



Taxation Laws Amendment Act (No. 2) 1996

No. 76, 1996

An Act to amend the law relating to taxation

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An Act to amend the law relating to taxation

[Assented to 18 December 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 1996*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 44, 45 and 46 of Schedule 1 are taken to have commenced on 1 January 1993.
- (3) Schedule 2 is taken to have commenced on 27 June 1996.

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- (4) Schedule 4 commences on the 60th day after the day on which this Act receives the Royal Assent.
 - (5) Items 1, 2 and 3 of Schedule 6 are taken to have commenced immediately after the commencement of Schedule 1 to the *Taxation Laws Amendment Act (No. 4) 1995*.
 - (6) Items 4 and 5 of Schedule 6 are taken to have commenced immediately after the commencement of items 1 and 2 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Income Tax Assessment Act 1936: various measures

Part 1—Offshore banking units

1 Section 121C (definition of *assessable OB income*)

Omit “subsection 121EE(2)”, substitute “subsections 121EE(2) and (3A)”.

2 Section 121C

Insert:

Australian thing has the meaning given by subsection 121DA(5).

3 Section 121C

Insert:

average Australian asset percentage has the meaning given by subsection 121DA(2).

4 Section 121C

Insert:

monthly Australian asset percentage has the meaning given by subsection 121DA(3).

5 Section 121C

Insert:

portfolio investment has the meaning given by subsection 121DA(1).

6 Paragraph 121D(1)(e)

After “subsection (6)”, insert “or (6A)”.

7 Paragraphs 121D(2)(a) and (b)

After “applies”, insert “and is not an OBU”.

8 Subsection 121D(6)

After “making”, insert “(but not managing)”.

9 Subsection 121D(6)

Omit “, or so making and managing such an investment”.

10 After subsection 121D(6)

Insert:

Investment activity—portfolio investment

(6A) For the purposes of paragraph (1)(e), an *investment activity* is also the managing by an OBU of a portfolio investment (see subsection 121DA(1)) for the whole or part (the *investment management period*) of a year of income, where:

- (a) the portfolio investment is managed as broker or agent for, or trustee for the benefit of, a non-resident; and
- (b) the portfolio investment was made by the OBU; and
- (c) the portfolio investment was made with a non-resident (except to the extent that making the investment consisted of making a loan or purchasing an Australian thing); and
- (d) the currency in which the portfolio investment was made was not Australian currency; and
- (e) if the portfolio investment consists of only a single thing—the thing is not an Australian thing (see subsection 121DA(5)); and
- (f) if paragraph (e) does not apply—the average Australian asset percentage (see subsection 121DA(2)) of the portfolio investment is not more than 10%.

11 After section 121D

Insert:

121DA Meaning of expressions relevant to *investment activity*

Portfolio investment

- (1) If, under a contract or trust instrument, an OBU manages one or more investments as broker or agent for, or trustee for the benefit

of, a non-resident, the investment, or all of the investments, constitute a *portfolio investment*.

Average Australian asset percentage

- (2) The *average Australian asset percentage* of a portfolio investment is the average, for all months that wholly or partly fall within the investment management period (see subsection 121D(6A)), of the monthly Australian asset percentages (see subsection (3)) of all of the things comprising the portfolio investment.

Monthly Australian asset percentage

- (3) For the purposes of subsection (2), the *monthly Australian asset percentage* of the things for a month is the percentage of the total value of all of the things comprising the portfolio investment, for the month, that is represented by the value of Australian things.

Basis for working out percentage

- (4) The percentage in subsection (3) must be worked out according to reasonable accounting practice that applies on the same basis for all months falling wholly or partly within the investment management period.

Australian thing

- (5) A thing is an *Australian thing* at a particular time if:
- (a) where the thing is a share in a company—the company is a resident company at the time; or
 - (b) where the thing is a unit in a unit trust—the unit trust is a resident trust (within the meaning of section 102Q) in relation to the year of income in which the time occurs; or
 - (c) where the thing is land or a building—the land or building is in Australia; or
 - (d) where the thing is a loan—the loan was made to an Australian resident; or
 - (e) in any other case—the thing is located in Australia at the time.

12 Subsection 121EE(2)

Omit “The”, substitute “Subject to subsection (3A), the”.

13 After subsection 121EE(3)

Insert:

Reduction of assessable OB income because of certain investment activities

- (3A) If OB activities of the OBU or the part of the OBU to which paragraph 121EB(1)(c) applies include an investment activity within the meaning of subsection 121D(6A), any assessable income derived from the investment activity that would otherwise be taken into account under subsection (2) is reduced by the average Australian asset percentage (within the meaning of subsection 121DA(2)) of the portfolio investment concerned.

14 At the end of section 121EI

Add:

No deduction if foreign tax credit is available

- (2) However, foreign tax paid by the OBU on those amounts is not an allowable deduction if the OBU is entitled to a credit under Division 18 in respect of the foreign tax.

Note: The following heading to subsection 121EI(1) is inserted: “*Deduction for foreign tax*”.

15 Paragraph 121EL(c)

Omit “of a kind to which subsection 121D(6) applies”, substitute “covered by subsection 121D(6) or (6A)”.

16 Paragraphs 121EL(d) and (e)

Omit “such investment activities”, substitute “an investment activity covered by subsection 121D(6)”.

17 At the end of section 121EL

Add:

- ; and (f) any income of the trust estate derived from an investment activity covered by subsection 121D(6A) is exempt from income tax, in so far as the income exceeds the average Australian asset percentage (within the meaning of subsection 121DA(2)) for the portfolio investment concerned; and

- (g) if, apart from this section, a capital gain would accrue to, or a capital loss would be incurred by, the trust estate under Part IIIA in respect of the disposal of any asset in the course of, or in connection with, an investment activity covered by subsection 121D(6A)—only the average Australian asset percentage (for the portfolio investment concerned) of the gain so accrues, or of the loss is so incurred.

18 Subsection 128AE(1)

Insert:

offshore gold borrowing means borrowing gold from an offshore person within the meaning of section 121E.

19 Subsection 128AE(1)

Insert:

tax exempt gold means gold that is tax exempt gold under this section.

20 Subsection 128AE(4)

After “offshore borrowing” (wherever occurring), insert “or offshore gold borrowing”.

21 Subsections 128AE(4), (5), (7), (8), (9) and (11)

After “tax exempt loan money” (wherever occurring), insert “or tax exempt gold”.

22 Subsection 128AE(8)

After “an amount”, insert “of money or gold”.

23 Subsections 128AE(9) and (11)

After “offshore borrowing” (wherever occurring), insert “or an offshore gold borrowing”.

24 Subsection 128GB(1)

Repeal the subsection, substitute:

- (1) This section applies to:

- (a) interest paid by a person in respect of an offshore borrowing of the person; or
 - (b) interest consisting of gold paid by a person in respect of an offshore gold borrowing of the person;
- if, when the borrowing took place, the person was an offshore banking unit (whether or not the person is still an offshore banking unit when the interest is paid).

25 Subsection 128GB(3)

After “offshore borrowing” (wherever occurring), insert “or offshore gold borrowing”.

26 Subsection 128GB(4) (definition of *offshore loan*)

After “a loan”, insert “of money or gold”.

27 Section 128NB

After “tax exempt loan money” (wherever occurring), insert “or tax exempt gold”.

28 Paragraph 128NB(1)(b)

After “offshore borrowing”, insert “or offshore gold borrowing”.

29 Application

- (1) The amendments made by items 1 to 17 apply to assessments of income of the 1996-97 year of income and of all later years of income.
- (2) The amendments made by the other items in this Part apply to interest paid by an OBU during the 1996-97 year of income and all later years of income.

Part 2—Complying funds: expenses of investing in pooled superannuation trusts or life assurance policies

30 After section 279D

Insert:

279E Expenses of investing in pooled superannuation trusts or life assurance policies

- (1) This section applies if a complying superannuation fund incurs expenditure in acquiring, holding or disposing of, or otherwise in relation to, an investment consisting of:
 - (a) units in a PST; or
 - (b) life assurance policies issued by a life assurance company or a registered organisation; or
 - (c) an interest in a trust whose assets consist wholly of life assurance policies issued by a life assurance company or a registered organisation.
- (2) In determining whether a deduction is allowable from the assessable income for the expenditure, it is to be assumed that:
 - (a) any profit or gain of a capital nature that the fund would derive in respect of the investment would instead be of an income nature; and
 - (b) paragraph 26AH(7)(b) and section 282A (which deal with excluding bonuses from assessable income) had not been enacted.

31 After section 289

Insert:

289A Expenses of investing in pooled superannuation trusts or life assurance policies

- (1) This section applies if a complying ADF incurs expenditure in acquiring, holding or disposing of, or otherwise in relation to, an investment consisting of:
 - (a) units in a PST; or

- (b) life assurance policies issued by a life assurance company or a registered organisation; or
 - (c) an interest in a trust whose assets consist wholly of life assurance policies issued by a life assurance company or a registered organisation.
- (2) In determining whether a deduction is allowable from the assessable income for the expenditure, it is to be assumed that:
- (a) any profit or gain of a capital nature that the fund would derive in respect of the investment would instead be of an income nature; and
 - (b) paragraph 26AH(7)(b) and section 291A (which deal with excluding bonuses from assessable income) had not been enacted.

32 Application

The amendments made by this Part apply to assessments for the year of income in which 1 July 1988 occurred and all later years of income.

Part 3—Deductions for gifts

33 Subsection 78(3) (after the entry relating to Australian Sports Foundation)

Insert:

Borneo Memorials Trust Fund (4) - Table 5, item 5.2.9

34 Subsection 78(3) (after the entry relating to Brisbane RAAF Memorial Fund)

Insert:

Central Synagogue Restoration Fund (4) - Table 5, item 5.2.8

35 Subsection 78(4) (at the end of Table 5)

Add:

5.2.8	The Central Synagogue Restoration Fund	the gift must be made after 22 December 1995 and before 23 December 1997
5.2.9	The Borneo Memorials Trust Fund	the gift must be made after 22 December 1995 and before 23 December 1997

Part 4—Repeal of section 261

36 Section 261

Repeal the section.

37 Application

The repeal applies to mortgages entered into after 27 June 1996.

Part 5—Taxation of income derived from sources outside Australia

38 After subsection 160AFB(5)

Insert:

- (5A) Despite paragraph (4)(b) and subsection (5), in determining for the purposes of this section:
- (a) whether a company has a voting interest in another company; and
 - (b) the extent of that interest;
- any appointment of a liquidator in respect of the other company is to be disregarded.

