290-60(4) and 290-230(4)**

Omit “regulated superannuation fund (within the meaning of that Act)”, substitute “\*regulated superannuation fund”.

### **3 Section 295-175**

Omit “regulated superannuation fund (within the meaning of that Act)”, substitute “\*regulated superannuation fund”.

### **4 Subsection 995-1(1) (definition of *complying superannuation plan*)**

Repeal the definition, substitute:

***complying superannuation plan*** means:

- (a) a \*complying superannuation fund; or
- (b) a \*public sector superannuation scheme that is:
  - (i) a \*regulated superannuation fund; or
  - (ii) an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*); or
- (c) a \*complying approved deposit fund; or

(d) an \*RSA.

## 5 Subsection 995-1(1)

Insert:

*instalment trust* has the meaning given by section 235-825.

*instalment trust asset* has the meaning given by section 235-825.

*regulated superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

## *Income Tax (Transitional Provisions) Act 1997*

### 6 Before Division 242

Insert:

## **Division 235—Particular financial transactions**

### **Table of Subdivisions**

235-I Instalment trusts

### **Subdivision 235-I—Instalment trusts**

#### **Table of sections**

235-810 Application of Subdivision 235-I of the *Income Tax Assessment Act 1997*

### **235-810 Application of Subdivision 235-I of the *Income Tax Assessment Act 1997***

Subdivision 235-I of the *Income Tax Assessment Act 1997* applies to assets acquired by the trustee of an instalment trust in:

- (a) the 2007-08 income year; or
- (b) a later income year.

***Taxation Administration Act 1953***

**7 Subsection 355-65(3) in Schedule 1 (table item 10, column headed “The record is made for or the disclosure is to ...”, paragraphs (a) and (b))**

Repeal the paragraphs, substitute:

- (a) a \*regulated superannuation fund; or
- (b) a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or

## **Schedule 4—Company losses**

### **Part 1—Changes in company ownership**

#### **Division 1—Main amendments**

##### *Income Tax Assessment Act 1997*

#### **1 After Division 166**

Insert:

### **Division 167—Companies whose shares carry unequal rights to dividends, capital distributions or voting power**

#### **Table of Subdivisions**

Guide to Division 167

167-A Rights to dividends or capital distributions

167-B Voting power

#### **Guide to Division 167**

##### **167-1 What this Division is about**

This Division modifies the way conditions relating to this Part apply to companies whose shares:

- (a) do not all carry the same rights to dividends or capital distributions; or
- (b) do not all carry the same voting rights, or do not carry all of the voting rights in the company.

## **Subdivision 167-A—Rights to dividends or capital distributions**

### **Guide to Subdivision 167-A**

#### **167-5 What this Subdivision is about**

Companies whose shares do not all carry the same rights to dividends or capital distributions may test the possession of those rights similarly to companies whose shares are all of a single class with the same rights.

#### **167-7 Simplified outline of this Subdivision**

If a condition of the continuity of ownership test cannot be worked out for a company:

- (a) because of its unequal share structure; or
- (b) because of a holding company's unequal share structure;

an entity can choose to reconsider that condition in up to 3 ways.

The first way involves disregarding debt interests.

The second way involves disregarding debt interests and secondary share classes.

The third way involves disregarding those shares, and treating the remaining shares as carrying certain percentages of the rights to receive dividends and capital distributions.

The second way can only be tried after the first way, while the third way can only be tried after the second way.

