



# **Taxation Laws Amendment Act (No. 2) 2000**

**No. 58, 2000**



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

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

[Assented to 31 May 2000]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 2000*.

### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Part 2 of Schedule 1 commences immediately after Part 1 of that Schedule.
  - (3) Item 1 of Schedule 3 is taken to have commenced immediately after the commencement of item 5 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
  - (4) Items 2, 4 and 5 of Schedule 3 are taken to have commenced immediately after the commencement of item 8 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
  - (5) Item 6 of Schedule 3 is taken to have commenced immediately after the commencement of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 1999*.
  - (6) Item 7 of Schedule 3 is taken to have commenced immediately after the commencement of item 22 of Schedule 4 to the *Taxation Laws Amendment Act (No. 2) 1999*.
  - (7) Item 8 of Schedule 3 is taken to have commenced on 23 June 1998, immediately after the commencement of Schedule 7 to the *Taxation Laws Amendment Act (No. 3) 1998*.
  - (8) Schedule 4 commences, or is taken to have commenced, immediately after the commencement of the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999*.
  - (9) If, apart from this subsection, items 3 to 11 of Schedule 6 would commence after the commencement of the *Taxation Laws Amendment (Political Donations) Act 2000*, those items are taken to have commenced immediately before the commencement of that Act.
  - (10) If, apart from this subsection, items 14, 15 and 16 of Schedule 6 would commence at or before the commencement of the *Taxation Laws Amendment (Political Donations) Act 2000*, those items are taken to have commenced immediately after the commencement of that Act.
  - (11) Item 19 of Schedule 6 commences, or is taken to have commenced, immediately after item 26 of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1999*.

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- (12) Item 33 of Schedule 6 commences, or is taken to have commenced, immediately after item 72 of Schedule 6 to the *Taxation Laws Amendment Act (No. 4) 1999*.
- (13) Schedule 8, apart from items 18 and 20, is taken to have commenced immediately after the commencement of section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998*. Items 18 and 20 are taken to have commenced on 1 July 1999.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Amendment of income tax assessments**

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

## Schedule 1—CFCs and capital gains tax

### Part 1—Amendments based on old CGT law

#### *Income Tax Assessment Act 1936*

#### **1 Section 317 (definition of *designated concession income*)**

Repeal the definition, substitute:

*designated concession income*, in relation to a broad-exemption listed country, means:

- (a) income or profits of a kind specified in the regulations if:
  - (i) foreign tax imposed by a tax law of the country is not payable in respect of the income or profits because of a particular feature; or
  - (ii) foreign tax imposed by a tax law of the country is payable in respect of the income or profits but there is a feature in relation to that tax; and the feature is of a kind specified in the regulations; or
- (b) capital gains that would accrue because of section 160ZZOA, if the assumptions in paragraphs 383(a) to (c) applied.

Note 1: Section 160ZZOA is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and may therefore be taken to have disposed of an asset because of section 160ZZOA.

#### **2 Section 317 (definition of *disposal*)**

Repeal the definition, substitute:

*disposal* of an asset includes:

- (a) redemption; and
- (b) a disposal that would be taken to occur under section 160ZZOA (about companies ceasing to be related after a roll-over) if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and may therefore be taken to have disposed of an asset under section 160ZZOA.



### **3 Section 317 (definition of *tainted commodity gain*)**

Omit all the words after “a statutory accounting period,”, substitute:  
means:

- (a) a gain realised by the company in the statutory accounting period from disposing of a tainted commodity investment; or
- (b) a capital gain that would have accrued to the company in the statutory accounting period, if the assumptions in paragraphs 383(a) to (c) applied, because the company would be taken to have disposed of a tainted commodity investment under section 160ZZOA.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and may therefore be taken to have disposed of an asset under section 160ZZOA.

### **4 Section 317 (definition of *tainted commodity loss*)**

Omit all the words after “a statutory accounting period,”, substitute:  
means:

- (a) a loss realised by the company in the statutory accounting period from disposing of a tainted commodity investment; or
- (b) a capital loss that the company would have incurred in the statutory accounting period, if the assumptions in paragraphs 383(a) to (c) applied, because the company would be taken to have disposed of a tainted commodity investment under section 160ZZOA.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and may therefore be taken to have disposed of an asset under section 160ZZOA.

### **5 After subsection 401(6)**

Insert:

- (6A) In determining, for the purposes of this section, whether there was an attribution surplus immediately before a disposal, and the amount of such a surplus, also take into account any attribution credit that later arises because the disposal caused section 160ZZOA (as it notionally applies to the disposal entity under this Division) to operate.

### **6 After subsection 434(1)**

Insert:

- (1A) In working out the gross turnover of a company of a statutory accounting period, assume that the amounts shown in the company's recognised accounts, as mentioned in paragraphs (1)(b) and (c), for that period had been worked out by also including:
- (a) as gains derived by the company in that period—capital gains that would have accrued to the company; and
  - (b) as losses incurred by the company in that period—capital losses the company would have incurred;
- in that period because of section 160ZZOA, if the assumptions in paragraphs 383(a) to (c) had applied.

Note 1: Section 160ZZOA is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident and may therefore be taken to have disposed of an asset because of section 160ZZOA.

## **7 At the end of section 445**

Add:

- (2) In paragraph (1)(a):

*gains* includes capital gains that would have accrued to the company in the statutory accounting period because of section 160ZZOA, if the assumptions in paragraphs 383(a) to (c) applied.

*losses* includes capital losses that the company would have incurred in the statutory accounting period because of section 160ZZOA, if the assumptions in paragraphs 383(a) to (c) applied.

Note 1: Section 160ZZOA is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident period and may therefore be taken to have disposed of an asset because of section 160ZZOA.

## **8 At the end of Division 9 of Part X**

Add:

### **460A Effect of reducing section 160ZZOA amount**

- (1) This section applies in either of the following cases:
-

- (a) one or more schemes or arrangements have the effect of reducing the attribution percentage of an attributable taxpayer in relation to a company that is a CFC, and are intended by the attributable taxpayer or an associate of the attributable taxpayer to have that effect;
  - (b) a company ceases to be a CFC in relation to a particular taxpayer.
- (2) Work out the amount (if any) included under this Division in the taxpayer's assessable income because of section 160ZZOA (as it notionally applies to the company under Division 7) as though the reduction or cessation had not happened.

Note: Section 160ZZOA is about companies ceasing to be related after a roll-over.

## **9 After subsection 461(4)**

Insert:

- (4A) In determining, for the purposes of this section, whether there was an attribution surplus immediately before a disposal, and the amount of such a surplus, also take into account any attribution credit that later arises because the disposal caused section 160ZZOA (as it notionally applies to the disposal entity under Division 7) to operate.

## **10 Application of amendments**

The amendments made by this Part apply in determining the attributable income of a CFC if a disposal was taken to have occurred, under section 160ZZOA of the *Income Tax Assessment Act 1936*, after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

## **11 Transitional—group roll-over disposals before 13 May 1997**

- (1) This item applies if a group roll-over disposal (within the meaning of section 160ZZOA of the *Income Tax Assessment Act 1936*) happened at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997 and during a particular statutory accounting period of an attributable taxpayer.
- (2) In applying section 460A of that Act (as amended by this Schedule), the taxpayer may elect to disregard so much of any change to the attribution

**Schedule 1** CFCs and capital gains tax  
**Part 1** Amendments based on old CGT law

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percentage of the taxpayer in relation to the relevant CFC as happened before the end of the statutory accounting period.

## **Part 2—Amendments based on new CGT law**

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

**12 Section 317 (paragraph (b) of the definition of *designated concession income*)**

Omit “accrue because of section 160ZZOA”, substitute “be made because of CGT event J1”.

**13 Section 317 (note 1 to the definition of *designated concession income*)**

Omit “Section 160ZZOA”, substitute “CGT event J1”.

**14 Section 317 (note 2 to the definition of *designated concession income*)**

Omit all the words after “resident”, substitute “and CGT event J1 may therefore be taken to have happened.”.

**15 Section 317 (paragraph (b) of the definition of *disposal*)**

Omit “a disposal that would be taken to occur under section 160ZZOA”, substitute “CGT event J1 happening in relation to the asset”.

**16 Section 317 (note to the definition of *disposal*)**

Omit all the words after “resident”, substitute “and CGT event J1 may therefore be taken to have happened.”.

**17 Section 317 (paragraph (b) of the definition of *tainted commodity gain* and the note to that definition)**

Repeal the paragraph and the note, substitute:

- (b) a capital gain that the company would have made in the statutory accounting period because CGT event J1 would have happened in relation to a tainted commodity investment, if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

**18 Section 317 (paragraph (b) of the definition of *tainted commodity loss* and the note to that definition)**

Repeal the paragraph and the note, substitute:

- (b) a capital loss that the company would have made in the statutory accounting period because CGT event J1 would have happened in relation to a tainted commodity investment, if the assumptions in paragraphs 383(a) to (c) applied.

Note: Basically, the effect of those assumptions is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

**19 Subsection 401(6A)**

Omit “disposal” (wherever occurring), substitute “CGT event”.

**20 Subsection 401(6A)**

Omit “160ZZOA”, substitute “104-175 of the *Income Tax Assessment Act 1997*”.

**21 Subsection 434(1A)**

Repeal the subsection, substitute:

- (1A) In working out the gross turnover of a company of a statutory accounting period, assume that the amounts shown in the company’s recognised accounts, as mentioned in paragraphs (1)(b) and (c), for that period had been worked out by also including:
  - (a) as gains derived by the company in that period—capital gains the company would have made; and
  - (b) as losses incurred by the company in that period—capital losses the company would have made;in that period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) had applied.

Note 1: CGT event J1 is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

**22 Subsection 445(2)**

Repeal the subsection, substitute:

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(2) In paragraph (1)(a):

**gains** includes capital gains the company would have made in the statutory accounting period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) applied.

**losses** includes capital losses the company would have made in the statutory accounting period because of CGT event J1, if the assumptions in paragraphs 383(a) to (c) applied.

Note 1: CGT event J1 is about companies ceasing to be related after a roll-over.

Note 2: Basically, the effect of the assumptions in paragraphs 383(a) to (c) is that the company concerned is taken to be a taxpayer and a resident and CGT event J1 may therefore be taken to have happened.

### **23 Subsection 460A(2)**

Omit “section 160ZZOA (as it notionally applies”, substitute “CGT event J1 (as it notionally happens”.

Note: The section heading to section 460A is altered by omitting “160ZZOA” and substituting “CGT event J1”.

### **24 Subsection 460A(2) (note)**

Omit “Section 160ZZOA”, substitute “CGT event J1”.

### **25 Subsection 461(4A)**

Omit “disposal” (wherever occurring), substitute “CGT event”.

### **26 Subsection 461(4A)**

Omit “160ZZOA”, substitute “104-175 of the *Income Tax Assessment Act 1997*”.

### **27 Application of amendments**

The amendments made by this Part apply in determining the attributable income of a CFC if CGT event J1 is taken to have happened at any time, whether before or after the Part commences.

## Schedule 2—Amendments to exempt certain post-judgment interest

### *Income Tax Assessment Act 1936*

#### 1 After section 23G

Insert:

#### 23GA Interest on judgment debt relating to personal injury

- (1) An amount derived during a year of income by way of interest on a judgment debt, whether payable under a law of the Commonwealth, a State or a Territory, or otherwise, is exempt from income tax if:
  - (a) the judgment debt arose from a judgment (the *original judgment*) given by, or entered in, a court for an award of damages for personal injury; and
  - (b) the amount is in respect of the whole or any part of the period:
    - (i) beginning at the time of the original judgment, or, if the judgment debt is taken to have arisen at an earlier time, at that earlier time; and
    - (ii) ending when the original judgment is finalised.
- (2) For the purposes of subsection (1), an original judgment is *finalised* at whichever of the following times applies:
  - (a) if the period for lodging an appeal against either the original judgment or a subsequent related judgment ends without an appeal being lodged—the end of the period;
  - (b) if an appeal from either the original judgment or a subsequent related judgment is lodged and final judgment on the appeal is given by, or entered in, a court—when the final judgment takes effect;
  - (c) if an appeal from either the original judgment or a subsequent related judgment is lodged but is settled or discontinued—when the settlement or discontinuance takes effect.
- (3) For the purposes of paragraph (2)(b), a judgment is a *final judgment* if:



- (a) no appeal lies against the judgment; or
- (b) leave to appeal against the judgment has been refused.