39 Subparagraph 160ZZO(2D)(b)(ii)

Omit “taxable Australian roll-over asset”, substitute “taxable Australian asset”.

40 Section 419 (subparagraph (i) of the paragraph (1)(a) substituted by that section for paragraph 160ZZO(1)(a))

Omit all the words before sub-subparagraph (A), substitute:

- (i) a company (the *transferor*) that is a CFC, and a resident of a listed country, at a particular time disposed of an asset (a *roll-over asset*) at that time to another company (the *transferee*), where any of the following sub-subparagraphs apply:

41 Section 419 (sub-subparagraph (C) of subparagraph (i) of the paragraph (1)(a) substituted by that section for paragraph 160ZZO(1)(a))

Before “asset”, insert “roll-over”.

42 Section 419 (subparagraph (ii) of the paragraph (1)(a) substituted by that section for paragraph 160ZZO(1)(a))

Omit “an asset”, substitute “a roll-over asset”.

43 Subsection 529(2)

Repeal the subsection, substitute:

- (2) If foreign investment fund income accrued to a taxpayer to whom this section applies from a FIF or a FLP in respect of a notional accounting period of the FIF or FLP, the taxpayer's assessable income of the year of income in which the notional accounting period ended includes:
- (a) if the taxpayer was a resident throughout the whole of the notional accounting period—the foreign investment fund income; or
 - (b) if the taxpayer was a resident throughout a part or parts of the notional accounting period—so much of the foreign investment fund income as is worked out using the formula:
$$\text{Foreign investment fund income} \times \frac{\text{Number of days of residence}}{\text{Total number of days}}$$

In the formula in paragraph (b):

foreign investment fund income means the amount of the foreign investment fund income that accrued to the taxpayer from the FIF or FLP in respect of the notional accounting period.

number of days of residence means the number of days in the notional accounting period throughout which the taxpayer was a resident.

total number of days means the number of days in the notional accounting period.

44 Paragraph 530(1)(a)

Repeal the paragraph, substitute:

- (a) a FIF attribution account payment is made by a FIF or a FLP to a taxpayer during a notional accounting period of the FIF or FLP, as the case may be; and

45 Paragraph 530(1)(b)

After "FIF", insert "or FLP".

46 After paragraph 530(1)(c)

Insert:

- (ca) was included in the taxpayer's assessable income of the year of income that immediately preceded the year of income referred to in paragraph (b); or

47 Application

- (1) The amendment made by item 38 is taken to have applied to assessments in respect of income of the 1987-88 year of income and later years of income.
- (2) The amendments made by items 39, 40, 41 and 42 apply to disposals of assets that occurred or occur after 2 April 1992.
- (3) The amendment made by item 43 applies to assessments in respect of income of the 1996-97 year of income and later years of income.

Schedule 2—Amendment of the Income Tax Assessment Act 1936: forgiveness of commercial debts

Part 1—Insertion of new Schedule 2C

1 After Schedule 2B

Insert:

Schedule 2C—Forgiveness of commercial debts

Division 245—Forgiveness of commercial debts

Guide to Division 245

245-1 What this Division is about

This Division applies if:

- (a) a debt or part of a debt ceases to be payable because the obligation to pay the debt or part is released or waived, or is otherwise extinguished (this is referred to as the *forgiveness* of the debt or part); and
- (b) there are amounts (*reducible amounts*) that would otherwise be taken into account in reducing the debtor's taxable income of the year of income in which the debt is forgiven or a later year of income.

The forgiven amount of the debt is treated as having been used to generate the reducible amounts and is accordingly applied to reduce them in a particular order.

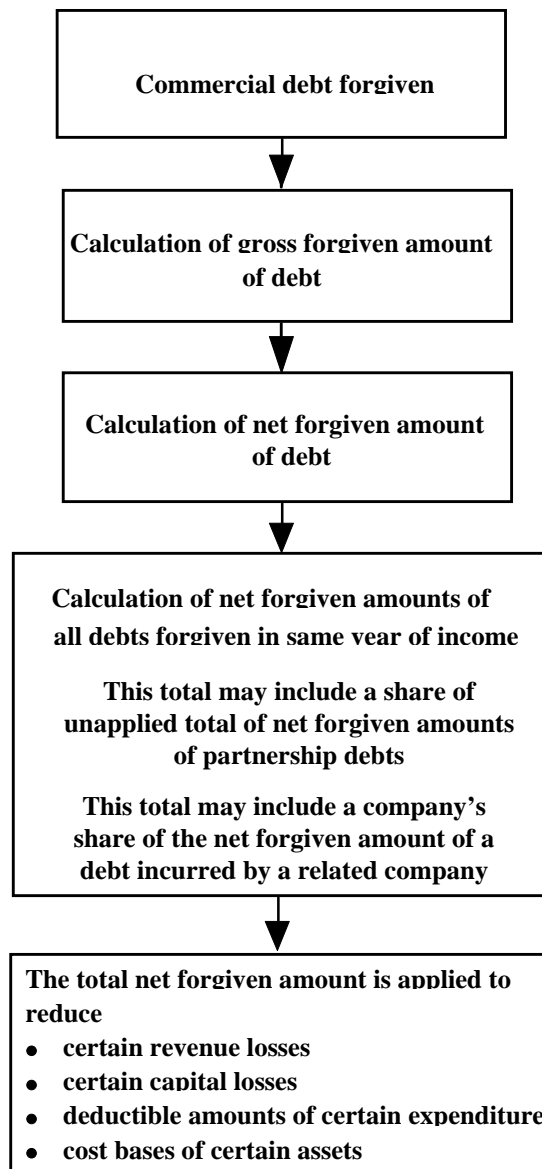
If the debtor is a company that is included in a group of related companies, the forgiven amount of the debt may be treated as

having been used to generate reducible amounts of one or more of the other companies.

245-2 Simplified outline of this Division

- (1) This Division applies to the forgiveness of the whole or a part of a commercial debt.
- (2) The forgiveness of a debt under an Act relating to bankruptcy, by will, or for reasons of natural love and affection, is not affected by the provisions of the Division.
- (3) Provision is made for the calculation of the *gross forgiven amount* in respect of each debt.
- (4) The gross forgiven amount may then be reduced by certain amounts that are taken into account in assessing the debtor's taxable income apart from this Division.
- (5) If the debt is owed between group companies, the gross forgiven amount may be further reduced in certain circumstances.
- (6) The amount remaining after all reductions to the gross forgiven amount is the *net forgiven amount* in respect of the debt.
- (7) The *total net forgiven amount* of all debts of a particular debtor that are forgiven in the same year of income (the *forgiveness year of income*) is to be applied in reduction of certain amounts that may otherwise be taken into account in assessing the debtor's taxable income.
- (8) The amounts to be reduced are certain revenue losses, net capital losses and other deductible amounts and the cost bases of certain assets.
- (9) Special rules apply in respect of debts of partnerships other than corporate limited partnerships.
- (10) Special rules apply in respect of debts of a company if the company is included in a group of related companies.

245-3 Map of this Division



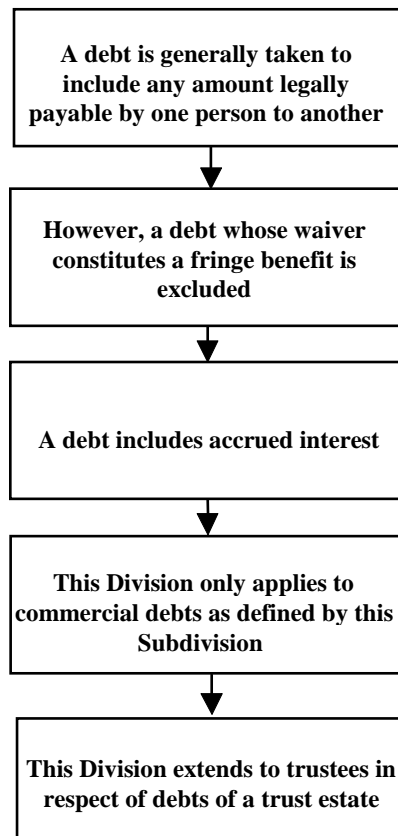
Subdivision 245-A—Debts to which this Division applies

Guide to Subdivision 245-A

245-5 What this Subdivision is about

The purpose of this Subdivision is to identify the debts to which this Division applies.

245-6 Map of this Subdivision



Operative provisions

245-10 Application of this Division

- (1) Subject to subsection (2), this Division applies to a forgiveness of a commercial debt but so applies only if the forgiveness occurs after the commencement day.
- (2) This Division does not apply to a forgiveness referred to in subsection (1) if the forgiveness occurs in accordance with the terms of an agreement or arrangement that:
 - (a) was entered into on or before the commencement day; and
 - (b) is evidenced in writing otherwise than by a document evidencing the agreement or transaction under which the debt arose.

245-15 What is a *debt*

- (1) Subject to this section, a *debt* is an enforceable obligation imposed by law on a person to pay an amount to another person.
- (2) If such an obligation is waived and the waiver constitutes a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment Act 1986*, the debt constituted by the obligation is to be disregarded for the purposes of this Division.
- (3) An amount that, apart from this subsection, would be an enforceable obligation referred to in subsection (1) is not to be regarded as a debt if the amount has been, or will be, included in the assessable income of any year of income of the person on whom the obligation is imposed.

245-20 Debt includes accrued interest

If there is, in respect of a debt, any interest or amount in the nature of interest that has accrued but has not been paid, the obligation to pay that interest or amount is not a separate debt but the first-mentioned debt includes the obligation to pay the interest or amount.

245-25 What constitutes a *commercial debt*

- (1) A debt is a ***commercial debt*** if it falls within any of the following provisions of this section.

Debt on which interest paid is an allowable deduction

- (2) A debt is a commercial debt if the whole or any part of interest, or of an amount in the nature of interest, paid or payable in respect of the debt:
- (a) is or would be allowable as a deduction to the debtor; or
 - (b) would be so allowable apart from the operation of an exception provision.

Debt on which no interest is payable

- (3) A debt is a commercial debt if interest, or an amount in the nature of interest, is not payable in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount:
- (a) would have been allowable as a deduction to the debtor; or
 - (b) would have been so allowable apart from the operation of an exception provision.