#### **Table of sections**

##### **Operative provisions**

167-10	When this Subdivision applies
167-15	First way—disregard debt interests
167-20	Second way—also disregard secondary share classes

**Schedule 4** Company losses  
**Part 1** Changes in company ownership

- 167-25 Third way—treat remaining shares as having fixed rights to dividends and capital distributions
- 167-30 Fixing rights if practicable to work out market values
- 167-35 Fixing rights if impracticable to work out market values etc.
- 167-40 The valuing times for conditions listed in subsection 167-10(1)

**Operative provisions**

**167-10 When this Subdivision applies**

*When this Subdivision applies*

- (1) This Subdivision applies in relation to a company if:
- (a) as described in the following table, a condition (the **unsatisfied condition**) cannot be worked out for the company for a particular period (the **test period**); and
  - (b) at one or more times during the test period:
    - (i) the company; or
    - (ii) a company that has a \*shareholding interest in it; (an **unequally structured company**) has an \*unequal share structure.

**Conditions that can be reconsidered under this Subdivision**

Item	Column 1 Each of the following provisions contains a condition:	Column 2 that cannot be worked out for:
1	(a) subsection 165-12(3) or (4); (b) paragraph 165-37(1)(b) or (c); (c) subsection 165-123(3) or (4); (d) paragraph 175-10(3)(b) or (c), 175-45(3)(b) or (c) or 175-85(3)(b) or (c); (e) subparagraph (b)(ii) or (iii) of the definition of <b>eligible Division 166</b> <b>company</b> in subsection 995-1(1)	a period that is all or part of the period to which that provision relates

Note: Each of these conditions is about rights to the company's dividends or capital distributions.

- (2) This Subdivision also applies in relation to a company if:

- (a) as described in the following table, a condition (the ***unsatisfied condition***) cannot be worked out for the company for a particular time (the ***test time***); and
- (b) at the test time, the company, or a company that has a \*shareholding interest in it, (an ***unequally structured company***) has an \*unequal share structure.

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**Conditions that can be reconsidered under this Subdivision**

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<b>Item</b>	<b>Column 1 Each of the following provisions contains a condition:</b>	<b>Column 2 that cannot be worked out for:</b>
1	(a) paragraph 165-115C(1)(b) or (c) or 165-115L(1)(b) or (c); (b) subparagraph 165-115X(1)(b)(ii) or (iii); (c) paragraph 165-115Z(1)(b) or (c); (d) subsection 166-145(3) or (4); (e) subparagraph 166-175(1)(e)(ii) or (iii); (f) paragraph 166-225(1)(b) or (c); (g) subparagraph 166-230(1)(a)(ii) or (iii); (h) paragraph 166-240(1)(b) or (c); (i) subparagraph 166-255(1)(e)(ii) or (iii) or 166-260(1)(e)(ii) or (iii); (j) paragraph 166-260(3)(b) or (c) or 166-270(2)(c); (k) paragraph 170-260(3)(b) or (c) or 170-265(2)(b) or (c)	a time that is the time, or one of the times, to which that provision relates

Note 1: Each of these conditions is about rights to the company's dividends or capital distributions.

Note 2: If a condition cannot be worked out for several of the times to which the provision relates, apply this Subdivision separately for each of those times.

***Meaning of unequal share structure***

- (3) A company has an ***unequal share structure*** at a particular time if, at that time:

- (a) the company's \*shares do not all carry the same rights to \*dividends, or capital distributions, of the company; or
- (b) some or all of the company's shares carry discretionary rights to dividends, or capital distributions, of the company; or
- (c) the company is a \*co-operative company that has \*on issue one or more interests (other than shares) in the company's capital.

**167-15 First way—disregard debt interests**

- (1) The unsatisfied condition may be reconsidered by disregarding any \*debt interests in each unequally structured company.
- (2) The way an entity prepares its \*income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under subsection (1).

**167-20 Second way—also disregard secondary share classes**

- (1) This section applies in relation to each unequally structured company if:
  - (a) despite section 167-15, the unsatisfied condition cannot be worked out; and
  - (b) on the last day of the test period or at the test time (as appropriate), there is \*on issue in that company one or more classes of \*shares (the *secondary share classes*) other than:
    - (i) the class or classes of ordinary or common shares that represent the majority of that company's value; and
    - (ii) \*debt interests; and
  - (c) it is reasonable to conclude that the total \*market value of the secondary share classes does not exceed 25% of the total market value of all of that company's shares (other than debt interests); and
  - (d) for one or more of the secondary share classes, it is reasonable to conclude that the market value of each of them does not exceed 10% of the total market value of all of that company's shares (other than debt interests).