***Income Tax Assessment Act 1997***

**2 Section 11-10 (after table item headed “franchise fees windfall tax”)**

Insert:

**interest**

judgment debt, personal injury .....51-55, 23GA

**3 At the end of Division 51**

Add:

**51-55 Interest on judgment debt relating to personal injury**

- (1) An amount paid by way of interest on a judgment debt, whether payable under a law of the Commonwealth, a State or Territory, or otherwise, is exempt from income tax if:
  - (a) the judgment debt arose from a judgment (the ***original judgment***) given by, or entered in, a court for an award of damages for personal injury; and
  - (b) the amount is in respect of the whole or any part of the period:
    - (i) beginning at the time of the original judgment, or, if the judgment debt is taken to have arisen at an earlier time, at that earlier time; and
    - (ii) ending when the original judgment is finalised.
- (2) For the purposes of subsection (1), an original judgment is ***finalised*** at whichever of the following times is applicable:
  - (a) if the period for lodging an appeal against either the original judgment or a subsequent related judgment ends without an appeal being lodged—the end of the period;
  - (b) if an appeal from either the original judgment or a subsequent related judgment is lodged and final judgment on the appeal is given by, or entered in, a court—when the final judgment takes effect;

- (c) if an appeal from either the original judgment or a subsequent related judgment is lodged but is settled or discontinued—when the settlement or discontinuance takes effect.
- (3) For the purposes of paragraph (2)(b), a judgment is a *final judgment* if:
  - (a) no appeal lies against the judgment; or
  - (b) leave to appeal against the judgment has been refused.

#### **4 Application**

- (1) The amendment made by item 1 applies to the 1992-93 year of income and to later years of income up to, and including, the 1996-97 year of income.
- (2) The amendments made by items 2 and 3 apply to the 1997-98 year of income and later years of income.

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## Schedule 3—Franking of dividends

### *Income Tax Assessment Act 1936*

#### **1 Paragraph 45ZB(6)(d)**

After “if the company’s average rate of tax is”, insert “not”.

#### **2 Subsections 160APHH(6) and (7)**

Repeal the subsections, substitute:

*Shares held by a bare trustee for a sole beneficiary*

(6) If:

- (a) a person (the *trustee*) holds shares in trust for another person (the *beneficiary*); and
- (b) the beneficiary:
  - (i) is the sole beneficiary of the trust; and
  - (ii) is absolutely entitled under the trust to the shares;

the following provisions have effect:

- (c) this Division applies as if:
  - (i) the shares were held by the beneficiary and not by the trustee; and
  - (ii) the acts of the trustee in relation to the shares were acts of the beneficiary;
- (d) if the shares were acquired by the trustee as a result of a disposal by the beneficiary, that acquisition and disposal are to be disregarded;
- (e) if the shares are subsequently acquired by the beneficiary as a result of a disposal by the trustee, that acquisition and disposal are to be disregarded.

*What happens if paragraph (6)(b) ceases to apply to beneficiary*

- (7) If paragraph (6)(b) ceases to apply to the beneficiary, then, after the time when it so ceases to apply (the *relevant time*):
  - (a) if the trust has become a widely held trust:
    - (i) the shares are taken to have been disposed of by the beneficiary to the trustee at the relevant time; and

- (ii) the beneficiary is taken to have acquired the beneficiary's interest in the shares immediately after the disposal; or
- (b) in any other case—this Division applies to the beneficiary and the trustee as if subsection (6) had never applied; and the respective positions of the beneficiary and the trustee in relation to the shares or interest are to be determined accordingly.

### 3 Application of item 2

Despite the amendment made by item 2, a taxpayer who was entitled to a franking credit or a franking rebate in respect of a dividend paid, or a distribution made, before the day on which this Act receives the Royal Assent continues to be entitled to the franking credit or franking rebate.

### 4 Subsection 160APHR(8)

After “shares”, insert “to which the election applies which are”.

### 5 Subsection 160APHU(1)

After “Subdivision”, insert “(except subsection 160APHH(6))”.

### 6 At the end of section 160AQTB

Add:

*Certain natural persons entitled to franking rebate in respect of exempted dividend*

- (4) If:
  - (a) a company other than a former exempting company became an exempting company; and
  - (b) immediately before the company became an exempting company all the accountable shares and accountable interests in the company were beneficially owned (whether directly or indirectly) by natural persons who were residents; and
  - (c) the company became an exempting company because some or all of the persons mentioned in paragraph (b) became non-residents; and
  - (d) the company becomes a former exempting company because all of the persons mentioned in paragraph (b) are or have become residents; and

- (e) an amount attributable to a class A exempted dividend or a class C exempted dividend paid by the company is included in the assessable income of such a person; and
- (f) all the accountable shares and accountable interests in the company were, throughout the period beginning when the company became an exempting company and ending when the amount was received by the person, beneficially owned (directly or indirectly) by persons mentioned in paragraph (b);

subsection 160AQT(1) or (1AB), or section 160AQX or 160AQZ, apply in relation to the person as if the amount were a class A franked dividend or a class C franked dividend, or a class A flow-on franking amount or a class C flow-on franking amount in relation to the relevant trust amount or partnership amount, and the class A exempted amount or class C exempted amount were a class A franked amount or a class C franked amount, as the case requires.

## **7 At the end of section 160AQZF**

Add:

- (6) If the sum of the rebates of tax to which the electing taxpayer is entitled under this Part in respect of dividends paid during the year of income exceeds the ceiling amount in relation to the fund in relation to the year of income, the excess is allowable as a deduction from the electing taxpayer's assessable income of the year of income.

## ***Taxation Laws Amendment Act (No. 3) 1998***

### **8 Paragraph 26(3)(b) of Schedule 7**

Repeal the paragraph, substitute:

- (b) any distributions made after that time that related to:
  - (i) dividends paid by a listed public company; or
  - (ii) dividends declared by a listed public company before that time.

## Schedule 4—Non-deductibility of bribes to foreign public officials

### *Income Tax Assessment Act 1997*

#### 1 Section 12-5 (before table item headed “buildings”)

Insert:

bribes to foreign public officials .....26-52

#### 2 After section 26-50

Insert:

#### 26-52 Bribes to foreign public officials

- (1) You cannot deduct under this Act a loss or outgoing you incur that is a \*bribe to a foreign public official.
- (2) An amount is a *bribe to a foreign public official* to the extent that:
  - (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or
    - (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person (see subsection (6)); and
  - (c) you incur the amount with the intention of influencing a \*foreign public official (who may or may not be the other person) in the exercise of the official’s duties as a foreign public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain an advantage in the conduct of business that is not legitimately due to you, or another person, as

the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (7)).

The benefit may be any advantage and is not limited to property.

*Payments that are legal in foreign public official's country*

- (3) An amount is not a ***bribe to a foreign public official*** if no person would have been guilty of an offence against the law of the \*foreign public official's country if the benefit had been provided, and all related acts had been done, in that country.

*Facilitation payments*

- (4) An amount is not a ***bribe to a foreign public official*** if it is incurred for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature.
- (5) For the purposes of this section, a ***routine government action*** is an action of a \*foreign public official that:
- (a) is ordinarily and commonly performed by the official; and
  - (b) is covered by any of the following subparagraphs:
    - (i) granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
    - (ii) processing government papers such as a visa or work permit;
    - (iii) providing police protection or mail collection or delivery;
    - (iv) scheduling inspections associated with contract performance or related to the transit of goods;
    - (v) providing telecommunications services, power or water;
    - (vi) loading and unloading cargo;
    - (vii) protecting perishable products, or commodities, from deterioration;
    - (viii) any other action of a similar nature; and
  - (c) does not involve a decision about:
    - (i) whether to award new business; or
    - (ii) whether to continue existing business with a particular person; or
    - (iii) the terms of new business or existing business; and
-

- (d) does not involve encouraging a decision about:
  - (i) whether to award new business; or
  - (ii) whether to continue existing business with a particular person; or
  - (iii) the terms of new business or existing business.

*Benefit not legitimately due*

- (6) In working out if a benefit is not legitimately due to another person in a particular situation, disregard the following:
  - (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not legitimately due*

- (7) In working out if an advantage in the conduct of business is not legitimately due in a particular situation, disregard the following:
  - (a) the fact that the advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the advantage;
  - (c) any official tolerance of the advantage.

*Duties of foreign public official*

- (8) The duties of a \*foreign public official are any authorities, duties, functions or powers that:
  - (a) are conferred on the official; or
  - (b) the official holds himself or herself out as having.

**3 At the end of section 110-25**

Add:

- (9) Expenditure does not form part of the *cost base* to the extent that it is a \*bribe to a foreign public official.

**4 Subsection 995-1(1)**

Insert:



*bribe to a foreign public official* has the meaning given by section 26-52.

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

Insert:

*foreign public official* has the same meaning as in section 70.1 of the *Criminal Code*.

## **6 Application**

The amendments made by this Schedule apply to losses, outgoings or expenditure incurred in the 1999-2000 income year or a later income year.

## Schedule 5—Non-deductibility of bribes to public officials

### *Income Tax Assessment Act 1997*

#### 1 Section 12-5 (before table item headed “buildings”)

Insert:

bribes to public officials.....26-53

#### 2 After section 26-52

Insert:

#### 26-53 Bribes to public officials

- (1) You cannot deduct under this Act a loss or outgoing you incur that is a \*bribe to a public official.
- (2) An amount is a *bribe to a public official* to the extent that:
  - (a) you incur the amount in, or in connection with:
    - (i) providing a benefit to another person; or
    - (ii) causing a benefit to be provided to another person; or
    - (iii) offering to provide, or promising to provide, a benefit to another person; or
    - (iv) causing an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the benefit is not legitimately due to the other person (see subsection (3)); and
  - (c) you incur the amount with the intention of influencing a \*public official (who may or may not be the other person) in the exercise of the official’s duties as a foreign public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain an advantage in the conduct of business that is not legitimately due to you, or another person, as the recipient, or intended recipient, of the advantage in the conduct of business (see subsection (4)).

The benefit may be any advantage and is not limited to property.

*Benefit not legitimately due*

- (3) In working out if a benefit is not legitimately due to another person in a particular situation, disregard the following:
- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Advantage in the conduct of business that is not legitimately due*

- (4) In working out if an advantage in the conduct of business is not legitimately due in a particular situation, disregard the following:
- (a) the fact that the advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the advantage;
  - (c) any official tolerance of the advantage.

*Duties of public official*

- (5) The duties of a \*public official are any authorities, duties, functions or powers that:
- (a) are conferred on the official; or
  - (b) the official holds himself or herself out as having.

**3 At the end of section 110-25**

Add:

- (10) Expenditure does not form part of the *cost base* to the extent that it is a \*bribe to a public official.

**4 Subsection 995-1(1)**

Insert:

*bribe to a public official* has the meaning given by section 26-53.

**5 Subsection 995-1(1)**

Insert:

*local governing body* has the same meaning as in section 74A of the *Income Tax Assessment Act 1936*.

*public official* means an employee or official of an \*Australian Government Agency or of a local governing body.

## **6 Application**

The amendments made by this Schedule apply to losses, outgoings or expenditure incurred in the 1999-2000 income year or a later income year.

## Schedule 6—Philanthropy

### *Income Tax Assessment Act 1997*

#### **1 At the end of subsection 25-5(1)**

Add:

; or (d) obtaining a valuation in accordance with section 30-212.