Amounts paid on shares in respect of which debt dividends are paid

- (4) A share issued by a company is taken to be a commercial debt owed by the company to the shareholder if a dividend paid in respect of the share would be a debt dividend within the meaning of subsection 46C(1) or 46D(1).

Meaning of exception provision

- (5) In this section:

exception provision means a provision of this Act that has the effect of preventing a deduction that would otherwise be allowable, but does not include an exception contained in subsection 51(1).

245-26 Application to trustees

This Division applies to a person in the capacity of a trustee of a trust estate in respect of the trust estate's debts, and references in this Division to a debtor include a reference to a person in the capacity of a trustee of a trust estate in respect of the trust estate's debts.

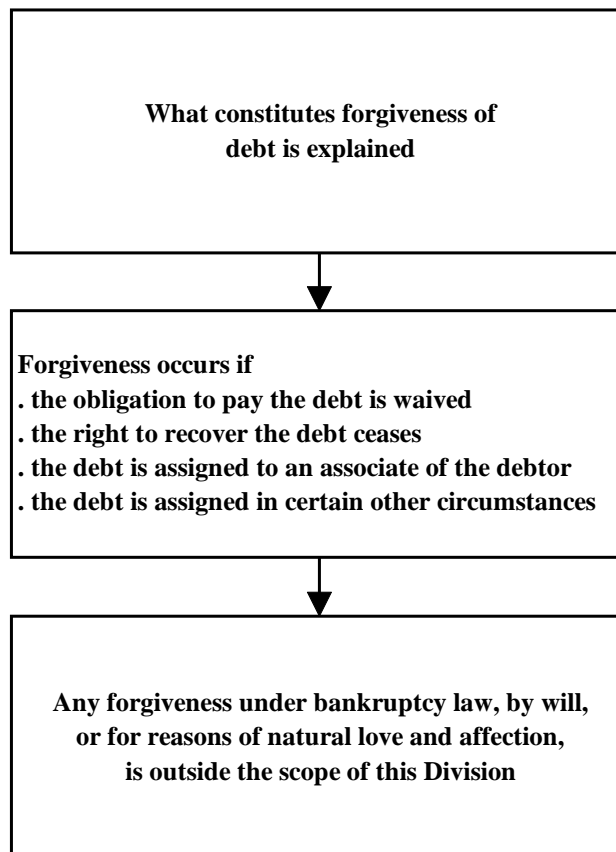
Subdivision 245-B—What constitutes forgiveness of a debt

Guide to Subdivision 245-B

245-30 What this Subdivision is about

<p>This Subdivision explains the circumstances in which a debt is taken to have been forgiven for the purposes of this Division.</p>
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245-31 Map of this Subdivision



Operative provisions

245-35 What constitutes *forgiveness* of a debt

Obligation to pay debt forgiven

- (1) A debt is forgiven if the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished.

Right to sue for debt ceases because of statute of limitations

- (2) A debt is forgiven if the period within which the creditor is entitled to sue for the recovery of the debt ends because of the operation of a statute of limitations without the debt having been paid.

Agreement to end obligation to pay debt with effect from a future time

- (3) If:
- (a) the debtor and creditor in relation to a debt enter into an agreement or arrangement (whether or not enforceable by legal proceedings); and
 - (b) under the agreement or arrangement the debtor's obligation to pay the whole or a part of the debt is to cease at a particular future time; and
 - (c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);

the debt or the part of the debt is taken to be forgiven when the agreement or arrangement is entered into. If, after the agreement or arrangement is entered into, the debt or the part of the debt is forgiven, the last-mentioned forgiveness is disregarded for the purposes of this Division.

Debt parking

- (4) If:
- (a) the creditor, in relation to a debt, assigns the right to receive payment of the debt to another person (the ***new creditor***); and
 - (b) either:
 - (i) the new creditor is an associate of the debtor; or
 - (ii) the assignment occurred under an agreement or arrangement to which the new creditor and the debtor were parties; and
 - (c) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of trading on a securities market;

this Division has effect as if:

- (d) the debtor had, at the time of the assignment, been forgiven a debt (the *notional debt*) equal to the amount of the assigned debt; and
- (e) the net forgiven amount of the notional debt were equal to the amount that would have been the net forgiven amount of the assigned debt if that debt had been forgiven instead of being assigned.

Subscription for shares to enable debt to be paid

(5) If:

- (a) a person subscribes for shares in a company to enable the company to make a payment in or towards discharge of a debt owed by it to the person; and
- (b) the company applies all or any of the money subscribed in or towards payment of the debt;

then:

- (c) so much of the debt as is paid out of the money so applied is taken to be forgiven; and
- (d) the time of the forgiveness is taken to be the time when the money is so applied.

Definition

(6) In this section:

securities market means a market, exchange or other place on which, or a facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III) are made or accepted.

245-40 Forgivenesses to which this Division does not apply

This Division does not apply to a forgiveness of a debt if:

- (a) the forgiveness is effected under an Act relating to bankruptcy; or
- (b) the forgiveness is effected by will; or
- (c) the debt is forgiven for reasons of natural love and affection.

Subdivision 245-C—Calculation of gross forgiven amount of a debt

Guide to Subdivision 245-C

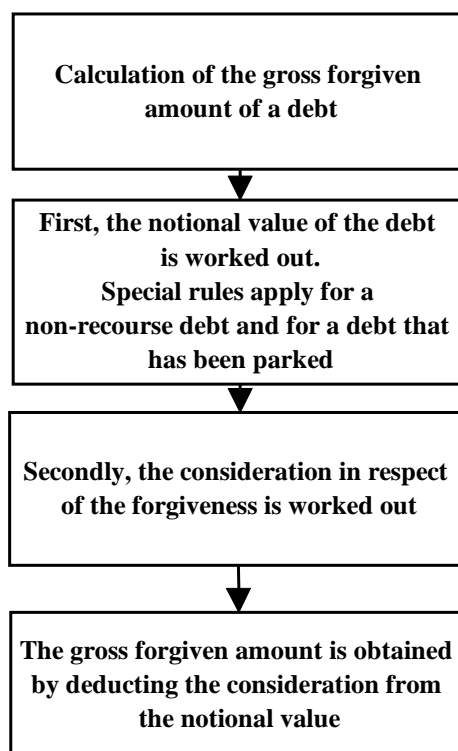
245-45 What this Subdivision is about

If a debt is forgiven, this Subdivision sets out the steps to be followed in calculating the gross forgiven amount of the debt.

245-46 Simplified outline of this Subdivision

- (a) The first step is to work out the *notional value* of a debt that has been forgiven
 - The notional value of the debt is calculated as at the time when the debt was forgiven on the basis that the debt was an asset of the creditor at that time.
 - The notional value of the debt is worked out for the purpose of calculating the gross forgiven amount of the debt.
 - A special rule applies for the purpose of working out the notional value of a non-recourse debt.
 - Another special rule applies for the purpose of working out the notional value of a debt that has been parked.
- (b) The second step is to work out the consideration (if any) in respect of the forgiveness of the debt.
- (c) If no such consideration was paid or given, the *gross forgiven amount* of the debt is equal to the notional value of the debt.
- (d) If any such consideration was paid or given, the *gross forgiven amount* of the debt is obtained by deducting the consideration from the notional value of the debt.

245-47 Map of this Subdivision



Operative provisions

245-50 What constitutes a forgiven debt if consideration is given in respect of the forgiveness

If any consideration is paid or given in respect of the forgiveness of a debt, the debt that is forgiven is taken to be:

- (a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and
- (b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

245-55 Working out *notional value* of a debt other than a non-recourse debt

- (1) Subject to sections 245-60 and 245-61, the *notional value* of a debt at the time when it was forgiven is the lesser of the amount worked out under subsection (2) (the *first applicable amount*) and the amount worked out under subsection (3) (the *second applicable amount*).
- (2) The *first applicable amount* is the amount that would have been the value of the debt (considered as an asset of the creditor) at the time when it was forgiven if:
 - (a) except where subsection (4) applies in relation to the debt, at the time when the debt was incurred the debtor was able to pay all the debtor's debts (including the debt concerned) as and when they fell due; and
 - (b) the debtor's capacity to pay the debt at the time when it was forgiven was the same as the debtor's capacity to pay the debt at the time when it was incurred.
- (3) The *second applicable amount* is the sum of the following amounts:
 - (a) the amount that would have been the value of the debt (considered as an asset of the creditor) at the time when it was forgiven if:
 - (i) except where subsection (4) applies in relation to the debt, at the time when the debt was incurred the debtor was able to pay all the debtor's debts (including the debt concerned) as and when they fell due; and
 - (ii) the debtor's capacity to pay the debt at the time when it was forgiven was the same as the debtor's capacity to pay the debt at the time when it was incurred; and
 - (iii) no changes occurred, between the time when the debt was incurred and the time when the debt was forgiven, in any market variables; and
 - (b) the amount or the sum of the amounts of any deduction or deductions that:
 - (i) have been allowed or are allowable to the debtor as a result of the forgiveness of the debt; and

- (ii) are attributable to changes in market variables that occurred between the time when the debt was incurred and the time when the debt was forgiven.
- (4) Paragraph (2)(a) and subparagraph (3)(a)(i) do not apply in relation to a debt if both of the following apply:
- (a) the debtor and the creditor were not dealing with each other at arm's length in respect of the incurring of the debt;
 - (b) the debt is not a moneylending debt.

- (5) In this section:

market variables, in relation to a debt, means changes in rates of interest, and changes in the rates of exchange between currencies, that affect the value of the debt.

245-60 Special rule for working out notional value of a non-recourse debt

- (1) This section applies to a debt (the *non-recourse debt*) if the debt was incurred directly in respect of the financing of the cost of the acquisition, construction or development of property (but not including the manufacture of goods) by the debtor and the rights of the creditor as against the debtor in the event of default in the payment of the debt or the payment of interest are limited to all or any of the following:
- (a) rights (including the right to moneys payable) in relation to all or any of the following:
 - (i) the property or the use of the property;
 - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the property;
 - (iii) the loss or disposal of the whole or a part of the property or of the debtor's interest in the property;
 - (b) rights in respect of a mortgage or other security over the property;
 - (c) rights arising out of any arrangement relating to the financial obligations, in relation to the property, of the end-user of the property towards the debtor.