Note: This section can apply separately for each unequally structured company.

- (2) For the purposes of subsection (1), use \*market values on the last day of the test period, or at the test time, (as appropriate).
- (3) The unsatisfied condition may be reconsidered by disregarding:
  - (a) those of the secondary share classes that, under paragraph (1)(d), caused this section to apply; and
  - (b) any \*debt interests in that company.
- (4) The way an entity prepares its \*income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under subsection (3).

**167-25 Third way—treat remaining shares as having fixed rights to dividends and capital distributions**

*When this section applies*

- (1) This section applies if, despite sections 167-15 and 167-20, the unsatisfied condition cannot be worked out for the test period or test time (as appropriate).

*How to fix rights to dividends and capital distributions*

- (2) The unsatisfied condition may be reconsidered by applying subsections (3) and (4) to each unequally structured company. When doing this for an unsatisfied condition listed in subsection 167-10(1), assume:
  - (a) that the test period consists only of the valuing times worked out under section 167-40; and
  - (b) that each of those valuing times is a test time.
- (3) Firstly, disregard any \*debt interests in that company and any of its \*shares that can be disregarded under subsection 167-20(3).
- (4) Secondly, treat each of that company's remaining \*shares \*on issue at the test time as having at that time the percentage of the rights to receive \*dividends, and capital distributions, worked out either:
  - (a) under section 167-30; or
  - (b) under section 167-35 if:
    - (i) it is not reasonably practicable to work out the market values of each of those remaining shares; or

- (ii) the sum of the \*market values of all of those remaining shares is nil.

Note: The remaining shares are those remaining after disregarding the shares mentioned in subsection (3).

*Evidence of a choice under this section*

- (5) The way an entity prepares its \*income tax return is sufficient evidence of it choosing to work out the unsatisfied condition under this section.

**167-30 Fixing rights if practicable to work out market values**

Each remaining \*share is treated at the test time as carrying the following percentage of the rights to receive \*dividends, and capital distributions, from the company:

$$\frac{\text{*Share's *market value}}{\text{Sum of market values of all of the remaining shares in the company}} \times 100$$

where market value is worked out at the test time.

**167-35 Fixing rights if impracticable to work out market values etc.**

- (1) Each remaining \*share is treated at the test time as carrying such a percentage of the rights to receive \*dividends, and capital distributions, from the company as is reasonable worked out:
- (a) at the test time; and
  - (b) having regard to the purpose of the unsatisfied condition.
- (2) In working out what is reasonable for subsection (1), have regard to the following:
- (a) the company's \*constitution;
  - (b) any agreements between the company and either or both of the following:
    - (i) any or all of the shareholders in the company;
    - (ii) any or all of the \*associates of a shareholder in the company;

- (c) any statement by the company of its policy in paying \*dividends or making capital distributions;
- (d) the ability of an entity to control (whether directly, or indirectly through one or more interposed entities) how the company pays dividends or makes capital distributions;
- (e) how the company has previously paid dividends or made capital distributions;
- (f) whether all classes of \*shares carry substantially the same rights to receive dividends and capital distributions;
- (g) the principle that:
  - (i) a \*tax loss or bad debt should only be deductible; and
  - (ii) a \*net capital loss should only be applied;if a majority of the persons entitled to the benefits of dividend and capital distributions of the company is maintained.

**167-40 The valuing times for conditions listed in subsection 167-10(1)**

- (1) For the purposes of subsection 167-25(2), the valuing times for the test period are:
  - (a) the time the test period starts; and
  - (b) the time just before, and the time just after, any of the following events that happen during the test period:
    - (i) the issue of \*shares of a class of remaining shares;
    - (ii) the variation of rights attached to any remaining shares to receive \*dividends or capital distributions;
    - (iii) the redemption or cancellation of any remaining shares; and
  - (c) the time the test period ends.
- (2) For paragraph (1)(b), disregard a time if it is outside the test period.