#### **2 Before subsection 30-5(5)**

Insert:

(4B) Subdivisions 30-DB, 30-DC and 30-DD allow you to spread the deduction for certain gifts over up to 5 income years.

#### **3 Subsection 30-15(2) (table item 1, at the end of the column headed “Type of gift or contribution”)**

Add:

; or

(d) property valued by  
the Commissioner  
at more than  
\$5,000.

#### **4 Subsection 30-15(2) (table item 1, column headed “How much you can deduct”)**

After “paragraph (c)”, insert “or property covered by paragraph (d)”.

#### **5 Subsection 30-15(2) (table item 1, at the end of the column headed “How much you can deduct”)**

Add:

; or

(d) if the gift is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the gift—the value of the property as determined by the Commissioner.

**6 Subsection 30-15(2) (table item 1, at the end of the column headed “Special conditions”)**

Add:

; and

(d) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.

**7 Subsection 30-15(2) (table item 2, column headed “Recipient”)**

After “public fund”, insert “, or a \*prescribed private fund,”.

**8 Subsection 30-15(2) (table item 2, at the end of the column headed “Type of gift or contribution”)**

Add:

; or

(d) property valued by the Commissioner at more than \$5,000.

**9 Subsection 30-15(2) (table item 2, column headed “How much you can deduct”)**

After “paragraph (c)”, insert “or property covered by paragraph (d)”.

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**10 Subsection 30-15(2) (table item 2, at the end of the column headed “How much you can deduct”)**

Add:

; or

(d) if the gift is property valued by the Commissioner at more than \$5,000 and you did not purchase the property during the 12 months before making the gift—the value of the property as determined by the Commissioner.

**11 Subsection 30-15(2) (table item 2, at the end of the column headed “Special conditions”)**

Add:

; and

(d) if the property is to be valued by the Commissioner—the requirements of section 30-212 are satisfied.

**12 At the end of section 30-205**

Add:

(2) However, this section does not apply if, apart from the operation of subsection 118-60(2), an amount would have been included in your assessable income in respect of the gift you made.

**13 After section 30-210**

Insert:

**30-212 Valuations by the Commissioner**

- (1) If you make a gift that is covered by a provision of this Division that refers to the value of property as determined by the Commissioner, you must seek the valuation from the Commissioner.
- (2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

**14 At the end of subsection 30-242(2)**

Add:

; or (c) property valued by the Commissioner at more than \$5,000.

**15 Subsection 30-243(2)**

After “is property”, insert “that you purchased during the 12 months before making the gift”.

**16 After subsection 30-243(2)**

Insert:

*\$100 limit on deductions*

- (2A) If the contribution or gift is property valued by the Commissioner at more than \$5,000, the amount of the deduction is \$100.

**17 Subsection 30-243(3) (heading)**

Repeal the heading.

**18 Before Subdivision 30-E**

Insert:



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## Subdivision 30-DB—Spreading cultural gift deductions over up to 5 income years

### Guide to Subdivision 30-DB

#### 30-246 What this Subdivision is about

This Subdivision allows you to choose to spread deductions for cultural gifts over up to 5 income years.

You must give a copy of the election to the Arts Secretary.

#### Table of sections

##### Operative provisions

30-247 Making an election

30-248 Effect of election

*[This is the end of the Guide.]*

#### Operative provisions

##### 30-247 Making an election

- (1) If you can deduct an amount under this Division for a gift that is covered by item 4 or 5 of the table in section 30-15, you may make a written election to spread that deduction over the current income year and up to 4 of the immediately following income years.
- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift.
- (4) You must give a copy of the election to the \*Arts Secretary before you lodge your \*income tax return for the income year in which you made the gift.

- (5) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return. You must give a copy of the variation to the \*Arts Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (6) The election and any variation must be in a form approved in writing by the \*Arts Secretary.

### **30-248 Effect of election**

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.
- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift in the income year in which you made the gift.

### **Subdivision 30-DC—Spreading environmental gift deductions over up to 5 income years**

#### **Guide to Subdivision 30-DC**

#### **30-249 What this Subdivision is about**

This Subdivision allows you to choose to spread deductions for environmental gifts over up to 5 income years.

You must give a copy of the election to the Environment Secretary.

#### **Table of sections**

##### **Operative provisions**

- 30-249A Making an election
- 30-249B Effect of election

*[This is the end of the Guide.]*

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## Operative provisions

### 30-249A Making an election

- (1) If you can deduct an amount under this Division for a gift that is:
  - (a) to a fund, authority or institution that is set out in section 30-55 (other than a fund, authority or institution that is covered by item 6.2.13 to 6.2.21 in the table in subsection 30-55(2)); and
  - (b) covered by item 1 or 2 of the table in section 30-15; and
  - (c) of property valued by the Commissioner at more than \$5,000;you may make a written election to spread that deduction over the current income year and up to 4 of the immediately following income years.
- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift.
- (4) You must give a copy of the election to the \*Environment Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (5) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return. You must give a copy of the variation to the \*Environment Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (6) The election and any variation must be in a form approved in writing by the \*Environment Secretary.

### 30-249B Effect of election

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.

- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift in the income year in which you made the gift.

## **Subdivision 30-DD—Spreading heritage gift deductions over up to 5 income years**

### **Guide to Subdivision 30-DD**

#### **30-249C What this Subdivision is about**

This Subdivision allows you to choose to spread deductions for heritage gifts over up to 5 income years.

You must give a copy of the election to the Heritage Secretary.

#### **Table of sections**

##### **Operative provisions**

30-249D Making an election

30-249E Effect of election

*[This is the end of the Guide.]*

### **Operative provisions**

#### **30-249D Making an election**

- (1) If you can deduct an amount under this Division for a gift:
- (a) that is:
    - (i) to a fund, authority or institution that is set out in item 6.2.13 to 6.2.21 in the table in subsection 30-55(2); and
    - (ii) covered by item 1 or 2 of the table in section 30-15; and
    - (iii) of property valued by the Commissioner at more than \$5,000; or
  - (b) that is covered by item 6 of the table in section 30-15;

you may make a written election to spread that deduction over the current income year and up to 4 of the immediately following income years.

- (2) In the election, you must specify the percentage (if any) of the deduction that you will deduct in each of the income years.
- (3) You must make the election before you lodge your \*income tax return for the income year in which you made the gift.
- (4) You must give a copy of the election to the \*Heritage Secretary before you lodge your \*income tax return for the income year in which you made the gift.
- (5) You may vary an election at any time. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an \*income tax return. You must give a copy of the variation to the \*Heritage Secretary before you lodge your \*income tax return for the first income year to which the variation applies.
- (6) The election and any variation must be in a form approved in writing by the \*Heritage Secretary.

### **30-249E Effect of election**

- (1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year.
- (2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift in the income year in which you made the gift.

### **19 Subsection 30-315(2) (after table item 112)**

Insert:

112AA	Spreading deductions over income years	Subdivisions 30-DB, 30-DC and 30-DD
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### **20 Subsection 30-315(2) (after table item 120)**

Insert:

**21 After subsection 70-90(1)**

Insert:

(1A) If the disposal is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the market value is replaced with the value of the property as determined under the valuation. You can only make this choice if the valuation was made no more than 90 days before or after the disposal.

**22 Section 70-95**

Omit “market value”, substitute “amount”.

**23 After section 112-45**

Insert:

**112-48 Gifts acquired by associates**

<b>Gifts acquired by associates</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A gift of property is covered by subsection 118-60(1) or (2) and the property is later *acquired by an associate for less than market value	First element of cost base and reduced cost base	118-60

**24 Section 116-25 (table item A1, at the end of the column headed “Special rules:”)**

Add:

If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100

**25 At the end of Division 116**

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Add:

### **116-100 Gifts of property**

- (1) If CGT event A1 is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the \*capital proceeds from the event are replaced with the value of the property as determined under the valuation.
- (2) You can only make this choice if the valuation was made no more than 90 days before or after the CGT event.

### **26 Section 118-60**

After “under the Cultural Bequests Program”, insert “or that would have been deductible under section 30-15 if it had not been a testamentary gift”.

### **27 Section 118-60 (heading)**

Repeal the heading, substitute:

### **118-60 Certain gifts**

### **28 At the end of section 118-60**

Add:

- (2) A \*capital gain or \*capital loss made from a gift of property that is deductible under section 30-15 because of item 4 or 5 in the table in that section is disregarded.
- (3) However, subsection (2) does not apply if the gift was not a testamentary gift and the property is later \*acquired for less than market value by the person who made the gift or an \*associate of that person.
- (4) If the gift was a testamentary gift and the property is later \*acquired for less than market value by the deceased person’s estate or a person (the *deceased’s associate*) who:
  - (a) is an \*associate of the deceased person’s estate; or
  - (b) was an associate of the deceased person immediately before the deceased person’s death;

the \*cost base and the \*reduced cost base of the property in the hands of the estate or the deceased's associate is worked out under section 128-15 as if the property had passed in the estate to the estate or the deceased's associate.

**29 Subsection 995-1(1)**

Insert:

*Arts Secretary* means the Secretary of the Department that administers the *National Gallery Act 1975*.

**30 Subsection 995-1(1)**

Insert:

*Environment Secretary* means the Secretary of the Department that administers the *Environment Protection and Biodiversity Conservation Act 1999*.

**31 Subsection 995-1(1)**

Insert:

*Heritage Secretary* means the Secretary of the Department that administers the *Australian Heritage Commission Act 1975*.

**32 Subsection 995-1(1)**

Insert:

*prescribed private fund* means a fund that is prescribed by the regulations for the purposes of this definition other than such a fund declared by the Treasurer, in writing, not to be a prescribed private fund.

***Income Tax Assessment Act 1936***

**33 Subsection 304(4)**

Omit "Gifts under the Cultural Bequests Program", substitute "Certain gifts".

**34 Application**

The amendments made by this Schedule apply to gifts made on or after 1 July 1999.



## **Schedule 7—Rate of tax for friendly societies etc.**

### ***Taxation (Deficit Reduction) Act (No. 2) 1993***

#### **1 Subsection 2(4)**

Omit “1999”, substitute “2000”.

#### **2 Subdivision B of Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

#### **Subdivision B—Rate for 1994-95, 1995-96, 1996-97, 1997-98, 1998-99 and 1999-2000**

#### **3 Subsection 18(2)**

Omit “and of the 1998-99 year of income”, substitute “, of the 1998-99 year of income and of the 1999-2000 year of income”.

#### **4 Subdivision C of Division 2 of Part 4 (heading)**

Repeal the heading, substitute:

#### **Subdivision C—Rate for 2000-01 and later years**

#### **5 Subsection 19(2)**

Omit “1999-2000”, substitute “2000-01”.

## **Schedule 8—Company Law Review Amendments**

### **Part 1—Income Tax Assessment Act 1936**

#### **1 Subsection 6BA(2)**

After “be a dividend”, insert “(including as a result of section 45C)”.

#### **2 Subsection 6BA(4)**

Omit “subsection (1)”, substitute “subsection (3)”.

#### **3 Paragraph 6BA(5)(c)**

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

#### **4 Paragraph 45A(3)(b)**

After “share capital”, insert “or share premium”.

#### **5 Paragraph 45B(4)(b)**

After “share capital”, insert “or share premium”.

#### **6 Paragraph 45B(5)(b)**

After “of capital”, insert “or share premium”.

#### **7 Paragraph 45B(5)(h)**

After “of share capital” (wherever occurring), insert “or share premium”.

#### **8 Paragraph 45C(4)(c)**

After “of share capital”, insert “or share premium”.

#### **9 Paragraph 45C(4)(c)**

After “share capital account”, insert “or share premium account”.

#### **10 Subsection 45D(2)**

Omit “under”, substitute “referred to in”.

#### **11 Subsection 45D(2)**

Omit “relevant taxpayer”, substitute “advantaged shareholder”.

**12 Paragraph 159GZG(6)(e)**

Omit “or (iii)” (wherever occurring).