- (2) The *notional value* of a non-recourse debt at the time when it was forgiven is the lesser of the following:
- (a) the amount of the non-recourse debt outstanding at that time;
 - (b) the market value at that time of the creditor's rights referred to in subsection (1) of this section.

- (3) In this section:

end-user, in relation to property, has the same meaning as in section 51AD.

245-61 Special rule for working out notional value of parked debt

If a debt that has been assigned as mentioned in subsection 245-35(4) is forgiven, the notional value of that debt is:

- (a) if the debt was not a moneylending debt and the creditor and the new creditor were not dealing with each other at arm's length in connection with the assignment—the market value of the debt at the time of the assignment; or
- (b) in any other case—the sum of:
 - (i) the amount or value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, to the creditor in respect of the assignment; and
 - (ii) the amount or value of the consideration (if any) paid or given by the new creditor in respect of the assignment.

245-65 The consideration in respect of forgiveness of a debt

- (1) Subject to subsection (2), the *consideration* in respect of the forgiveness of a debt (other than a debt to which subsection (3) or (4) applies) is:
- (a) if the debtor has paid, or is required to pay, an amount or amounts of money as a result of, or in respect of, the forgiveness of the debt:
 - (i) if the debt is not a moneylending debt—that amount or the sum of those amounts; or
 - (ii) if the debt is a moneylending debt—the sum of the amount or amounts (if any) that the debtor has paid and the market value, at the time of the forgiveness, of the debtor's obligation to pay an amount or amounts; or

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- (b) if the debtor has given, or is required to give, property other than money as a result of, or in respect of, the forgiveness of the debt—the market value of the property at the time of the forgiveness; or
- (c) if the debtor has paid or given, or is required to pay or give, both an amount or amounts of money and property other than money as a result of, or in respect of, the forgiveness of the debt:
- (i) if the debt is not a moneylending debt—the sum of that amount or those amounts and the market value of the property at the time of the forgiveness; or
- (ii) if the debt is a moneylending debt—the sum of the amount or amounts (if any) that the debtor has paid, the market value, at the time of the forgiveness, of the property (if any) that the debtor has given and the market value, at the time of the forgiveness, of the debtor's obligation to pay any amount or amounts or to give any property.
- (2) If a debt (other than a moneylending debt) to which subsection (1) applies is forgiven and:
- (a) there is no consideration in respect of the forgiveness; or
- (b) the whole or a part of the consideration in respect of the forgiveness cannot be valued; or
- (c) the amount that, apart from this paragraph, would be taken to be the amount or value of the consideration in respect of the forgiveness is greater or less than the market value of the debt at the time of the forgiveness and the debtor and creditor were not dealing with each other at arm's length in connection with the forgiveness;
- the debtor is taken to have paid as *consideration* in respect of the forgiveness of the debt an amount equal to the market value of the debt at the time of the forgiveness.
- (3) In calculating for the purposes of paragraph 245-35(4)(e) the amount that would have been the net forgiven amount of an assigned debt referred to in that paragraph if that debt had been forgiven instead of being assigned:
- (a) if the debt is not a moneylending debt and the creditor and the new creditor were not dealing with each other at arm's length in connection with the assignment—the *consideration*
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- in respect of the forgiveness of the debt is taken to be the market value of the debt at the time of the assignment; or
- (b) in any other case—the *consideration* in the respect of the forgiveness of the debt is taken to be the sum of:
- (i) the amount or value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, to the creditor in respect of the assignment; and
 - (ii) the amount or value of the consideration (if any) paid or given by the new creditor in respect of the assignment.
- (4) If a debt is forgiven by subscribing for shares in a company as mentioned in subsection 245-35(5), the *consideration* in respect of the forgiveness of the debt is the amount worked out using the formula:

$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

where:

amount applied means the amount applied by the company as mentioned in paragraph 245-35(5)(b).

amount subscribed means the amount subscribed as mentioned in paragraph 245-35(5)(a).

market value of shares subscribed for means the market value, of all the shares in the company that were subscribed for as mentioned in paragraph 245-35(5)(a), immediately after those shares were issued.

245-70 Money or other property applied for benefit of creditor

- (1) For the purposes of section 245-65:
- (a) money or property is taken to have been paid or given to a creditor if the money or property has been applied for the benefit, or in accordance with the directions, of the creditor; and
 - (b) a debtor is taken to be required to pay money or give property to a creditor if the debtor is required to apply money or property for the benefit, or in accordance with the directions, of the creditor.

- (2) For the purposes of section 245-65, a reference in subsection (1) to the application of money or property for the benefit of a creditor includes, without limiting the generality of the expression, a reference to the application of money or property in the discharge, wholly or partly, of a debt due by the creditor.
- (3) This section does not limit the operation of section 19.

245-75 Gross forgiven amount of a debt

- (1) If no consideration is paid or given, or taken to be paid or given, in respect of the forgiveness of the debt, the **gross forgiven amount** of the debt is an amount equal to the notional value of the debt at the time when the debt was forgiven.
- (2) If any consideration is paid or given, or taken to be paid or given, in respect of the forgiveness of the debt:
 - (a) where the notional value of the debt at the time when the debt was forgiven exceeds the consideration—the **gross forgiven amount** of the debt is an amount equal to the excess; or
 - (b) where the notional value of the debt at the time when the debt was forgiven is equal to or less than the consideration—there is no forgiven amount in respect of the debt and Subdivisions 245-D to 245-G do not apply in respect of the debt.

Subdivision 245-D—Calculation of net forgiven amount of a debt

Guide to Subdivision 245-D

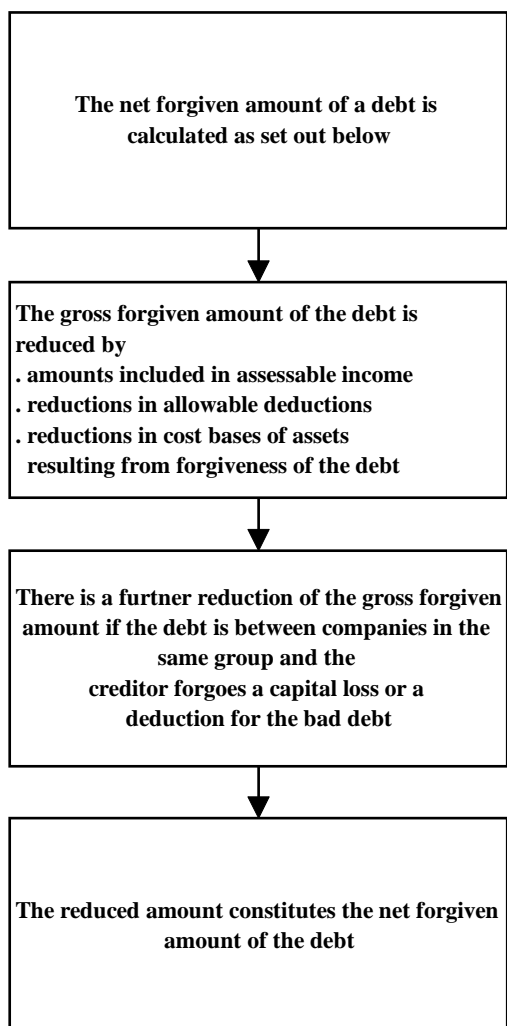
245-80 What this Subdivision is about

This Subdivision provides for the gross forgiven amount of a debt to be reduced in certain circumstances.

If the gross forgiven amount is not reduced under this Subdivision, the gross forgiven amount is also the **net forgiven amount** of the debt.

If the gross forgiven amount is reduced under this Subdivision, the amount remaining after the reduction is the *net forgiven amount* of the debt.

245-81 Map of this Subdivision



Operative provisions

245-85 Reduction of gross forgiven amount

- (1) The gross forgiven amount of a debt is reduced by the sum of any of the following amounts that apply in relation to the debtor:
 - (a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in the debtor's assessable income of any year of income as a result of the forgiveness of the debt;
 - (b) any amount by which, under a provision of this Act other than this Division, a deduction that would otherwise be allowable from the debtor's assessable income of any year of income has been, or will be, reduced as a result of the forgiveness of the debt;
 - (c) any amount by which the cost base to the debtor of any asset for the purposes of Part IIIA has been, or will be, reduced under that Part as a result of the forgiveness of the debt.
- (2) The amount remaining after reducing the gross forgiven amount under subsection (1) is:
 - (a) if section 245-90 does not apply—the *net forgiven amount* of the debt; or
 - (b) if section 245-90 applies—the *provisional net forgiven amount* of the debt.

245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction under subsection 51(1) or section 63

- (1) This section applies if:
 - (a) a debt owed by a company to another company is forgiven; and
 - (b) throughout the period from the time when the debt was incurred until the time when the debt is forgiven, the companies were under common ownership.
- (2) If, apart from this subsection, the creditor would have incurred a capital loss under paragraph 160Z(1)(b) as a result of the forgiveness of the debt:

Schedule 2 Amendment of the Income Tax Assessment Act 1936: forgiveness of commercial debts

- (a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the provisional net forgiven amount of the debt; and
 - (b) if such an agreement is made:
 - (i) the creditor's capital loss is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
 - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the *net forgiven amount* of the debt.
- (3) If, apart from this subsection, a deduction in respect of the debt would be allowable to the creditor under subsection 51(1) or section 63 in the forgiveness year of income:
- (a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the provisional net forgiven amount of the debt; and
 - (b) if such an agreement is made:
 - (i) the deduction otherwise allowable to the creditor is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
 - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the *net forgiven amount* of the debt.
- (4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:
- (a) is in writing and signed by the public officer of the company that is the debtor and by the public officer of the company that is the creditor; and
 - (b) is made before whichever is the earlier of the following:
 - (i) the date of lodgment of the return of income for the forgiveness year of income of the company that is the creditor;

- (ii) the date of lodgment of the return of income for the forgiveness year of income of the company that is the debtor;
or before any later date that the Commissioner determines.