## Subdivision 167-B—Voting power

### Guide to Subdivision 167-B

#### 167-75 What this Subdivision is about

Companies whose shares:

- (a) do not all carry the same voting rights; or
  - (b) do not carry all of the voting rights in the company;
- may test the possession of voting rights similarly to companies whose shares are all of a single class with the same rights.

#### Table of sections

##### Operative provisions

167-80	When this Subdivision applies
167-85	Different method for working out voting power
167-90	Dual listed companies

#### Operative provisions

##### 167-80 When this Subdivision applies

- (1) For the purposes of this Part, voting power in a company at one or more times can be worked out under section 167-85 if:
  - (a) the company's \*shares do not all, at those times, carry the same voting rights for all matters affecting the company; or
  - (b) the company's shares do not carry all of the voting rights in the company;whether this is because of the company's \*constitution, an \*arrangement or some other reason.

Note: Disregard dual listed company voting shares (see section 167-90).
- (2) Further, if those times are consecutive times during a period, the voting power in the company can be worked out under section 167-85 as if that period consists only of:
  - (a) the time that period starts; and

- (b) each later time (if any) during that period when there is a change in the maximum number of votes any entity could cast on a poll described in paragraph 167-85(1)(a) or (b).

### **167-85 Different method for working out voting power**

- (1) An entity may choose whether voting power in the company at a particular time is worked out solely by reference to:
  - (a) the maximum number of votes that could be cast on a poll on the election of a director of the company, if such a poll were to be held at that time; or
  - (b) the maximum number of votes that could be cast on a poll on an amendment to the company's \*constitution, other than an amendment altering:
    - (i) the rights carried by any of the company's \*shares; or
    - (ii) other forms of voting power in the company; if such a poll were to be held at that time.
- (2) The way the entity prepares its \*income tax return is sufficient evidence of it making a choice under subsection (1).

### **167-90 Dual listed companies**

For the purposes of this Subdivision, disregard \*shares that are \*dual listed company voting shares.

## **Division 2—Other amendments**

### ***Income Tax Assessment Act 1997***

#### **2 Subsection 165-12(2) (note)**

Omit “Note”, substitute “Note 1”.

#### **3 At the end of subsection 165-12(2)**

Add:

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**4 Subsection 165-12(3) (note)**

Omit “Note”, substitute “Note 1”.

**5 At the end of subsection 165-12(3)**

Add:

Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

**6 Subsection 165-12(4) (note)**

Omit “Note”, substitute “Note 1”.

**7 At the end of subsection 165-12(4)**

Add:

Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

**8 At the end of subsection 165-37(1)**

Add:

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**9 Subsection 165-40(1) (note)**

Omit “Note”, substitute “Note 1”.

**10 At the end of subsection 165-40(1)**

Add:

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**11 At the end of subsection 165-115C(1)**

Add:

Note 5: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**12 Subsection 165-115D(1) (note)**

Omit “Note”, substitute “Note 1”.

**13 At the end of subsection 165-115D(1)**

Add:

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**14 At the end of subsection 165-115L(1)**

Add:

Note 4: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**15 Subsection 165-115M(1) (note)**

Omit “Note”, substitute “Note 1”.

**16 At the end of subsection 165-115M(1)**

Add:

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**17 At the end of subsection 165-115X(1)**

Add:

Note: For paragraph (b), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**18 Subsection 165-115Z(1) (note)**

Omit “Note”, substitute “Note 1”.

**19 At the end of subsection 165-115Z(1)**

Add:

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Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**20 Subsection 165-123(2) (note)**

Repeal the note, substitute:

Note 1: See section 165-150 to work out who had more than 50% of the voting power.