**13 Paragraph 159GZG(6)(f)**

Repeal the paragraph, substitute:

- (f) where subparagraph (b)(ii) applies in relation to subparagraph (a)(iii)—the difference between:
- (i) the greatest amount unpaid on the eligible share at any time during the year of income; and
  - (ii) the amount unpaid on the eligible share at the end of the year of income.

**14 Section 160APA (paragraph (a) of the definition of *frankable dividend*) (the paragraph (a) inserted by item 4 of Schedule 4 to the *Taxation Laws Amendment (Company Law Review) Act 1998*)**

Renumber as paragraph (aa).

**15 Paragraph 160ARDW(2)(a)**

Omit “160ARDX(2)(a)”, substitute “160ARDX(a)”.

**16 Paragraph 160ARDW(2)(b)**

Omit “160ARDX(2)(b)”, substitute “160ARDX(b)”.

**17 At the end of Division 7B of Part IIIA**

Add:

**Subdivision D—Payment etc. of untainting tax**

**160ARDZ Payment of untainting tax**

*Due date*

- (1) Untainting tax is due and payable at the end of:
- (a) 21 days after an election to untaint is made under section 160ARDR; or

- (b) such later day as the Commissioner, in special circumstances, allows.

*Debt due*

- (2) Untainting tax, when it becomes due and payable, is a debt due to the Commonwealth and payable to the Commissioner.

**160ARDZA Late payment of untainting tax**

- (1) Subject to subsection (2), if any untainting tax remains unpaid 60 days after the day by which it is due to be paid, additional tax, by way of penalty, is due and payable at the rate of 16% per annum on the amount unpaid, calculated from the end of that period.

*Remission of additional tax*

- (2) Where additional tax is due and payable by a company under subsection (1) in relation to an amount of untainting tax, the Commissioner may remit the additional tax or a part of it if he or she is satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so.

*Effect of court judgment*

- (3) Where judgment is given by, or entered in, a court for the payment of:
- (a) an amount of tainting tax; or
  - (b) an amount that includes an amount of tainting tax;
- then:
- (c) the untainting tax is not taken, for the purposes of subsection (1), to have ceased to be due and payable by reason only of the giving or entering of the judgment; and
  - (d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the untainting tax is reduced by:
    - (i) in a case to which paragraph (a) applies—the amount of the interest; or
    - (ii) in a case to which paragraph (b) applies—the percentage of the interest worked out using the formula:

$$\frac{\text{Untainting tax}}{\text{Judgment debt}} \times 100\%$$

### **160ARDZB Recovery of tax**

Any unpaid untainting tax, and any unpaid additional tax payable under section 160ARDZA, may be sued for and recovered in a court of competent jurisdiction by the Commissioner suing in his or her official name.

### **160ARDZC Notice of liability**

- (1) The Commissioner may give a company, by post or otherwise, a notice specifying:
  - (a) the amount of any untainting tax that the Commissioner has ascertained is payable by the company; and
  - (b) the day on which that tax became or will become due and payable.

*Effect of notice on liability etc.*

- (2) The amount of the liability of a person or persons to untainting tax, and the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice.

*Amendment of notice*

- (3) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

*Inconsistency between notices*

- (4) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

*Objections*

- (5) A company that is dissatisfied with a notice made in relation to the company may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**160ARDZD Evidentiary effect of notice of liability**

- (1) The production of:
  - (a) a notice given under section 160ARDZC; or
  - (b) a document that is signed by the Commissioner and appears to be a copy of such a notice;is conclusive evidence that:
  - (c) the notice was duly given; and
  - (d) the amount of untainting tax specified in the notice became due and payable by the company to which it was given on the day specified.
- (2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

**18 Sections 160ARDZA and 160ARDZB**

Repeal the sections, substitute:

**160ARDZA Late payment of untainting tax**

If any of the untainting tax which a person is liable to pay remains unpaid 60 days after the day by which it is due to be paid, the person is liable to pay the general interest charge on the unpaid amount for each day in the period that:

- (a) started at the beginning of the 60th day after the day by which the untainting tax was due to be paid; and
- (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the untainting tax;
  - (ii) general interest charge on any of the untainting tax.

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

**160ARDZB Recovery of tax**

Any unpaid untainting tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner suing in his or her official name.

## **Part 2—Income Tax Assessment Act 1997**

### **19 Subsection 109-55(1) (table item 9)**

Omit “not”.

**Part 3—Taxation Administration Act 1953**

**20 Subsection 8AAB(4) (after table item 1)**

Insert:

1A      160ARDZA      payment of untainting tax



## **Part 4—Application of amendments**

### **21 Application**

The amendments made by items 4 to 9 apply to the provision of bonus shares or capital benefits on or after 30 June 1999.

## Schedule 9—Technical amendments

### *Income Tax Assessment Act 1997*

#### **1 Subsection 4-10(3) (note at the end of step 4 of the method statement)**

Repeal the note.

#### **2 Before subsection 4-10(3A)**

Insert:

*Excess tax offsets*

#### **3 Subsection 4-10(3A) (note)**

Repeal the note, substitute:

Note: However, some tax offsets can be carried forward to a later year. See, for example:

- Division 65 of this Act, which deals with carrying forward excess tax offsets; and
- section 160AFE of the *Income Tax Assessment Act 1936*, which deals with carrying forward excess foreign tax credits.

#### **4 Before subsection 4-10(4)**

Insert:

*Income tax worked out on another basis*

## **Schedule 10—Concessional tracing rules for company loss etc. provisions**

### **Part 1—Family trust tracing concession for company loss etc. provisions**

#### **Division 1—Amendment of the Income Tax Assessment Act 1936**

##### **1 Paragraph 50H(7)(a)**

Repeal the paragraph, substitute:

- (a) a person has a shareholding interest in a company if:
  - (i) the person is the beneficial owner of, or of an interest in, any shares in the company; or
  - (ii) the person is the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) who is the owner of, or of an interest in, any shares in the company; and

##### **2 After subsection 50K(1)**

Insert:

- (1A) If the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) owns shares in a company, the trustee is taken to be the beneficial owner of the shares.

##### **3 After section 50K**

Insert:

##### **50KA Special provision relating to capacity in which family trust beneficially owns shares**

For the purposes of sections 50D and 50H, if:

- (a) the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) is taken by subsection 50K(1A), or by that subsection and subsection 50J(6), to be the beneficial owner of shares; and
- (b) the trustee is a company;

the trustee is taken to be a natural person.

#### **4 After section 50N**

Insert:

#### **50P Information about family trusts with interests in company**

##### *Notice about family trust*

- (1) The Commissioner may give a company a notice in accordance with section 50Q if the requirements of subsections (2) to (5) of this section are met.

##### *First requirement*

- (2) In its return of income for a year of income:
- (a) the company must not have calculated its taxable income in accordance with section 50C; or
  - (b) the company must have calculated its taxable income in accordance with that section and in doing so must have taken into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company.

##### *Second requirement*

- (3) The Commissioner must be satisfied that:
- (a) if paragraph (2)(a) applies—the company was not required to calculate its taxable income in accordance with section 50C but it would have been if one or more trusts had not been family trusts (see subsection (6)); or
  - (b) if paragraph (2)(b) applies—the company was required to calculate its taxable income in accordance with section 50C and in doing so was entitled to take into account the amount by reason of subsection 50D(2), but it would not have been so entitled unless one or more trusts had been family trusts (see subsection (6)).

##### *Third requirement*

- (4) When the Commissioner gives the notice, for at least one of the family trusts:
- (a) a trustee of the trust must be a non-resident; or

- (b) the central management and control of the trust must be outside Australia.

*Fourth requirement*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the year of income to which the return relates; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

*Family trust*

- (6) The expression *family trust* has the same meaning as in section 272-75 of Schedule 2F.

**50Q Notice where requirements of section 50P are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 50P(2) to (5) are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F) of, income and capital, since the start of the income year to which the return relates, by all of the family trusts meeting the requirements of paragraph 50P(4)(a) or (b).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows:
- (a) if paragraph 50P(2)(a) applies—the company is required, and is taken always to have been required, to calculate its taxable income of the year of income in accordance with section 50C; or
  - (b) if paragraph 50P(2)(b) applies—the company is not entitled, and is taken never to have been entitled, to take into account the amount by reason of subsection 50D(2).
- (5) If, because of paragraph (4)(a), the company is required to calculate its taxable income for the year of income in accordance with section 50C, that section is to be applied as if it required the year of income to be divided into such relevant periods as would result in the highest possible taxable income for the year of income.

*No offences or penalties*

- (6) To avoid doubt, subsections (4) and (5) do not cause the company to commit any offence or be liable to any penalty under Part VII for not calculating its taxable income in accordance with section 50C, or for taking into account the amount by reason of subsection 50D(2), in the company's return.

**5 Subsections 63A(2), (4) and (6)**

Omit “and 63C”, substitute “, 63C and 63CB”.

**6 After subsection 63A(6)**

Insert:

- (6A) For the purposes of subsection (2) or (4), if a family trust (within the meaning of section 272-75 of Schedule 2F) owns a share in a company, the trustee is taken to own the share beneficially.

**7 Subsection 63A(8)**

Omit “and 63C”, substitute “, 63C and 63CB”.

**8 After subsection 63A(9)**

Insert:

- (9A) For the purposes of applying subsection (9) to the whole or a fraction of a dividend or of a distribution of capital that a person who is the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) would receive or would have received in the event of a payment as mentioned in that subsection, the requirement in that subsection that the person would do so or have done so otherwise than as a trustee is to be disregarded.
- (9B) For the purpose of paragraph (4)(b) or (c) or (8)(b) or (c), if the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) has a right to receive, directly or (as a result of applying subsection (9) in accordance with subsection (9A)) indirectly, the whole or part of a dividend or of a distribution of capital, the trustee is taken:
- (a) to have that right for his or her own benefit; and
  - (b) if the trustee is a company—not to be a company.

## **9 Paragraph 63B(5)(a)**

Repeal the paragraph, substitute:

- (a) a person has a shareholding interest in a company if:
  - (i) the person is the beneficial owner of, or of an interest in, any shares in the company; or
  - (ii) the person is the trustee of a family trust (within the meaning of section 272-75 of Schedule 2F) who is the owner of, or of an interest in, any shares in the company; and

## **10 After section 63C**

Insert:

### **63CA Information about family trusts with interests in company**

*Notice about family trust*

- (1) The Commissioner may give a company a notice in accordance with section 63CB if the requirements of subsections (2) to (4) of this section are met.

*First requirement*

- (2) In its return of income for a year of income, the company must have deducted an amount in respect of a debt incurred in the year of income or an earlier year of income, where it was allowed to do so but would not have been unless one or more trusts had been family trusts (see subsection (5)).

*Second requirement*

- (3) When the Commissioner gives the notice, for at least one of the family trusts:
- (a) a trustee of the trust must be a non-resident; or
  - (b) the central management and control of the trust must be outside Australia.

*Third requirement*

- (4) The Commissioner must give the notice before the later of:
- (a) 5 years after the year of income to which the return relates; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

*Family trust*

- (5) The expression *family trust* has the same meaning as in section 272-75 of Schedule 2F.

**63CB Notice where requirements of section 63CA are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 63CA(2) to (4) are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F) of, income and capital, since:
- (a) if the debt was incurred in an earlier year of income—the start of the day on which the debt was incurred; or



(b) if the debt was incurred in the year of income—the start of the year of income;  
by all of the family trusts meeting the requirements of paragraph 63CA(3)(a) or (b).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is not entitled, and is taken never to have been entitled, to deduct the amount in respect of the debt.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII for deducting the amount in respect of the debt in the company's return.

## **11 After section 160ZC**

Insert:

### **160ZCA Information about family trusts with interests in companies: first case**

*Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 160ZCB if the requirements of this section are met.

*Company must have applied a net capital loss in certain circumstances*

- (2) In determining in its return of income for the 1997-98 year of income whether a net capital gain accrued to the company, the company must have applied a net capital loss that is to be taken to have been incurred in the 1996-97 year of income where, under subsection 160ZC(5), it would not have been allowed to apply the loss if it did not meet the condition in section 165-12 of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act.