Subdivision 245-E—Application of net forgiven amounts

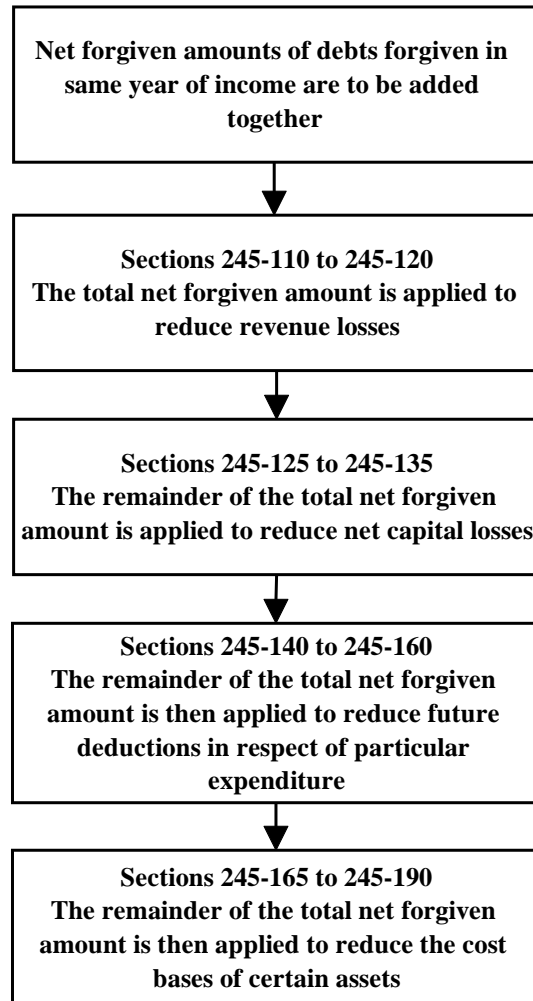
Guide to Subdivision 245-E

245-95 What this Subdivision is about

This Subdivision provides for the total of the net forgiven amounts (the *total net forgiven amount*) of all debts of a particular debtor that are forgiven in the same year of income (the *forgiveness year of income*) to be applied in reduction of amounts that would otherwise be taken into account in assessing the debtor's taxable income of the forgiveness year of income or any later year of income.

This Subdivision does not apply to the calculation of attributable income of a non-resident trust estate or a controlled foreign company.

245-96 Map of this Subdivision



General operative provisions

245-100 Subdivision not to apply to calculation of attributable income

This Subdivision does not apply to the calculation of:

- (a) attributable income of a non-resident trust estate for the purposes of Division 6AAA of Part III; or

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- (b) attributable income of a controlled foreign company for the purposes of Part X.

245-105 How *total net forgiven amount* is to be applied

- (1) Subject to subsection (2), the total of the net forgiven amounts of all debts of a debtor that are forgiven in the same year of income (the *forgiveness year of income*) constitutes the ***total net forgiven amount*** in relation to the debtor in respect of the forgiveness year of income.
 - (2) Section 245-215 has effect in calculating the total net forgiven amount of a partner in a partnership.
 - (3) Subdivision 245-G has effect in calculating the total net forgiven amount of a company that is included in a group of related companies.
 - (4) The total net forgiven amount is to be applied in accordance with this section before the debtor's return in respect of income of the forgiveness year of income is furnished to the Commissioner.
 - (5) The total net forgiven amount is to be applied first, in accordance with sections 245-110 to 245-120, in reduction of deductible revenue losses (if any) incurred by the debtor in years of income before the forgiveness year of income.
 - (6) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsection (5), it is to be applied, in accordance with sections 245-125 to 245-135, in reduction of deductible net capital losses (if any) incurred by the debtor in respect of the year of income immediately preceding the forgiveness year of income.
 - (7) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsections (5) and (6), it is to be applied, in accordance with sections 245-140 to 245-160, in reduction of deductible expenditures (if any) that are to be taken into account in the assessment of the debtor's taxable income of the forgiveness year of income or any later year of income.
 - (8) To the extent to which the total net forgiven amount cannot be applied as mentioned in subsections (5), (6) and (7), it is to be applied, in accordance with sections 245-165 to 245-190, in
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reduction of the relevant cost bases of certain assets of the debtor at the beginning of the forgiveness year of income.

Operative provisions relating to reduction of revenue losses

245-110 Definitions applicable to provisions reducing revenue losses

In sections 245-110 to 245-120:

deductible revenue loss means a loss:

- (a) that is of a kind described in the table of deductible revenue losses; and
- (b) in respect of which a deduction would, apart from this Subdivision, be allowable to the debtor in the forgiveness year of income or any later year of income if the debtor had derived sufficient assessable income in the year of income concerned (including sufficient assessable income from which the loss could be deducted).

table of deductible revenue losses means the following table:

Table of deductible revenue losses	
Column 1	Column 2
General description of losses	Provision under which loss is deductible
General domestic losses of post-1989 years of income	Subsection 79E(3)
Film losses of post-1989 years of income	Subsection 79F(6)
General domestic losses of pre-1990 years of income	Subsection 80(2)
Film losses of pre-1990 years of income	Subsection 80AAA(7)
Primary production losses of pre-1990 years of income	Subsection 80AA(4)
Foreign losses of pre-1990 years of income	Subsection 160AFD(1)
Foreign losses of post-1989 years of income	Subsection 160AFD(2)

245-115 Total net forgiven amount to be applied in reduction of revenue losses

The total net forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with section 245-120, of deductible revenue losses (if any).

245-120 Allocation of total net forgiven amount in respect of deductible revenue losses

- (1) The debtor may choose:
 - (a) the order in which the deductible revenue losses are to be reduced; and
 - (b) the amount by which each of those losses is to be reduced; provided that the total net forgiven amount is applied, to the maximum extent possible, in reduction of deductible revenue losses.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

Operative provisions relating to reduction of net capital losses

245-125 Definitions applicable to provisions reducing net capital losses

In sections 245-125 to 245-135:

deductible net capital loss means:

- (a) a net capital loss (if any) that:
 - (i) is taken under subsection 160ZC(4), for the purposes of Part IIIA, to have been incurred by the debtor in respect of the year of income immediately preceding the forgiveness year of income; and
 - (ii) would, apart from this Subdivision, be taken into account in determining whether a net capital gain accrued to the debtor, or the debtor incurred a net capital loss, in respect of the forgiveness year of income; or
- (b) a net listed personal-use asset loss (if any):

- (i) that is taken under subsection 160ZQ(6), for the purposes of section 160ZQ, to have been incurred by the debtor in respect of the year of income immediately preceding the forgiveness year of income; and
- (ii) would, apart from this Subdivision, be taken into account in determining whether a capital gain accrued to the debtor, or the debtor incurred a net listed personal-use asset loss, in respect of the forgiveness year of income.

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses.

245-130 Residual forgiven amount to be applied in reduction of net capital losses

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of deductible net capital losses (if any).

245-135 Allocation of residual forgiven amount in respect of deductible net capital losses

- (1) The debtor may choose:
 - (a) the order in which the deductible net capital losses are to be reduced; and
 - (b) the amount by which each of those losses is to be reduced; provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of deductible net capital losses.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

Operative provisions relating to reduction of deductible expenditure

245-140 Definitions applicable to provisions reducing deductible expenditure

(1) In sections 245-140 to 245-160:

deductible expenditure means expenditure (other than excluded expenditure):

- (a) that is of a kind referred to in the table of deductible expenditure and was incurred before the forgiveness year of income; and
- (b) in respect of which a deduction would, apart from this Subdivision, be allowable to the debtor in respect of income of the forgiveness year of income or a later year of income if no event or circumstance (other than a recoupment of the expenditure in the forgiveness year of income) occurred that would affect the allowance of the deduction.

excluded expenditure has the meaning given by subsections (2), (3) and (4).

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses and deductible net capital losses.

table of deductible expenditure means the following table.

Table of deductible expenditure	
Column 1	Column 2
General description of expenditure	Provision under which a deduction is allowable in respect of the expenditure
Cost of plant or articles used (or installed ready for use) to produce assessable income	Subsections 54(1), 56(1), 57AK(4) and 57AM(5), (7), (9), (10) and (11)
Expenditure incurred in borrowing money to produce assessable income	Subsection 67(1)

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Table of deductible expenditure	
Column 1	Column 2
General description of expenditure	Provision under which a deduction is allowable in respect of the expenditure
Expenditure on a telephone line on land on which a business of primary production is carried on	Subsection 70(2)
Expenditure in connecting or upgrading mains electricity facilities on land used or intended for use in producing assessable income	Subsection 70A(3)
Expenditure on scientific research	Subsection 73A(2)
Expenditure in connection with clearing and preparing land for primary production	Subsection 75A(3)
Expenditure on establishing a grape vine	Subsection 75AA(1)
Expenditure on plant or structural improvements for conserving or conveying water	Subsection 75B(3B)
Expenditure on certain kinds of plant and equipment for use in very large development projects	Subsections 82AB(1) and 82AT(1)
Expenditure on study to evaluate the environmental impact of an income producing project	Paragraphs 82BB(1)(b), (c) and (d)
Advance revenue expenditure	Section 82KZM
Expenditure incurred in relation to mining or quarrying operations	Sections 122D, 122DB, 122DD, 122DF, 122DG, 122JE and 122KA
Expenditure incurred on exploration or prospecting for minerals obtainable by prescribed mining operations	Section 122J
Expenditure incurred in transporting minerals or quarry materials	Subsections 123B(1) and 123BE(1)
Expenditure on prospecting and mining for petroleum	Sections 124AD, 124ADB, 124ADD, 124ADE, 124ADF, 124ADG, 124AF, 124AH and 124AMA

Table of deductible expenditure	
Column 1	Column 2
General description of expenditure	Provision under which a deduction is allowable in respect of the expenditure
Expenditure on access roads to an area of timber operations	Section 124F
Expenditure on timber buildings used for timber milling business, if the buildings are in a forest or adjacent to a timber milling or timber felling area	Subsection 124JA(1)
Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1)
Expenditure on Australian films	Section 124ZAF
Construction costs of building for short term traveller accommodation	Section 124ZC
Construction costs of buildings, structural improvements etc.	Subsections 124ZH(1), (2) and (2A)

- (2) Expenditure is *excluded expenditure* if:
- (a) it was incurred in respect of an asset that has been disposed of by the debtor to a person who was dealing at arm's length with the debtor in respect of the disposal; and
 - (b) the disposal occurred during the forgiveness year of income before the forgiveness of any debt owed by the debtor, being a forgiveness that resulted in a net forgiven amount; and
 - (c) no provision of this Act includes an amount in the debtor's assessable income, or allows a deduction to the debtor, as a result of the disposal.
- (3) Expenditure is *excluded expenditure* if the asset in respect of which the expenditure was incurred was disposed of by the debtor, or was lost or destroyed, on or before the commencement day.
- (4) Expenditure is *excluded expenditure* to the extent (if any) to which the expenditure was recouped on or before the commencement day.