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**21 Subsection 165-123(3) (note)**

Repeal the note, substitute:

Note 1: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

**22 Subsection 165-123(4) (note)**

Omit "Note", substitute "Note 1".

**23 At the end of subsection 165-123(4)**

Add:

Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

**24 Subsection 165-129(1) (note)**

Omit "Note", substitute "Note 1".

**25 At the end of subsection 165-129(1)**

Add:

Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**26 Subsection 166-145(2) (note)**

Repeal the note, substitute:

- Note 1: To work out who had more than 50% of the voting power, see section 165-150.
- Note 2: Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**27 Subsection 166-145(3) (note)**

Repeal the note, substitute:

- Note 1: To work out who had rights to more than 50% of the company's dividends, see section 165-155.
- Note 2: Subdivision 167-A has special rules for working out rights to dividends in a company whose shares do not all carry the same rights to dividends.

**28 Subsection 166-145(4) (note)**

Omit "Note", substitute "Note 1".

**29 At the end of subsection 166-145(4)**

Add:

- Note 2: Subdivision 167-A has special rules for working out rights to capital distributions in a company whose shares do not all carry the same rights to capital distributions.

**30 At the end of subsection 166-175(1)**

Add:

- Note: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**31 Subsection 166-225(1) (note)**

Omit "Note", substitute "Note 1".

**32 At the end of subsection 166-225(1)**

Add:

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Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**33 At the end of subsection 166-230(1)**

Add:

Note 3: For paragraph (a), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**34 At the end of subsection 166-235(2)**

Add:

Note: For working out the size of a voting stake (for example, for paragraph 166-225(1)(a)), Subdivision 167-B has special rules for working out voting power in a company whose shares do not all carry the same voting rights, or do not carry all of the voting rights in the company.

**35 At the end of subsection 166-235(4)**

Add:

Note: For working out the size of a dividend stake (for example, for paragraph 166-225(1)(b)), Subdivision 167-A has special rules for a company whose shares do not all carry the same rights to dividends.

**36 At the end of subsection 166-235(6)**

Add:

Note: For working out the size of a capital stake (for example, for paragraph 166-225(1)(c)), Subdivision 167-A has special rules for a company whose shares do not all carry the same rights to capital distributions.

**37 Subsection 166-240(1) (note)**

Omit “Note”, substitute “Note 1”.

**38 At the end of subsection 166-240(1)**

Add:

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**39 At the end of subsection 166-255(1)**

Add:

Note 3: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**40 At the end of subsection 166-260(1)**

Add:

Note 3: For paragraph (e), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**41 At the end of subsection 166-260(3)**

Add:

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**42 At the end of subsection 170-260(3)**

Add:

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**43 At the end of subsection 170-265(2)**

Add:

Note: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**44 Subsection 175-10(3) (note)**

Repeal the note, substitute:

Note 1: See section 165-12 (which is about the company maintaining the same owners).

Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**45 Subsection 175-45(3) (note)**

Repeal the note, substitute:

- Note 1: See section 165-12 (which is about the company maintaining the same owners).
- Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**46 Subsection 175-85(3) (note)**

Repeal the note, substitute:

- Note 1: See section 165-123 (about the company maintaining the same owners).
- Note 2: Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

**47 Subsection 707-205(1)**

Omit “Divisions 165 and 166”, substitute “Divisions 165, 166 and 167”.

**48 Subsection 707-205(2)**

Omit “Division 166”, substitute “Divisions 166 and 167”.

**49 Subsection 974-10(1) (note)**

Omit “Note”, substitute “Note 1”.

**50 At the end of subsection 974-10(1)**

Add:

- Note 2: Subdivision 167-A has special rules for working out rights to dividends and capital distributions in a company whose shares do not all carry the same rights to those matters. Those rules include disregarding debt interests.