*Role of family trust*

- (3) The Commissioner must be satisfied that the company meets the conditions in section 165-12 of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act, but it would not do so unless one or more trusts were family trusts (within the meaning of section 272-75 of Schedule 2F).

*Non-resident trust*

- (4) When the Commissioner gives the notice, for at least one of the family trusts:
- (a) a trustee of the trust must be a non-resident; or
  - (b) the central management and control of the trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the 1997-98 year of income; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

**160ZCB Notice where requirements of section 160ZCA are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of section 160ZCA are met must require the company to give the
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Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F) of, income and capital, since the start of the 1996-97 year of income by all of the family trusts meeting the requirements of paragraph 160ZCA(4)(a) or (b).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is not entitled, and is taken never to have been entitled, to apply the net capital loss.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII for applying the net capital loss in the company's return.

**160ZCC Information about family trusts with interests in companies: second case**

*Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 160ZCD if the requirements of this section are met.

*Net capital loss must have been applied in certain circumstances*

- (2) In determining whether a net capital gain accrued to the company for the 1997-98 year of income, a net capital loss that is to be taken to have been incurred in respect of the 1996-97 year of income

must have been applied, where subsection 160ZC(5) would have prevented it from being applied but for the application of subsection 175-10(2) or 175-15(2) of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act.

*Role of family trust*

- (3) A family trust (within the meaning of section 272-75 of Schedule 2F) must have been:
- (a) one of the continuing shareholders mentioned in subsection 175-10(2) of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act; or
  - (b) the person who had the shareholding interest mentioned in subsection 175-15(2) of the *Income Tax Assessment Act 1997*, as so applied;
- as the case requires.

*Non-resident trust*

- (4) When the Commissioner gives the notice:
- (a) a trustee of the family trust must be a non-resident; or
  - (b) the central management and control of the family trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the 1997-98 year of income; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

**160ZCD Notice where requirements of section 160ZCC are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of section 160ZCC are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of
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Subdivision 272-B of Schedule 2F) of, income and capital by the family trust since the start of the 1996-97 year of income.

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the net capital loss cannot be applied.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII for previously applying the net capital loss in the company's return.

## **Division 2—Amendment of the Income Tax Assessment Act 1997**

### **12 After section 165-205**

Insert:

#### **165-207 Trustee of family trust treated as beneficial owner**

- (1) For the purposes of a primary test, the trustee of a \*family trust who owns \*shares in a company is taken to own the shares beneficially.
- (2) For the purposes of an alternative test, the trustee of a \*family trust who has the right to receive (whether directly, or indirectly through one or more interposed entities) a percentage of a \*dividend or a distribution of capital is taken:

- (a) to have the right to receive the percentage for the trustee's own benefit; and
- (b) if the trustee is a company—not to be a company.

### **13 Subsection 166-165(1)**

Repeal the subsection, substitute:

- (1) The rules in these provisions also apply for the purposes of an ownership test in this Subdivision:
  - section 165-175 (which is about how an ownership test can be satisfied by a single person);
  - section 165-185 (which treats some shares as never having carried rights);
  - section 165-190 (which treats some shares as always having carried rights);
  - section 165-195 (which disregards redeemable shares);
  - section 165-200 (which is about how other rules do not affect how shares or rights are counted);
  - section 165-205 (which deals with deaths of beneficial owners);
  - subsection 165-207(2) (which treats the trustee of a family trust as a beneficial owner of some rights).

### **14 Subsection 175-95(1)**

Repeal the subsection, substitute:

- (1) A person has a *shareholding interest* in the company if the person is:
  - (a) the beneficial owner; or
  - (b) the trustee of a \*family trust who is the owner;of:
  - (c) \*shares in the company; or
  - (d) an interest in \*shares in the company.

## **15 After Division 175**

Insert:

### **Division 180—Information about family trusts with interests in companies**

#### **Table of Subdivisions**

Guide to Division 180

180-A Information relevant to Division 165

180-B Information relevant to Division 175

#### **Guide to Division 180**

##### **180-1 What this Division is about**

If a company would only avoid the tax consequences of Division 165 or 175 because of interests held by a non-resident family trust, the Commissioner may require the company to give certain information about the non-resident family trust. If it is not given, the company does not avoid the tax consequences of that Division.

##### **Subdivision 180-A—Information relevant to Division 165**

#### **Table of sections**

180-5 Information about family trusts with interests in companies

180-10 Notice where requirements of section 180-5 are met

##### **180-5 Information about family trusts with interests in companies**

#### *Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 180-10 if the requirements of this section are met.

#### *Tax detriment under Division 165*

- (2) In its return of income for an income year:

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- (a) the company must have deducted a \*tax loss from a \*loss year where it would not be allowed to deduct the tax loss if it did not meet the conditions in section 165-12; or
- (b) the company must not have calculated:
  - (i) its taxable income and tax loss under Subdivision 165-B; and
  - (ii) its \*net capital gain and \*net capital loss under Subdivision 165-CB;where it would have been required to calculate them under that Subdivision if it did not satisfy the requirements of paragraph 165-35(a); or
- (c) the company must have applied a \*net capital loss from an earlier income year in working out its net capital gain or \*net capital loss where it would not have been allowed to apply the loss if it did not meet the condition in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or
- (d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt if it did not satisfy the requirements of paragraph 165-120(1)(a) or (b).

*Role of family trust*

- (3) The Commissioner must be satisfied that the company:
  - (a) if paragraph (2)(a) applies—meets the conditions in section 165-12; or
  - (b) if paragraph (2)(b) applies—satisfies the requirements of paragraph 165-35(a); or
  - (c) if paragraph (2)(c) applies—meets the conditions in section 165-12 as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) if paragraph (2)(d) applies—satisfies the requirements of paragraph 165-120(1)(a) or (b);but it would not do so unless one or more trusts were \*family trusts.

*Non-resident trust*

- (4) When the Commissioner gives the notice, for at least one of the \*family trusts:



- (a) a trustee of the trust must be a non-resident; or
- (b) the central management and control of the trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the income year to which the return relates; and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

### **180-10 Notice where requirements of section 180-5 are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of section 180-5 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital, since the start of:
    - (a) if paragraph 180-5(2)(a) applies—the \*loss year mentioned in that paragraph; or
    - (b) if paragraph 180-5(2)(b) applies—the income year for which that paragraph is being applied; or
    - (c) if paragraph 180-5(2)(c) applies—the earlier income year mentioned in that paragraph; or
    - (d) if paragraph 180-5(2)(d) applies:
      - (i) where the debt mentioned in that paragraph was incurred in an earlier income year—the day on which the debt was incurred; or
      - (ii) where the debt mentioned in that paragraph was incurred in the income year mentioned in that paragraph—that income year;
- by all of the \*family trusts meeting the requirements of paragraph 180-5(4)(a) or (b).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows:
- (a) if paragraph 180-5(2)(a) applies—the company is not entitled, and is taken never to have been entitled, to deduct the \*tax loss; or
  - (b) if paragraph 180-5(2)(b) applies—the company is required, and taken always to have been required:
    - (i) to calculate its taxable income and tax loss for the income year under Subdivision 165-B; and
    - (ii) to calculate its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB; or
  - (c) if paragraph 180-5(2)(c) applies—the company is not entitled, and is taken never to have been entitled, to apply the net capital loss; or
  - (d) if paragraph 180-5(2)(d) applies—the company is not entitled, and is taken never to have been entitled, to deduct the debt.
- (5) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-B its taxable income and \*tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.
- (6) If, because of paragraph (4)(b), the company is required to calculate under Subdivision 165-CB its \*net capital gain and \*net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such

periods as would result in the highest net capital gain for the income year.

*No offences or penalties*

- (7) To avoid doubt, subsections (4) to (6) do not cause the company to commit any offence or be liable to any penalty under Part VII of the *Income Tax Assessment Act 1936* for:
- (a) deducting the \*tax loss; or
  - (b) not calculating its taxable income and tax loss under Subdivision 165-B as it applies in accordance with subsection (5) of this section; or
  - (c) not calculating its \*net capital gain and \*net capital loss under Subdivision 165-CB as it applies in accordance with subsection (6) of this section; or
  - (d) applying the net capital loss; or
  - (e) deducting the debt;
- in the company's return.

## **Subdivision 180-B—Information relevant to Division 175**

### **Table of sections**

180-15	Information about family trusts with interests in companies
180-20	Notice where requirements of section 180-15 are met

### **180-15 Information about family trusts with interests in companies**

*Notice about company*

- (1) The Commissioner may give a company a notice in accordance with section 180-20 if the requirements of this section are met.

*Tax detriment under Division 175*

- (2) The Commissioner:
- (a) must have been prevented by subsection 175-10(2) or 175-15(2) from disallowing, as a deduction for an income year, the whole or part of a \*tax loss from a \*loss year; or
  - (b) must have been prevented by subsection 175-20(2), 175-25(2) or 175-30(4) from disallowing the whole or part of a deduction for an income year; or

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- (c) must have been prevented by subsection 175-45(2) or 175-50(2) from disallowing, in working out the \*net capital gain or \*net capital loss for an income year, the whole or part of a \*net capital loss for an earlier income year (or a part of one); or
- (d) must have been prevented by subsection 175-60(2), 175-65(2) or 175-70(4) from disallowing, in working out its net capital gain or net capital loss for an income year, the whole or part of a \*capital loss made during the income year; or
- (e) must have been prevented by subsection 175-85(2) or 175-90(2) from disallowing, as a deduction for an income year, the whole or part of a debt.

*Role of family trust*

- (3) A \*family trust must have been:
  - (a) one of the \*continuing shareholders mentioned in subsection 175-10(2), 175-20(2), 175-25(2), 175-45(2), 175-60(2), 175-65(2) or 175-85(2); or
  - (b) the person who had the \*shareholding interest mentioned in subsection 175-15(2), 175-30(4), 175-50(2), 175-70(4) or 175-90(2);as the case requires.

*Non-resident trust*

- (4) When the Commissioner gives the notice:
  - (a) a trustee of the \*family trust must be a non-resident; or
  - (b) the central management and control of the \*family trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the income year mentioned in subsection (2); and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

## **180-20 Notice where requirements of section 180-15 are met**

### *Information required*

- (1) The notice that the Commissioner may give if the requirements of section 180-15 are met must require the company to give the Commissioner specified information about conferrals of present entitlements to, and distributions (within the meaning of Subdivision 272-B of Schedule 2F to the *Income Tax Assessment Act 1936*) of, income and capital by the \*family trust since the start of:
  - (a) the \*loss year mentioned in paragraph 180-15(2)(a); or
  - (b) the income year mentioned in paragraph 180-15(2)(b) or (d);  
or
  - (c) the earlier income year mentioned in paragraph 180-15(2)(c);  
or
  - (d) if the debt mentioned in paragraph 180-15(2)(e) was incurred in the income year mentioned in that paragraph—that income year; or
  - (e) if the debt mentioned in paragraph 180-15(2)(e) was incurred in an earlier income year than the one mentioned in that paragraph—the day on which the debt was incurred.

### *Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

### *Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

### *Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows:
  - (a) subsection 175-10(2), 175-15(2), 175-20(2), 175-25(2), 175-30(4), 175-85(2) or 175-90(2) does not prevent the Commissioner from disallowing the deduction; or

- (b) subsection 175-45(2) or 175-50(2) does not prevent the Commissioner from \*disallowing the \*net capital loss; or
  - (c) subsection 175-60(2), 175-65(2) or 175-70(4) does not prevent the Commissioner from \*disallowing the \*capital loss;
- as the case requires.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII of the *Income Tax Assessment Act 1936* for claiming the deduction, or applying the \*net capital loss or \*capital loss, in the company's return.

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

Insert:

*family trust* has the same meaning as in section 272-75 of Schedule 2F to the *Income Tax Assessment Act 1936*.