245-145 Residual forgiven amount to be applied in reduction of deductible expenditures

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with sections 245-150 and 245-155, of deductible expenditures (if any).

245-150 Allocation of residual forgiven amount in respect of deductible expenditures

- (1) The debtor may choose:
 - (a) the order in which deductible expenditures are to be subject to reduction; and
 - (b) the amount to be applied in reduction of each of those expenditures;provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of deductible expenditures.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

245-155 How a reduction of a deductible expenditure is to be effected

- (1) The following paragraphs apply in respect of the reduction of any deductible expenditure if the deduction that would be allowable to the debtor, apart from this Subdivision, in respect of the deductible expenditure is a percentage, fraction or proportion of an amount (the *base amount*) that is worked out without regard to any amount or amounts previously allowed as a deduction or deductions in respect of the deductible expenditure:
 - (a) any amount that is to be applied in reduction of the deductible expenditure is taken to reduce the base amount for the purpose of working out the deduction in respect of the forgiveness year of income and later years of income;
 - (b) the amount of the reduction is taken to have been a deduction allowed to the debtor in respect of the deductible expenditure before the forgiveness year of income for the purposes of the operation of any provision of this Act that includes an

amount in the debtor's assessable income or allows a deduction to the debtor:

- (i) because of the disposal, loss or destruction of the asset in respect of which the deductible expenditure was incurred; or
 - (ii) because of the recoupment of any of the expenditure; or
 - (iii) because use of the asset for a particular purpose has been otherwise terminated;
- as the case may be;
- (c) the total amount of the deductions allowed or allowable otherwise than under paragraph (b) in respect of the deductible expenditure for all years of income (including years of income before the forgiveness year of income) must not exceed the base amount as reduced under paragraph (a).
- (2) If the deduction that would be allowable to the debtor, apart from this Subdivision, in respect of any deductible expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount or amounts previously allowed as a deduction or deductions in respect of the deductible expenditure, any amount to be applied in reduction of the deductible expenditure is taken to have been a deduction allowed to the debtor in respect of the deductible expenditure before the forgiveness year of income.

245-160 Amount applied in reduction of deductible expenditure to be included in assessable income in certain circumstances

If:

- (a) an amount of deductible expenditure is recouped after the forgiveness year of income; and
- (b) as a result of the recoupment, this Act applies to disallow any deduction previously allowed to the debtor in respect of the expenditure;

an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the deductible expenditure is included in the debtor's assessable income of the year of income in which the expenditure is recouped.

Operative provisions relating to reduction of cost bases of assets

245-165 Definitions applicable to provisions reducing cost bases

- (1) In sections 245-165 to 245-190:

excluded asset has the meaning given by section 245-170.

reducible asset means an asset (other than an excluded asset) of the debtor at the beginning of the forgiveness year of income.

relevant cost base, in relation to an asset, means the cost base, the indexed cost base, or the reduced cost base, of the asset.

residual forgiven amount means the total net forgiven amount to the extent to which it has not been applied in making reductions of deductible revenue losses, deductible net capital losses and deductible expenditures.

- (2) In sections 245-165 to 245-190, an expression that is used in Part IIIA has the meaning given to that expression by that Part.

245-170 Excluded assets

The following assets of a debtor are excluded assets:

- (a) an asset acquired by the debtor before 20 September 1985;
 - (b) an asset disposed of by the debtor on or before the commencement day;
 - (c) a non-listed personal-use asset;
 - (d) a dwelling that was the sole or principal residence of the debtor at any time before the forgiveness year of income;
 - (e) goodwill;
 - (f) a right referred to in section 160ZZJ (a right to, or to any part of, an allowance, annuity or capital amount payable out of an asset of a superannuation fund or an approved deposit fund or a right to, or to a part of, an asset of such a fund);
 - (g) an asset that, throughout the period before the forgiveness year when it was owned by the debtor, constituted trading stock of the debtor for the purposes of this Act;
 - (h) an asset:
 - (i) the cost of which is deductible expenditure in relation to the debtor under section 245-140; and
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- (ii) as a result of the disposal of which an amount would be included in the debtor's assessable income or a deduction would be allowable to the debtor;
- (i) if the debtor is a non-resident at the beginning of the forgiveness year of income—an asset that is not a taxable Australian asset.

245-175 Residual forgiven amount to be applied in reduction of cost bases of assets

The residual forgiven amount is to be applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the relevant cost bases of reducible assets (if any).

245-180 Allocation of residual forgiven amount among relevant cost bases of assets

- (1) Subject to section 245-185, the debtor may choose:
 - (a) the reducible assets whose relevant cost bases are to be subject to reduction; and
 - (b) the amount to be applied in reduction of the relevant cost base of each of those assets;provided that the residual forgiven amount is applied, to the maximum extent possible, in reduction of the relevant cost bases of reducible assets.
- (2) If the debtor does not make a choice for the purposes of subsection (1), the Commissioner may make the choice on behalf of the debtor in a reasonable way.

245-185 Relevant cost bases of investments in associated entities to be reduced last

- (1) If a debtor's reducible assets include investments in, or in relation to, entities that are associates of the debtor, the relevant cost bases of those investments are not subject to reduction under section 245-175 until the residual forgiven amount has been applied, to the maximum extent possible, in reduction of the relevant cost bases of reducible assets other than such investments.
- (2) In this section:

entity means a natural person, a partnership, a trustee of a trust or a company.

investment includes:

- (a) in respect of an entity that is a partnership—an interest as a partner in a partnership; and
- (b) in respect of an entity that is a trustee of a trust—a beneficial interest under the trust; and
- (c) in respect of an entity that is a company—a share in the company; and
- (d) in respect of any entity—a debt owed to the debtor by the entity.

245-190 How a reduction of the relevant cost bases of an asset is to be effected

- (1) Subject to subsection (3), if the debtor chooses to apply an amount in reduction of the relevant cost bases of a particular asset, each relevant cost base of the asset, as at any time on or after the beginning of the forgiveness year of income, is taken to be reduced by that amount.
- (2) The reduction by a particular amount of each of the relevant cost bases of a particular asset is, for the purpose of working out the amount by which the residual forgiven amount is applied in making the reduction, taken to be a reduction in that residual forgiven amount by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).
- (3) The maximum amount by which each of the relevant cost bases of an asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if:
 - (a) the asset had been disposed of on the first day of the forgiveness year of income; or
 - (b) if, after the beginning of the forgiveness year of income, an event occurred that would cause the reduced cost base of the asset to be reduced—the asset had been disposed of on the day on which the event occurred.

Operative provision relating to unapplied total net forgiven amount

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

- (1) If any part of the total net forgiven amount remains after the application of that amount in making reductions under the preceding provisions of this Subdivision, the remaining part is disregarded.
- (2) This section has effect subject to section 245-215.

Subdivision 245-F—Special rules relating to partnerships

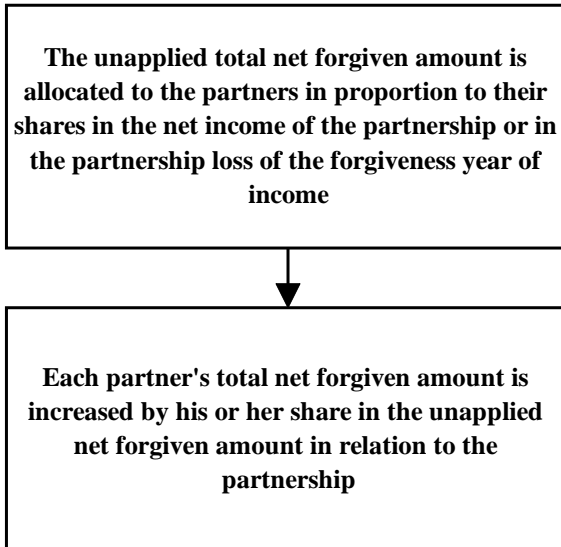
Guide to Subdivision 245-F

245-200 What this Subdivision is about

This Subdivision provides that the preceding Subdivisions apply to a partnership in relation to debts owed by the partnership that are forgiven.

However, if the total net forgiven amount in relation to a partnership is not able to be fully applied under those provisions as they apply to the partnership, the remainder is treated as being net forgiven amounts of debts of the partners in proportion to their respective shares in the net income, or the partnership loss, of the partnership of the forgiveness year of income.

245-201 Map of this Subdivision



Operative provisions

245-205 This Subdivision does not apply to corporate limited partnerships

- (1) This Subdivision does not apply to a corporate limited partnership.
- (2) This Division, other than this Subdivision, applies to a corporate limited partnership as if the partnership were a company.
- (3) In this section:

corporate limited partnership has the meaning given by section 94D.

245-210 Subdivisions 245-A to 245-E to apply to partnerships

- (1) Subdivisions 245-A to 245-D apply to a partnership in respect of the partnership's debts, and references in those Subdivisions to a debtor include a reference to a partnership in respect of the partnership's debts.

- (2) Subject to section 245-215, Subdivision 245-E applies to a partnership in respect of the total net forgiven amount calculated in relation to the partnership under Subdivisions 245-A to 245-D as they apply under subsection (1).

245-215 Unapplied total net forgiven amount of a partnership to be transferred to partners

- (1) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.
- (2) This section applies if any part (the *residual amount*) of the total net forgiven amount in relation to a partnership in respect of the forgiveness year of income remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.
- (3) If there is a net income in relation to the partnership in respect of the forgiveness year of income, each partner is taken to have had a debt forgiven during the forgiveness year of income and there is taken to be, in respect of the debt of each partner, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

- (4) If there is a partnership loss in relation to the partnership in respect of the forgiveness year of income, each partner is taken to have had a debt forgiven during the forgiveness year of income and there is taken to be, in respect of the debt of each partner, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

- (5) In the formulas in subsections (3) and (4):

partner's share of net income means the part of the net income of the partnership of the forgiveness year of income that is included in the partner's assessable income.

partner's share of partnership loss means the part of the partnership loss that is allowable as a deduction to the partner.

net income means the net income of the partnership of the forgiveness year of income.

partnership loss means the partnership loss of the forgiveness year of income.

residual amount has the meaning given by subsection (2).

- (6) The total net forgiven amount of a partner for the forgiveness year of income as worked out under subsection 245-105(1) includes the net forgiven amount worked out in relation to the partner under this section.