**51 Subsection 995-1(1) (at the end of the definition of *eligible Division 166 company*)**

Add:

- Note: For subparagraphs (b)(i), (ii) and (iii), Division 167 has special rules for working out rights to voting power, dividends and capital distributions in a company whose shares do not all carry the same rights to those matters.

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

Insert:

*unequal share structure* has the meaning given by subsection 167-10(3).

## ***Income Tax (Transitional Provisions) Act 1997***

### **53 After Division 166**

Insert:

## **Division 167—Companies whose shares carry unequal rights to dividends, capital distributions or voting power**

### **Table of sections**

167-1      Application of provisions

### **167-1 Application of provisions**

- (1) Division 167 of the *Income Tax Assessment Act 1997* applies:
  - (a) to any tax loss that is incurred in an income year commencing on or after 1 July 2002; and
  - (b) to any net capital loss that is made in an income year commencing on or after 1 July 2002; and
  - (c) to any deduction in respect of a bad debt that is claimed in an income year commencing on or after 1 July 2002; and
  - (d) in determining whether any changeover time or alteration time occurred on or after 1 July 2002.
- (2) Division 167 of the *Income Tax Assessment Act 1997* also applies:
  - (a) to any tax loss of a company:
    - (i) that is incurred in an income year commencing on or before 30 June 2002; and
    - (ii) that could have been deducted, in accordance with Divisions 165 and 166 of that Act as in force at that time, in the first income year commencing after 30 June

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- 2002 if the deduction had not been limited by the company's income for that income year; and
- (b) to any net capital loss of a company:
- (i) that is made in an income year commencing on or before 30 June 2002; and
  - (ii) that could have been applied, in accordance with Divisions 165 and 166 of that Act as in force at that time, in the first income year commencing after 30 June 2002 if the application of the loss had not been limited by the company's capital gains for that income year.

## **Part 2—Same business test**

### *Income Tax Assessment Act 1997*

#### **54 Section 165-212E**

Repeal the section, substitute:

#### **165-212E Entry history rule does not apply for the purposes of section 165-210**

For the purposes of section 165-210, section 701-5 (the entry history rule) does not operate in relation to an entity becoming a \*subsidiary member of a \*consolidated group or a \*MEC group.

#### **55 Application of amendments**

The amendment made by this Part applies on and after 1 July 2002.

## Part 3—Shares held by certain entities

### *Income Tax Assessment Act 1997*

#### **56 At the end of subsection 165-202(1)**

Add:

- ; (h) a \*complying superannuation fund;
- (i) a superannuation fund that is established in a foreign country and is regulated under a \*foreign law;
- (j) a \*complying approved deposit fund;
- (k) a \*special company;
- (l) a \*managed investment scheme.

#### **57 Application of amendments**

The amendment made by item 56 applies in relation to:

- (a) deducting a tax loss in the 2011-12 income year or a later income year; or
- (b) applying a net capital loss in the 2011-12 income year or a later income year; or
- (c) a deduction in respect of a bad debt claimed in the 2011-12 income year or a later income year; or
- (d) determining whether any changeover time or alteration time occurred during the 2011-12 income year or a later income year.

#### **58 Transitional—FHSA trusts**

- (1) An FHSA trust (within the meaning of the *Income Tax Assessment Act 1997* on 1 January 2015) is taken to be one of the kinds of entities listed in the paragraphs of subsection 165-202(1) of that Act.
- (2) Subitem (1) applies in relation to:
  - (a) deducting a tax loss in an applicable income year; or
  - (b) applying a net capital loss in an applicable income year; or
  - (c) a deduction in respect of a bad debt claimed in an applicable income year; or

(d) determining whether any changeover time or alteration time occurred during an applicable income year.

(3) In this item:

***applicable income year*** means the 2011-12 income year, the 2012-13 income year, the 2013-14 income year or the 2014-15 income year.

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[*Minister's second reading speech made in—  
House of Representatives on 24 June 2015  
Senate on 19 August 2015*]

(69/15)

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