**Division 3—Application of amendments**

**17 Application**

- (1) The amendments made by items 1 to 4 apply in relation to the 1996-97 year of income.
- (2) The amendments made by items 5 to 10 apply:
  - (a) to allowable deductions for the 1996-97 year of income for amounts in respect of debts incurred in that year of income; or
  - (b) to allowable deductions for the 1997-98 year of income for amounts in respect of debts incurred in that year of income or in the 1996-97 year of income.
- (3) The amendments made by items 12 and 13 apply:
  - (a) so far as the amendments affect Subdivision 165-A (including as modified by Subdivision 166-A) of the *Income Tax Assessment Act 1997*—where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that

Subdivision is the 1997-98 income year or any later income year; and

- (b) so far as the amendments affect Subdivision 165-B (including as modified by Subdivision 166-B) of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (c) so far as the amendments affect Subdivision 165-CA of the *Income Tax Assessment Act 1997*—where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the current income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (d) so far as the amendments affect Subdivision 165-CB (including as modified by Subdivision 166-B) of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (e) so far as the amendments affect Subdivision 165-C (including as modified by Subdivision 166-C) of the *Income Tax Assessment Act 1997*—where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (4) The amendments made by item 14 apply:
- (a) so far as the amendments affect Subdivision 175-A of the *Income Tax Assessment Act 1997*—where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (b) so far as the amendments affect Subdivision 175-B of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year; and
  - (c) so far as the amendments affect Subdivision 175-CA of the *Income Tax Assessment Act 1997*—where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned

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- in that Subdivision is the 1998-99 income year or any later income year; and
- (d) so far as the amendments affect Subdivision 175-CB of the *Income Tax Assessment Act 1997*—where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year; and
  - (e) so far as the amendments affect Subdivision 175-C of the *Income Tax Assessment Act 1997*—where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (5) Subdivision 180-A of the *Income Tax Assessment Act 1997* as inserted by item 15 of this Schedule applies where:
- (a) the loss year mentioned in paragraph 180-5(2)(a) is the 1996-97 income year or any later income year and the income year for which that paragraph is being applied is the 1997-98 income year or any later income year; or
  - (b) the income year for which subparagraph 180-5(2)(b)(i) is being applied is the 1997-98 income year or any later income year; or
  - (c) the income year for which subparagraph 180-5(2)(b)(ii) is being applied is the 1998-99 income year or any later income year; or
  - (d) the earlier income year mentioned in paragraph 180-5(2)(c) is the 1996-97 income year or any later income year and the income year for which that paragraph is being applied is the 1998-99 income year or any later income year; or
  - (e) the debt mentioned in paragraph 180-5(2)(d) was incurred in the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year.
- (6) Subdivision 180-B of the *Income Tax Assessment Act 1997* as inserted by item 15 of this Schedule applies where:
- (a) the loss year mentioned in paragraph 180-15(2)(a) is the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1997-98 income year or any later income year; or



- (b) the income year mentioned in paragraph 180-15(2)(b) is the 1997-98 income year or any later income year; or
- (c) the earlier income year mentioned in paragraph 180-15(2)(c) is the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year; or
- (d) the income year mentioned in paragraph 180-15(2)(d) is the 1998-99 income year or any later income year; or
- (e) the debt mentioned in paragraph 180-15(2)(e) was incurred in the 1996-97 income year or any later income year and the income year mentioned in that paragraph is the 1998-99 income year or any later income year.

## Part 2—Trust loss amendments related to Part 1 amendments

### *Income Tax Assessment Act 1936*

#### **18 At the end of subsection 271-60(3) of Schedule 2F**

Add:

- ; and (c) any company to which subsection (5) applies; and
- (d) any person who is a director of such a company when the determination is made.

Note: The heading to subsection 271-60(3) of Schedule 2F is altered by omitting “*paragraph (2)(b)*” and substituting “*subsection (2)*”.

#### **19 Subsection 271-60(4) of Schedule 2F**

Omit “held an interest in relation to the trust as mentioned in subsection 272-30(2)”, substitute “been a family trust”.

#### **20 At the end of section 271-60 of Schedule 2F**

Add:

*Company mentioned in paragraph (3)(c)*

- (5) This subsection applies to a company if, in its return of income for the income year in which the determination is made or an earlier income year:
  - (a) the company deducted an amount in respect of a debt, where it was allowed to do so but, because of section 63B or 63C, or Subdivision 165-C of the *Income Tax Assessment Act 1997*, it would not have been if the family trust had not been a family trust; or
  - (b) the company deducted a tax loss (within the meaning of the *Income Tax Assessment Act 1997*) where it was allowed to do so but, because of Subdivision 165-A of that Act, it would not have been if the family trust had not been a family trust; or
  - (c) the company applied a net capital loss (within the meaning of Part IIIA of this Act) where it was allowed to do so but,

- because of subsection 160ZC(5), it would not have been if the family trust had not been a family trust; or
- (d) the company applied a net capital loss (within the meaning of the *Income Tax Assessment Act 1997*) where it was allowed to do so but, because of Subdivision 165-CA of that Act, it would not have been if the family trust had not been a family trust;
  - (e) the company did not calculate its taxable income in accordance with section 50C of this Act where it was not required to do so but would have been if the family trust had not been a family trust; or
  - (f) the company calculated its taxable income in accordance with section 50C and took into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, where it was required to calculate its taxable income in accordance with section 50C and entitled to take the amount into account but would not have been so entitled if the family trust had not been a family trust; or
  - (g) the company did not calculate its taxable income and tax loss under Subdivision 165-B of the *Income Tax Assessment Act 1997* where it was not required to do so but would have been if the family trust had not been a family trust; or
  - (h) the company did not calculate its net capital gain and net capital loss under Subdivision 165-CB of the *Income Tax Assessment Act 1997* where it was not required to do so but would have been if the family trust had not been a family trust.

## 21 Application

The amendments made by this Part apply to the making of determinations under section 271-60 of Schedule 2F to the *Income Tax Assessment Act 1936* after the commencement of this Part, in relation to tax under section 271-15 of that Schedule that:

- (a) has become due and payable before the commencement of this Part; or
- (b) becomes due and payable after the commencement of this Part.

## Part 3—Non-fixed trust tracing concession for company loss etc. provisions

### Division 1—Amendment of the Income Tax Assessment Act 1936

#### 22 Subsection 50H(1)

After “Subject to this section”, insert “and section 50HA”.

#### 23 After subsection 50H(1)

Insert:

(1A) If:

- (a) the taxable income of a company is required by subsection 50C(1) to be calculated in accordance with section 50C; and
- (b) the company satisfies the requirements of subsections 50HA(2) and (4);

then:

- (c) for the purpose of applying section 50C to calculate the taxable income, subsection (1) of this section applies as if paragraphs (a), (b) and (c) were omitted and the paragraphs set out in subsection (1B) were substituted; and
- (d) in the substituted paragraphs, the expressions *control a non-fixed trust, directly or indirectly, excepted trust, fixed entitlement, group, more than a 50% stake* and *non-fixed trust* have the same meanings as in Schedule 2F.

(1B) For the purposes of paragraph (1A)(c), the substituted paragraphs are as follows:

- (a) immediately after the relevant time, the persons having fixed entitlements to shares of the income or shares of the capital of:
  - (i) if the company satisfied the requirements of paragraph 50HA(2)(a)—the company; or
  - (ii) if the company satisfied the requirements of paragraph 50HA(2)(b)—the holding entity mentioned in that paragraph;

or the percentages of those shares, were different from immediately before the relevant time;

- (b) immediately after the relevant time, there were no individuals who had more than a 50% stake in either the income or capital of a non-fixed trust (other than an excepted trust) that held directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the year of income who, immediately before the relevant time, had more than a 50% stake in the income or capital, respectively, of the non-fixed trust;
- (c) at the relevant time, a group began to control a non-fixed trust (other than an excepted trust) that held directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the year of income.

## **24 After section 50H**

Insert:

### **50HA Continuity of ownership tests inapplicable if company satisfies non-fixed trust ownership test**

- (1) Paragraphs 50H(1)(a), (b) and (c) do not apply if the company satisfies the conditions in this section.

#### *First condition*

- (2) At all times during the year of income:
  - (a) both:
    - (i) persons must have held fixed entitlements (see subsection (6)) to all of the income and capital of the company; and
    - (ii) non-fixed trusts (see subsection (6)), other than family trusts (see subsection (6)), must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust (see subsection (6)) or a company (which trust or company is the *holding entity*) must have held, directly or indirectly (see subsection (6)), fixed entitlements to all of the income and capital of the company; and

- (ii) non-fixed trusts, other than family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
  - (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;at the beginning of the year of income must have held those entitlements to those shares at all times during the year of income.

*Third condition*

- (4) At the beginning of the year of income:
  - (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust as defined in subsection (6)) that, at any time in the year of income, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-60 of Schedule 2F does not require the non-fixed trust to work out its net income and loss for the income year under Division 268 of Schedule 2F.

*Meaning of expressions*

- (6) The expressions *directly or indirectly*, *excepted trust*, *family trust*, *fixed entitlement*, *fixed trust* and *non-fixed trust* have the same meanings as in Schedule 2F.

## **50HB Information about non-fixed trusts with interests in company**

### *Notice about non-resident non-fixed trust*

- (1) The Commissioner may give the company a notice in accordance with section 50HC if the requirements of subsections (2) to (5) of this section are met.

### *First requirement*

- (2) In its return of income for the year of income, the company must not have calculated its taxable income and loss for the year of income under section 50C where it would be required to calculate its taxable income and loss under that section unless it met the conditions in section 50HA.

### *Second requirement*

- (3) In order to determine whether it meets the conditions in that section, the Commissioner must need information about a non-fixed trust mentioned in subsection 50HA(5).

### *Third requirement*

- (4) When the Commissioner gives the notice:
  - (a) a trustee of the non-fixed trust must be a non-resident; or
  - (b) the central management and control of the non-fixed trust must be outside Australia.

### *Fourth requirement*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the year of income; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

## **50HC Notices where requirements of section 50HB are met**

### *Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 50HB(2) to (5) are met must require the company to

give the Commissioner specified information that is relevant in determining whether the requirements of subsection 50HA(5) are satisfied in relation to the non-fixed trust mentioned in subsections 50HB(3) and (4).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the conditions in section 50HA.

*Application of section 50C*

- (5) If, because of subsection (4), the company is required to calculate its taxable income and loss for the year of income in accordance with section 50C, that section is to be applied as if it required the year of income to be divided into such relevant periods as would result in the highest possible taxable income for the year of income.

*No offences or penalties*

- (6) To avoid doubt, subsections (4) and (5) do not cause the company to commit any offence or be liable to any penalty under Part VII for not calculating its taxable income and loss in accordance with section 50C in its return.

**25 Subsection 63A(2)**

Before “63B”, insert “63AA,”.

**26 Subsection 63A(4)**

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Before “63B”, insert “63AA,”.

**27 Subsection 63A(6)**

Before “63B”, insert “63AB,”.

**28 Subsection 63A(8)**

Before “63B”, insert “63AB,”.

**29 After section 63A**

Insert:

**63AA Section 63A inapplicable to earlier year debts if company satisfies non-fixed trust ownership test**

- (1) Section 63A does not prevent an amount in respect of a debt incurred in an earlier year of income being an allowable deduction in the year of income if the company satisfies the conditions in this section.

*First condition*

- (2) At all times during:
- (a) the part (the *eligible earlier year period*) of the earlier year of income occurring after the beginning of the day on which the debt was incurred; and
  - (b) during the year of income;
- either:
- (c) non-fixed trusts (see subsection (6)), other than family trusts (see subsection (6)), must have held fixed entitlements (see subsection (6)) to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (d) both:
    - (i) a fixed trust (see subsection (6)) or a company (which trust or company is the *holding entity*) must have held, directly or indirectly (see subsection (6)), fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than family trusts, must have held fixed entitlements to a 50% or greater share of the

income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(c) case—the company; or
  - (b) in a paragraph (2)(d) case—the holding entity;
- at the beginning of the eligible earlier year period must have held those entitlements to those shares at all times during the eligible earlier year period and the year of income.