Subdivision 245-G—Special rules affecting related companies

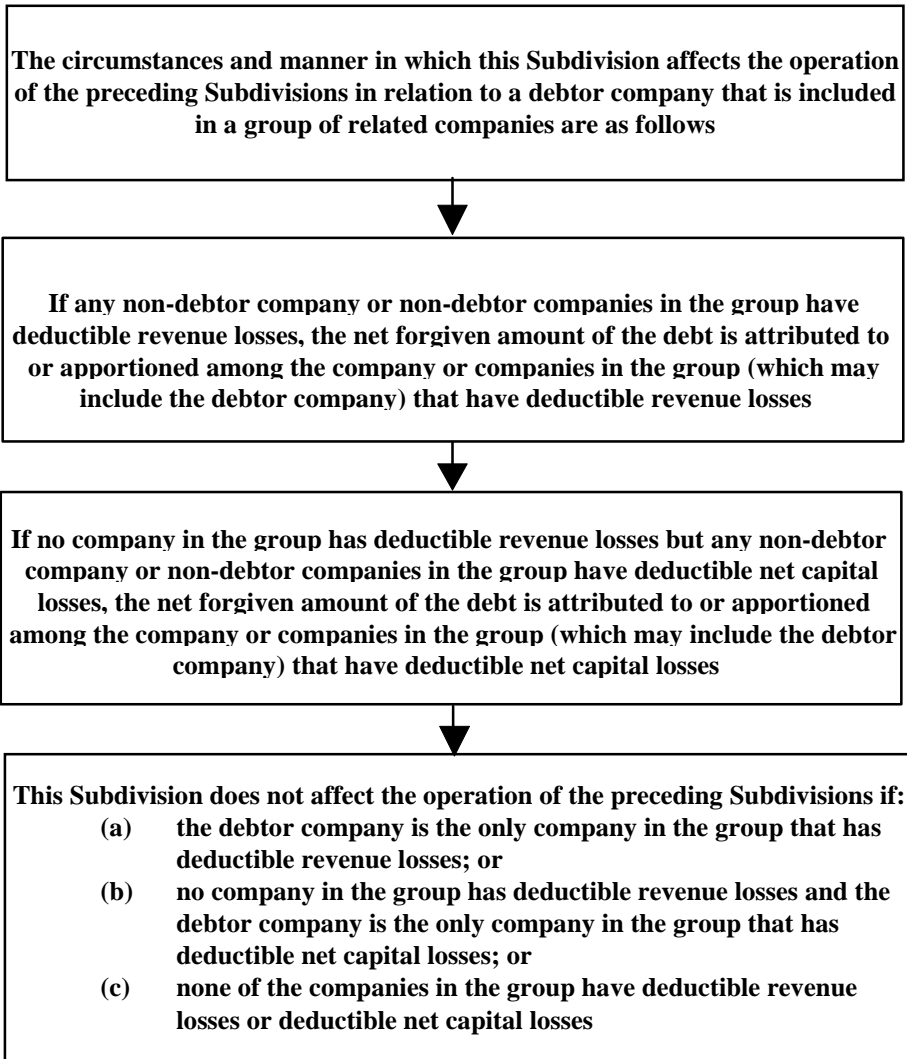
Guide to Subdivision 245-G

245-220 What this Subdivision is about

This Subdivision applies in certain circumstances if, at the time when a debt incurred by a company is forgiven, the company and another company or other companies constituted a group of related companies.

The forgiven amount of the debt is treated in those circumstances as having been used to generate amounts that would otherwise be taken into account in reducing the taxable incomes of the debtor company and other company or companies in the group.

245-221 Map of this Subdivision



Operative provisions

245-225 Application of Subdivision

- (1) This Subdivision applies in respect of a debt (the *relevant debt*) incurred by a company (the *debtor company*) if, and only if:
 - (a) the relevant debt has been forgiven; and

- (b) there is a net forgiven amount in respect of the relevant debt; and
 - (c) the debtor company and another company or other companies constitute a group of related companies in respect of the relevant debt.
- (2) The debtor company and another company or other companies constitute a group of related companies in respect of the relevant debt for the purposes of this section if the companies concerned were under common ownership:
- (a) at the time when the relevant debt was forgiven; and
 - (b) at any time on the last day of the year of income that immediately preceded the forgiveness year of income in respect of the relevant debt.
- (3) If:
- (a) the debtor company and another company were not under common ownership at the times mentioned in subsection (2); and
 - (b) the 2 companies had been under common ownership at any time within:
 - (i) the 2 years of income that immediately preceded the forgiveness year of income in respect of the relevant debt; or
 - (ii) the part of the forgiveness year of income that occurred before the relevant debt was forgiven; and
 - (c) a taxpayer who was a controller of the other company immediately before, and immediately after, the 2 companies ceased to be under common ownership was also:
 - (i) a controller of the other company at the time when the relevant debt was forgiven; and
 - (ii) a controller of the debtor company at that time;
- the other company is taken to be included in the group of related companies referred to in subsection (2) in respect of the relevant debt.

245-230 If any non-debtor companies in a group of related companies have deductible revenue losses

- (1) This section applies in relation to the relevant debt if, and only if, any one or more of the non-debtor companies in the group of related companies in respect of the relevant debt have deductible revenue losses for the purposes of the application of this Division in relation to the forgiveness year of income in respect of the relevant debt (the *relevant year of income*).
- (2) The net forgiven amount of the relevant debt (the *disregarded net forgiven amount*) is disregarded for the purposes of this Division other than this Subdivision.
- (3) However, each company in the group that has deductible revenue losses for the purposes mentioned in subsection (1) (including the debtor company if it has deductible revenue losses for those purposes) is taken to have had a debt forgiven during the relevant year of income and there is taken to be, in respect of each such debt, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Company's deductible revenue losses}}{\text{Total deductible revenue losses}} \times \text{Disregarded net forgiven amount}$$

where:

company's deductible revenue losses means the total of the company's deductible revenue losses for the purposes of the application of this Division in relation to the relevant year of income.

total deductible revenue losses means the total of the deductible revenue losses of all the companies in the group of related companies for the purposes of the application of this Division in relation to the relevant year of income.

245-235 If any non-debtor companies in a group of related companies have deductible net capital losses

- (1) This section applies in relation to the relevant debt if, and only if, for the purposes of the application of this Division in relation to the forgiveness year of income in respect of the relevant debt (the *relevant year of income*):

- (a) none of the companies in the group of related companies in respect of the relevant debt have deductible revenue losses; but
 - (b) any one or more of the non-debtor companies in the group of related companies in respect of the relevant debt have deductible net capital losses.
- (2) The net forgiven amount of the relevant debt (the *disregarded net forgiven amount*) is disregarded for the purposes of this Division other than this Subdivision.
- (3) However, each company in the group that has deductible net capital losses for the purposes mentioned in subsection (1) (including the debtor company if it has deductible net capital losses for those purposes) is taken to have had a debt forgiven during the relevant year of income and there is taken to be, in respect of each such debt, a net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Company's deductible net capital losses}}{\text{Total deductible net capital losses}} \times \text{Disregarded net forgiven amount}$$

where:

company's deductible net capital losses means the total of the company's deductible net capital losses for the purposes of the application of this Division in relation to the relevant year of income.

total deductible net capital losses means the total of the deductible net capital losses of all the companies in the group of related companies for the purposes of the application of this Division in relation to the relevant year of income.

245-240 If neither section 245-230 nor 245-235 applies

If neither section 245-230 nor 245-235 applies in respect of the relevant debt, this Subdivision does not affect the application of the preceding Subdivisions in relation to the net forgiven amount of the debt.

Subdivision 245-H—General

245-245 Definitions

- (1) In this Division, unless the contrary intention appears:

associate has the meaning given by section 318.

commencement day means the day on which this Schedule commences.

debt includes a part of a debt.

debtor company, in relation to a group of companies that are related companies in respect of a debt incurred by one of those companies, means the company in the group that incurred the debt.

deductible net capital loss, subject to subsection (2), has the meaning given by section 245-125.

deductible revenue loss, subject to subsection (2), has the meaning given by section 245-110.

extinguished, in relation to a debt, does not include payment of the whole of the debt in cash.

forgive, in relation to a debt, has the meaning given by section 245-35.

forgiveness year of income has the meaning given by subsection 245-105(1).

moneylending debt means a debt resulting from a loan of money to the debtor made by the creditor in the ordinary course of a business of lending money carried on by the creditor.

net forgiven amount, in relation to a debt, has the meaning given by Subdivision 245-D.

non-debtor company, in relation to a group of companies that are related companies in respect of a debt incurred by one of those companies, means a company in the group other than the company that incurred the debt.

pay includes repay.

related group of companies has the meaning given by section 245-225.

total net forgiven amount, in relation to a debtor in respect of a forgiveness year of income, has the meaning given by subsection 245-105(1).

- (2) In determining for the purposes of this Division whether a non-debtor company in a group of companies that are related companies in respect of a debt has a *deductible revenue loss* or a *deductible net capital loss*, the relevant definitions of those expressions as set out in sections 245-110 and 245-125, respectively, are to be applied as if the company were the debtor company.

245-250 Companies under common ownership

For the purposes of this Division, the question whether 2 companies were under common ownership at a particular time is to be determined in the same way as that question would be determined for the purposes of Division 19A of Part IIIA (see section 160ZZRB).

245-255 Controller of company

For the purposes of this Division, the question whether a taxpayer was a controller of a company at a particular time is to be determined in the same way as that question would be determined under section 160ZZRN.

245-260 Time of incurring debt

- (1) Subject to subsection (2), if a debt resulted from the debtor's drawing from time to time on an established line of credit, the debt is taken, for the purposes of this Division, to have been incurred at the time when the debtor first drew on the line of credit.
- (2) If, at any time after a debtor made a drawing or drawings on a line of credit, the debtor repaid the only previous drawing or all the previous drawings, as the case may be, the reference in subsection (1) to the time when the debtor first drew on the line of credit is taken to be a reference to the time of the first drawing after the repayment.

245-265 Keeping and retention of records

- (1) A person (the *debtor*) who incurs a commercial debt must keep any records that are necessary to enable the following matters to be readily found out:
 - (a) the date on which the debt was incurred;
 - (b) the identity of the creditor;
 - (c) the amount of the debt;
 - (d) the terms of repayment of the debt;
 - (e) if the debt is not a moneylending debt and the debtor and the creditor were not dealing with each other at arm's length in respect of the incurring of the debt—the debtor's capacity at the time when the debt was incurred to pay the debt when it falls due;
 - (f) if the debtor's obligation to pay the debt is forgiven—the date of the forgiveness and the consideration (if any) in respect of the forgiveness.