*Third condition*

- (4) At the beginning of the eligible earlier year period:
- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust as defined in subsection (6)) that, at any time in the eligible earlier year period or the year of income, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-25 of Schedule 2F would not have prevented the non-fixed trust from deducting the amount in respect of the debt if it, rather than the company, would otherwise be entitled to deduct the amount.

*Meaning of expressions*

- (6) The expressions *directly or indirectly*, *excepted trust*, *family trust*, *fixed entitlement*, *fixed trust* and *non-fixed trust* have the same meanings as in Schedule 2F.

**63AB Section 63A inapplicable to current year debts if company satisfies non-fixed trust ownership test**

- (1) Section 63A does not prevent an amount in respect of a debt incurred in the year of income being an allowable deduction if the company satisfies the conditions in this section.

*First condition*

- (2) At all times during the year of income:
- (a) both:
    - (i) persons must have held fixed entitlements (see subsection (6)) to all of the income and capital of the company; and
    - (ii) non-fixed trusts (see subsection (6)), other than family trusts (see subsection (6)), must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust (see subsection (6)) or a company (which trust or company is the **holding entity**) must have held, directly or indirectly (see subsection (6)), fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;
- at the beginning of the year of income must have held those entitlements to those shares at all times during the year of income.

*Third condition*

- (4) At the beginning of the year of income:
- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust as defined in subsection (6)) that, at any time in the year of income, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-65 of Schedule 2F would not have prevented the non-fixed trust from deducting the amount in respect of the debt if it, rather than the company, would otherwise be entitled to deduct the amount.

*Meaning of expressions*

- (6) The expressions *directly or indirectly*, *excepted trust*, *family trust*, *fixed entitlement*, *fixed trust* and *non-fixed trust* have the same meanings as in Schedule 2F.

**63AC Information about non-fixed trusts with interests in company**

*Notice about non-resident non-fixed trust*

- (1) The Commissioner may give the company a notice in accordance with section 63AD if the requirements of subsections (2) to (5) of this section are met.

*First requirement*

- (2) In its return of income for the year of income, the company must have deducted an amount in respect of a debt where it would not be allowed to deduct the amount unless it met the conditions in section 63AA or 63AB.

*Second requirement*

- (3) In order to determine whether it meets the conditions in that section, the Commissioner must need information about a non-fixed trust mentioned in subsection 63AA(5) or 63AB(5).

*Third requirement*

- (4) When the Commissioner gives the notice:
- (a) a trustee of the non-fixed trust must be a non-resident; or
  - (b) the central management and control of the non-fixed trust must be outside Australia.

*Fourth requirement*

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the year of income; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

**63AD Notices where requirements of section 63AC are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 63AC(2) to (5) are met must require the company to give the Commissioner specified information that is relevant in determining whether the requirements of subsection 63AA(5) or 63AB(5) are satisfied in relation to the non-fixed trust mentioned in subsections 63AC(3) and (4).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the conditions in section 63AA or 63AB.

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII for deducting the amount in respect of the debt in its return.

**30 Before section 160ZD**

Insert:

**160ZCE Information about non-fixed trusts with interests in company**

*Notice about non-resident non-fixed trust*

- (1) The Commissioner may give the company a notice in accordance with section 160ZCF if the requirements of subsections (2) to (5) of this section are met.

*Company must have applied a net capital loss in certain circumstances*

- (2) In determining in its return of income for the 1997-98 year of income whether a net capital gain accrued to the company, the company must have applied a net capital loss that is to be taken to have been incurred in the 1996-97 year of income where, under subsection 160ZC(5), it would not have been allowed to apply the loss if it did not meet the condition in section 165-215 of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act.

*Information about non-fixed trust*

- (3) In order to determine whether it meets the condition, the Commissioner must need information about a non-fixed trust mentioned in subsection 165-215(5) of the *Income Tax Assessment*

*Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act.

*Non-resident trust*

- (4) When the Commissioner gives the notice:
- (a) a trustee of the non-fixed trust must be a non-resident; or
  - (b) the central management and control of the non-fixed trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
- (a) 5 years after the 1997-98 year of income; and
  - (b) the end of the period during which the company is required by section 262A to retain records in relation to that year of income.

**160ZCF Notices where requirements of section 160ZCE are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 160ZCE(2) to (5) are met must require the company to give the Commissioner specified information that is relevant in determining whether the requirements of subsection 165-215(5) of the *Income Tax Assessment Act 1997*, as applied on the assumption mentioned in subsection 160ZC(5) of this Act, are satisfied in relation to the non-fixed trust mentioned in subsections 160ZCE(3) and (4).

*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the condition mentioned in subsection 160ZCE(2).

*No offences or penalties*

- (5) To avoid doubt, subsection (4) does not cause the company to commit any offence or be liable to any penalty under Part VII for applying the net capital loss in the company's return.

**Division 2—Amendment of the Income Tax Assessment Act 1997**

**31 After paragraph 165-10(a)**

Insert:

Note: See section 165-215 for a special alternative to these conditions.

**32 After paragraph 165-35(a)**

Insert:

Note: See section 165-220 for a special alternative to the condition in this paragraph.

**33 At the end of section 165-45**

Add:

Note: See section 165-225 for a special alternative to this section.

**34 At the end of subsection 165-96(1)**

Add:

Note 3: Subdivision 165-F may affect the application of Subdivision 165-A.

**35 After paragraph 165-102(a)**

Insert:

Note: Subdivision 165-F may affect the application of Subdivision 165-B.

**36 After paragraph 165-120(1)(a)**



Insert:

Note: See section 165-230 for a special alternative to the condition in this paragraph.

### **37 After Subdivision 165-E**

Insert:

### **Subdivision 165-F—Special provisions relating to ownership by non-fixed trusts**

#### **Table of sections**

165-215	Special alternative to change of ownership test for Subdivision 165-A
165-220	Special alternative to change of ownership test for Subdivision 165-B
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165-235	Information about non-fixed trusts with interests in company
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#### **165-215 Special alternative to change of ownership test for Subdivision 165-A**

- (1) If a company does not meet the conditions in section 165-12, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

*First condition*

- (2) At all times during the \*loss year and the income year:
- (a) both:
    - (i) persons must have held fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust or a company (which trust or company is the *holding entity*) must have held, directly or

indirectly, fixed entitlements to all of the income and capital of the company; and

- (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
  - (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;at the beginning of the \*loss year must have held those entitlements to those shares at all times during the loss year and the income year.

*Third condition*

- (4) At the beginning of the \*loss year:
  - (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the \*loss year or the income year, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-20 of Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the \*tax loss concerned if it, rather than the company, had incurred the tax loss.

**165-220 Special alternative to change of ownership test for  
Subdivision 165-B**

- (1) If the company does not meet the condition in paragraph 165-35(a), it is nevertheless taken to meet the condition if it meets the conditions in this section.

*First condition*

- (2) At all times during the income year:
- (a) both:
    - (i) persons must have held fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
- (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;
- at the beginning of the income year must have held those entitlements to those shares at all times during the income year.

*Third condition*

- (4) At the beginning of the income year:

- (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
- (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the income year, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-60 of Schedule 2F to the *Income Tax Assessment Act 1936* does not require the non-fixed trust to work out its net income and \*tax loss for the income year under Division 268.

**165-225 Special way of dividing the income year under Subdivision 165-B**

If:

- (a) the company is required to calculate:
  - (i) its taxable income and \*tax loss for the income year under Subdivision 165-B; and
  - (ii) its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB; and
- (b) the company meets the requirements of subsections 165-220(2) and (4);

section 165-45 is replaced by the following section:

**165-45 First, divide the income year into periods**

- (1) Divide the income year into periods as follows.
- (2) The first period starts at the start of the income year. Each later period starts immediately after the end of the previous period.
- (3) The last period ends at the end of the income year. Each period (except the last) ends at the earliest of:
  - (a) the latest time that would result in the persons holding fixed entitlements to shares of the income or shares of the capital of:

- (i) if the company meets the requirements of paragraph 165-220(2)(a)—the company; or
- (ii) if the company meets the requirements of paragraph 165-220(2)(b)—the holding entity mentioned in that paragraph;  
and the percentages of the shares that they hold, remaining the same during the whole of the period; and
- (b) the times that, for all of the non-fixed trusts, other than excepted trusts, holding directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year, are the latest times that would result in individuals having more than a 50% stake in their income or capital; and
- (c) the earliest time in the period when a group begins to control a non-fixed trust, other than an excepted trust, that holds directly or indirectly a fixed entitlement to a share of the income or capital of the company at any time during the income year.

### **165-230 Special alternative to change of ownership test for Subdivision 165-C**

- (1) If a company does not meet the conditions in section 165-123, it is nevertheless taken to meet the conditions if it meets the conditions in this section.

#### *First condition*

- (2) At all times during the \*first continuity period and the \*second continuity period (both within the meaning of subsection 165-120(2)):
  - (a) both:
    - (i) persons must have held fixed entitlements to all of the income and capital of the company; and
    - (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or
  - (b) both:
    - (i) a fixed trust or a company (which trust or company is the **holding entity**) must have held, directly or

indirectly, fixed entitlements to all of the income and capital of the company; and

- (ii) non-fixed trusts, other than \*family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

*Second condition*

- (3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:
  - (a) in a paragraph (2)(a) case—the company; or
  - (b) in a paragraph (2)(b) case—the holding entity;at the beginning of the \*first continuity period must have held those entitlements to those shares at all times during that period and the \*second continuity period (within the meaning of subsection 165-120(2)).

*Third condition*

- (4) At the beginning of the \*first continuity period:
  - (a) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of the company; or
  - (b) individuals must not have had (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the company.

*Fourth condition*

- (5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the \*first continuity period or the \*second continuity period, held directly or indirectly a fixed entitlement to a share of the income or capital of the company, section 267-25 of Schedule 2F to the *Income Tax Assessment Act 1936* would not have prevented the non-fixed trust from deducting the amount in respect of the debt if it, rather than the company, would otherwise be entitled to deduct the amount.

**165-235 Information about non-fixed trusts with interests in company**

*Notice about non-resident non-fixed trust*

- (1) The Commissioner may give the company a notice in accordance with section 165-240 if the requirements of subsections (2) to (5) of this section are met.

*Tax detriment under Division 165*

- (2) In its return of income for the income year:
- (a) the company must have deducted a \*tax loss from a \*loss year where it would not be allowed to deduct the tax loss unless it met the conditions in section 165-215; or
  - (b) the company must not have calculated:
    - (i) its taxable income and tax loss for the income year under Subdivision 165-B; and
    - (ii) its \*net capital gain and \*net capital loss for the income year under Subdivision 165-CB; where it would have been required to calculate them unless it met the conditions in section 165-220; or
  - (c) the company must have applied a net capital loss for an earlier income year in working out its net capital gain or net capital loss where it would not have been allowed to apply the loss unless it met the conditions in section 165-215 as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) the company must have deducted a debt that it wrote off as bad in the income year where it would not be allowed to deduct the debt unless it met the conditions in section 165-230.

*Information about non-fixed trust*

- (3) In order to determine whether it meets the conditions concerned, the Commissioner must need information about a non-fixed trust mentioned in:
- (a) if paragraph (2)(a) applies—subsection 165-215(5); or
  - (b) if paragraph (2)(b) applies—subsection 165-220(5); or

- (c) if paragraph (2)(c) applies—subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or
- (d) if paragraph (2)(d) applies—subsection 165-230(5).

*Non-resident trust*

- (4) When the Commissioner gives the notice:
  - (a) a trustee of the non-fixed trust must be a non-resident; or
  - (b) the central management and control of the non-fixed trust must be outside Australia.

*When notice must be given*

- (5) The Commissioner must give the notice before the later of:
  - (a) 5 years after the income year; and
  - (b) the end of the period during which the company is required by section 262A of the *Income Tax Assessment Act 1936* to retain records in relation to that income year.

**165-240 Notices where requirements of section 165-235 are met**

*Information required*

- (1) The notice that the Commissioner may give if the requirements of subsections 165-235(2) to (5) are met must require the company to give the Commissioner specified information that is relevant in determining whether:
  - (a) if paragraph 165-235(2)(a) applies—the requirements of subsection 165-215(5); or
  - (b) if paragraph 165-235(2)(b) applies—the requirements of subsection 165-220(5); or
  - (c) if paragraph 165-235(2)(c) applies—the requirements of subsection 165-215(5) as applied on the assumption mentioned in subsection 165-96(1); or
  - (d) if paragraph 165-235(2)(d) applies—the requirements of subsection 165-230(5);are satisfied in relation to the non-fixed trust mentioned in subsections 165-235(3) and (4).



*Company knowledge*

- (2) The information need not be within the knowledge of the company at the time the notice is given.

*Period for giving information*

- (3) The notice must specify a period within which the company is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

*Consequence of not giving the information*

- (4) If the company does not give the information within the period or within such further period as the Commissioner allows, the company is taken not to meet, and never to have met, the conditions mentioned in whichever paragraph of subsection 165-235(2) is applicable.

*Application of Subdivision 165-B*

- (5) If, because of subsection (4), the company is required to calculate under Subdivision 165-B its taxable income and \*tax loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest possible taxable income for the income year.

*Application of Subdivision 165-CB*

- (6) If, because of subsection (4), the company is required to calculate under Subdivision 165-CB its \*net capital gain and \*net capital loss for the income year concerned, that Subdivision is to be applied as if it required the income year to be divided into such periods as would result in the highest net capital gain for the income year.

*No offences or penalties*

- (7) To avoid doubt, subsections (4) to (6) do not cause the company to commit any offence or be liable to any penalty under Part VII of the *Income Tax Assessment Act 1936* for:
- (a) deducting the \*tax loss mentioned in paragraph 165-235(2)(a); or

- (b) not calculating its taxable income and tax loss under Subdivision 165-B as it applies in accordance with subsection (5) of this section; or
- (c) not calculating its \*net capital gain and \*net capital loss under Subdivision 165-CB as it applies in accordance with subsection (6) of this section; or
- (d) applying the \*net capital loss mentioned in paragraph 165-235(2)(c); or
- (e) deducting the debt mentioned in paragraph 165-235(2)(d); in the company's return.

### **165-245 Meaning of expressions**

The expressions *control a non-fixed trust, directly or indirectly, excepted trust, family trust, fixed entitlement, fixed trust, group, more than a 50% stake* and *non-fixed trust* have the same meanings as in Schedule 2F to the *Income Tax Assessment Act 1936*.

## **Division 3—Application of amendments**

### **38 Application**

- (1) The amendments made by items 22 to 24 apply for the 1996-97 year of income.
- (2) The amendments made by items 25 to 29 apply:
  - (a) to allowable deductions for the 1996-97 year of income for amounts in respect of debts incurred in that year of income; or
  - (b) to allowable deductions for the 1997-98 year of income for amounts in respect of debts incurred in that year of income or in the 1996-97 year of income.
- (3) The amendments made by items 31 and 37 (so far as the amendments made by those items affect Subdivision 165-A of the *Income Tax Assessment Act 1997*) apply where the loss year mentioned in that Subdivision is the 1996-97 income year or any later income year and the income year mentioned in that Subdivision is the 1997-98 income year or any later income year.

- (4) The amendments made by items 32, 33 and 37 (so far as the amendments made by those items affect Subdivision 165-B of the *Income Tax Assessment Act 1997*) apply where the income year mentioned in that Subdivision is the 1997-98 income year or any later income year.
- (5) The amendments made by items 31, 32, 33, 34, 35 and 37 (so far as the amendments made by those items affect Subdivision 165-CA of the *Income Tax Assessment Act 1997*) apply where the earlier income year mentioned in that Subdivision is the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (6) The amendments made by items 31, 32, 33, 34, 35 and 37 (so far as the amendments made by those items affect Subdivision 165-CB of the *Income Tax Assessment Act 1997*) apply where the income year mentioned in that Subdivision is the 1998-99 income year or any later income year.
- (7) The amendments made by items 36 and 37 (so far as the amendments made by those items affect Subdivision 165-C of the *Income Tax Assessment Act 1997*) apply where the debt mentioned in that Subdivision was incurred in the 1996-97 income year or any later income year and the current year mentioned in that Subdivision is the 1998-99 income year or any later income year.

## **Schedule 11—Extension of transitional family trust and interposed entity election provisions**

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

#### **1 Subsection 262A(4AL)**

Omit “or 23(3)”, substitute “, 22A(3), 23(3) or 23A(2)”.

### ***Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998***

#### **2 Subitem 22(1) of Schedule 1**

After “this item”, insert “and item 22A”.

#### **3 Subitems 22(2) and (3) of Schedule 1**

Repeal the subitems, substitute:

- (2) If:
- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1998-99 year of income; and
  - (b) assuming that the family trust election could instead specify the 1996-97 year of income or the 1997-98 year of income (the *qualifying year of income*):
    - (i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or
    - (ii) a company that would otherwise be prevented by subsection 160ZC(5) of the *Income Tax Assessment Act 1936* from applying a net capital loss in the qualifying year of income would not be so prevented; or
    - (iii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax*

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- Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or
- (iv) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or
  - (v) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or
  - (vi) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
- (i) if the qualifying year of income is the 1996-97 year of income—at all times from the beginning of that year of income until the end of the 1997-98 year of income; or
  - (ii) if the qualifying year of income is the 1997-98 year of income—at the end of the 1997-98 year of income; and
- (d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:
- (i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or
  - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(2A) If:

- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1998-99 year of income; and

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- (b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income (the *qualifying year of income*); and
  - (c) the trust passes the family control test at the end of the 1997-98 year of income; and
  - (d) the *Taxation Laws Amendment Act (No. 2) 1999* and the *Taxation Laws Amendment Act (No. 2) 2000* receive the Royal Assent:
    - (i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or
    - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;
- the election can instead specify the qualifying year of income.
- (3) A family trust election specifying the qualifying year of income in accordance with subitem (2) or (2A) must:
- (a) be in writing in a form and manner approved by the Commissioner; and
  - (b) be made:
    - (i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or
    - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

**4 Subitem 22(4) of Schedule 1**

Omit “1997-98 year of income or an earlier”, substitute “qualifying”.

**5 Subitem 22(5) of Schedule 1**

Repeal the subitem, substitute:

- (5) If:
- (a) a family trust election does specify the qualifying year of income in accordance with this item; and
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- (b) the trust concerned is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in:
  - (i) if the qualifying year is the 1996-97 year of income—that year of income, the 1997-98 year of income or both (the *excluded period*); or
  - (ii) if the qualifying year mentioned in that subitem is the 1997-98 year of income—that year of income (also the *excluded period*);

no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place in the excluded period.

## **6 After item 22 of Schedule 1**

Insert:

### **22A Transitional—family trust elections**

- (1) If:
  - (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1999-2000 year of income; and
  - (b) assuming that a family trust election could specify the 1996-97 year of income, the 1997-98 year of income or the 1998-1999 year of income (the *qualifying year of income*):
    - (i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* or by Subdivision 165-C or 175-C of the *Income Tax Assessment Act 1997*, from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or
    - (ii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or
    - (iii) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in

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- accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or
- (iv) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or
  - (v) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; or
  - (vi) a company that would otherwise be prevented by Subdivision 165-CA or 175-CA of the *Income Tax Assessment Act 1997* from applying in the qualifying year a net capital loss from an earlier year of income would not be so prevented; or
  - (vii) a company that would otherwise be required to calculate its net capital gain and net capital loss for the qualifying year under Subdivision 165-CB or 175-CB of the *Income Tax Assessment Act 1997* would not be so required; and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
- (i) if the qualifying year of income is the 1996-97 year of income or the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or
  - (ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and
- (d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:
- (i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or
  - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

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(2) If:

- (a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1999-2000 year of income; and
- (b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income or the 1998-99 year of income (the *qualifying year of income*); and
- (c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
  - (i) if the qualifying year of income is the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or
  - (ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and
- (d) either the *Taxation Laws Amendment Act (No. 2) 1999* or the *Taxation Laws Amendment Act (No. 2) 2000*, or both, receive the Royal Assent:
  - (i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or
  - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(3) The election must:

- (a) be in a form and manner approved by the Commissioner; and
- (b) be made:
  - (i) if the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the trustee furnishes the return; or
  - (ii) if the trustee is not required to furnish a return for the 1999-2000 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

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- (4) If a family trust election is made in accordance with subitem (3) specifying the qualifying year:
- (a) if the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and
  - (b) if the trustee is not required to furnish a return for that year of income—the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.
- (5) If:
- (a) a family trust election does specify the qualifying year of income in accordance with this item; and
  - (b) the trust is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in the qualifying year or any later year of income that occurs before the 1999-2000 year of income;
- no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place during the qualifying year or the later year of income.

**7 Subitem 23(1) of Schedule 1**

After “this item”, insert “and item 23A”.

**8 Subitems 23(2) and (3) of Schedule 1**

Repeal the subitems, substitute:

- (2) If:
- (a) a trustee makes a family trust election under subitem 22(3) (as inserted by the *Taxation Laws Amendment Act (No. 2) 2000*); and
  - (b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1998-99 year of income; and

- (c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
  - (i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income—at all times from a day in that year of income until the end of the 1997-98 year of income; or
  - (ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1997-98 year of income—at the end of the 1997-98 year of income;

the interposed entity election can instead specify:

- (d) if subparagraph (c)(i) of this subitem applies—the day mentioned in that subparagraph or a later day in the qualifying year of income; or
- (e) if subparagraph (c)(ii) applies—a day in the qualifying year of income;

provided the day specified is not before the day on which the family trust election came into force.

- (3) The election must:
  - (a) be in writing in a form and manner approved by the Commissioner; and
  - (b) be made:
    - (i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or
    - (ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

### **9 Subitem 23(4) of Schedule 1**

Omit “1997-98 year of income or an earlier”, substitute “qualifying”.

### **10 After item 23 of Schedule 1**

Insert:

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**23A Transitional—interposed entity elections**

(1) If:

- (a) a trustee makes a family trust election under subitem 22A(3); and
- (b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1999-2000 year of income; and
- (c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):
  - (i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income or the 1997-98 year of income—at all times from a day in that year of income until the end of the 1998-99 year of income; or
  - (ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1998-99 year of income—at the end of the 1998-99 year of income;

the interposed entity election can instead specify:

- (d) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1996-1997 year of income—the day mentioned in that subparagraph, a later day in the 1996-97 year of income or a day in the 1997-1998 year of income; or
- (e) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1997-1998 year of income—the day mentioned in that subparagraph or a later day in the 1997-98 year of income; or
- (f) if subparagraph (c)(ii) applies—a day in the 1998-99 year of income;

provided the day specified is not before the day on which the family trust election came into force.

(2) The election must:

- (a) be in a form and manner approved by the Commissioner; and
- (b) be made:

- (i) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the company, partners or trustee furnishes the return; or
  - (ii) if not—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.
- (3) If an interposed entity election is made in accordance with subitem (2) specifying the qualifying year:
  - (a) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and
  - (b) if the company, partners or the trustee is not required to furnish a return for that year of income—the company, the partners or the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

## **11 Continuation of previous transitional election provisions**

In addition to the effect that items 22 and 23 of Schedule 1 to the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* have as a result of the amendments made by this Schedule, those items continue to have the effect that they would have had if the amendments had not been made.

**Schedule 11** Extension of transitional family trust and interposed entity election provisions

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*[Minister's second reading speech made in—  
House of Representatives on 30 June 1999  
Senate on 29 September 1999]*

(156/99)