- (2) If a company and another company that are under common ownership cease to be under common ownership, each company must keep any records that are necessary to enable the following matters to be readily found out:
 - (a) the date on which the companies ceased to be under common ownership;
 - (b) the identity of each person who was a controller of the company immediately before the companies ceased to be under common ownership;
 - (c) the identity of each person who was a controller of the company immediately after the companies ceased to be under common ownership.

- (3) A person who is required by subsection (1) or (2) to keep records must keep them in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.

- (4) Subject to subsection (5), a person who keeps any records, relating to a debt incurred by the person, as required by subsection (1) must retain the records until:
 - (a) if paragraph (b) does not apply—the end of 5 years after the debt was forgiven; or

- (b) if the period (the *assessment period*) within which the Commissioner may, under paragraph 170(2)(b), amend an assessment in respect of the person's income of the year of income to which the records relate, or in which a transaction or act to which the records relate was completed, is extended by an order of the Federal Court of Australia made under subsection 170(4A) or by the consent of the person given under subsection 170(4B):
 - (i) the end of the period of 5 years referred to in paragraph (a); or
 - (ii) the end of the assessment period as so extended;whichever is the later.
- (5) Subsection (4) does not require records in respect of a debt that has been wholly paid in cash to be retained after the debt was so paid.
- (6) Subject to subsection (7), each company referred to in subsection (2) that keeps any records relating to the company as required by subsection (2) must retain the records until the end of the second year of income after the year of income in which the company and the other company referred to in subsection (2) ceased to be under common ownership.
- (7) If a debt of one of the companies referred to in subsection (2) was forgiven at any time after the companies ceased to be under common ownership and before the end of the second year of income after the year of income in which the cessation occurred, each of the companies that keeps any records relating to the company as required by that subsection must retain the records until:
 - (a) if paragraph (b) does not apply—the end of 5 years after the debt was forgiven; or
 - (b) if the period (the *assessment period*) within which the Commissioner may, under paragraph 170(2)(b), amend an assessment in respect of the company's income of the year of income to which the records relate, or in which a transaction or act to which the records relate was completed, is extended by an order of the Federal Court of Australia made under subsection 170(4A) or by the consent of the company given under subsection 170(4B):

- (i) the end of the period of 5 years referred to in paragraph (a); or
 - (ii) the end of the assessment period as so extended;whichever is the later.
- (8) A person who, without reasonable excuse, intentionally or recklessly contravenes a provision of this section is guilty of an offence punishable on conviction by a penalty of not more than 30 penalty units.
- (9) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

Part 2—Consequential amendments

2 After subsection 51(1)

Insert:

- (1A) A deduction otherwise allowable under subsection (1) to a creditor in respect of a debt is reduced to the extent mentioned in subparagraph 245-90(3)(b)(i) of Schedule 2C if an agreement between the debtor and the creditor is made as mentioned in paragraph 245-90(3)(a) of Schedule 2C.

3 Before subsection 54(1)

Insert:

- (1A) This section has effect subject to Division 245 of Schedule 2C.

4 Before subsection 56(1)

Insert:

- (1AAA) This section has effect subject to Division 245 of Schedule 2C.

5 Before subsection 57AK(1)

Insert:

- (1A) This section has effect subject to Division 245 of Schedule 2C.

6 Before subsection 57AM(5)

Insert:

- (4B) This section has effect subject to Division 245 of Schedule 2C.

7 Before subsection 59(1)

Insert:

- (1A) This section has effect subject to Division 245 of Schedule 2C.

8 After subsection 59AAA(1)

Insert:

- (1A) This section has effect subject to Division 245 of Schedule 2C.

9 Before subsection 62(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

10 Before subsection 62AAM(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

11 At the end of section 62AAN

Add:

(2) Subsection (1) has effect subject to Division 245 of Schedule 2C.

12 Before subsection 62AAP(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

13 At the end of section 62AAR

Add:

(2) Subsection (1) has effect subject to Division 245 of Schedule 2C.

14 After subsection 63(1)

Insert:

(1AA) A deduction otherwise allowable under subsection (1) to a creditor in respect of a debt is reduced to the extent mentioned in subparagraph 245-90(3)(b)(i) of Schedule 2C if an agreement between the debtor and the creditor is made as mentioned in paragraph 245-90(3)(a) of Schedule 2C.

15 Before subsection 67(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

16 After subsection 70(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

17 Before subsection 70A(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

18 Before subsection 73A(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

19 After subsection 75A(2)

Insert:

(2A) This section has effect subject to Division 245 of Schedule 2C.

20 Before subsection 75AA(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

21 After subsection 75B(1)

Insert:

(1A) This section has effect subject to Division 245 of Schedule 2C.

22 After subsection 79E(3)

Insert:

(3A) If a loss referred to in subsection (3) is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of income or a previous year of income, any reference to that loss in this section is to be treated as a reference to that loss as so taken to be reduced.

23 After subsection 79F(6)

Insert:

(6A) If a loss referred to in subsection (6) is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of income or a previous year of income, any reference to that loss in

this section is to be treated as a reference to that loss as so taken to be reduced.

24 After subsection 80(2)

Insert:

- (2AA) If a loss referred to in subsection (2) is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of income or a previous year of income, any reference to that loss in this section is to be treated as a reference to that loss as so taken to be reduced.

25 After subsection 80AAA(7)

Insert:

- (7A) If a loss referred to in subsection (7) is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of income or a previous year of income, any reference to that loss in this section is to be treated as a reference to that loss as so taken to be reduced.

26 After subsection 80AA(4)

Insert:

- (4A) If a loss referred to in subsection (4) is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of income or a previous year of income, any reference to that loss in this section is to be treated as a reference to that loss as so taken to be reduced.

27 After section 82AB

Insert:

82ABA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

28 After section 82AR

Insert:

82ARA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

29 After section 82BA

Insert:

82BAA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

30 At the end of section 82KZM

Add:

(2) Subsection (1) has effect subject to Division 245 of Schedule 2C.

31 After section 122AA

Insert:

122AB Subdivision applies subject to Division 245 of Schedule 2C

The application of this Subdivision is subject to Division 245 of Schedule 2C.

32 After section 122JB

Insert:

122JBA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

33 At the beginning of Subdivision C of Division 10 of Part III

Insert:

122KAA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

34 After section 123

Insert:

123AAA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of
Schedule 2C.

35 After section 123BC

Insert:

123BCA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of
Schedule 2C.

**36 At the beginning of Subdivision C of Division 10AAA of
Part III**

Insert:

123CA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of
Schedule 2C.

37 After section 124

Insert:

124AAA Division subject to Division 245 of Schedule 2C

This Division has effect subject to Division 245 of Schedule 2C.

38 After section 124E

Insert:

124EA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of
Schedule 2C.

39 At the beginning of Subdivision B of Division 10A of Part III

Insert:

124JAA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

40 After section 124K

Insert:

124KAA Division subject to Division 245 of Schedule 2C

This Division has effect subject to Division 245 of Schedule 2C.

41 At the beginning of Subdivision B of Division 10BA of Part III

Insert:

124ZAFAA Subdivision subject to Division 245 of Schedule 2C

This Subdivision has effect subject to Division 245 of Schedule 2C.

42 After section 124ZA

Insert:

124ZAAA Division subject to Division 245 of Schedule 2C

This Division has effect subject to Division 245 of Schedule 2C.

43 After section 124ZF

Insert:

124ZFAA Division subject to Division 245 of Schedule 2C

This Division has effect subject to Division 245 of Schedule 2C.

44 Subsection 160AFD(1) (definition of *Total loss*)

Repeal the definition, substitute:

Total loss means the amount of the loss, or the sum of the amounts of the losses, less the total of any amounts by which the loss or sum is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the particular year of income or any previous year of income.

45 Subsection 160AFD(2) (definition of *Total loss*)

Repeal the definition, substitute:

Total loss means the amount of the loss, or the sum of the amounts of the losses, less the total of any amounts by which the loss or sum is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the particular year of income or any previous year of income.

46 Paragraph 160Z(1)(b)

After “excess”, insert “(less any amount by which that loss is reduced under subparagraph 245-90(2)(b)(i) of Schedule 2C).”.

47 Before subsection 160ZC(5)

Insert:

- (4E) If, apart from sections 245-125 to 245-135 in Schedule 2C, a taxpayer would be taken to have incurred a net capital loss in the immediately preceding year of income, then, for the purposes of this section:
- (a) if the effect of those sections is to reduce the amount of the loss to nil—the taxpayer is taken not to have incurred a net capital loss in that year of income; or
 - (b) if the effect of those sections is to reduce the amount of the loss to an amount greater than nil—the amount of the net capital loss incurred by the taxpayer in that year of income is taken to be the reduced amount.

48 After subsection 160ZH(3)

Insert:

- (3A) If the relevant cost base of an asset is taken to be reduced under Subdivision 245-E of Schedule 2C in its application to the year of

income in which the disposal of the asset occurs or a previous year of income, the reference in subsection (1), (2) or (3) to the sum of the amounts referred to in that subsection is to be treated as a reference to that sum as so taken to be reduced.

49 After subsection 160ZQ(6)

Insert:

- (6A) If, apart from sections 245-125 to 245-135 in Schedule 2C, a taxpayer would be taken to have incurred a net listed personal-use asset loss in the immediately preceding year of income, then, for the purposes of this section:
- (a) if the effect of those sections is to reduce the amount of the loss to nil—the taxpayer is taken not to have incurred a net listed personal-use asset loss in that year of income; or
 - (b) if the effect of those sections is to reduce the amount of the loss to an amount greater than nil—the amount of the net listed personal-use asset loss incurred by the taxpayer in that year of income is taken to be the reduced amount.

Schedule 3—Amendment of the Superannuation Guarantee (Administration) Act 1992

1 Subsection 13(5) (after paragraph (aa) of the definition of *reference earnings*)

Insert:

- (ab) if the employer is contributing for the benefit of the employee in relation to a contribution period to the superannuation fund known as the Aberfoyle Award Superannuation Fund that was established by a trust deed on 18 May 1987—the amount that is the earnings base for the purposes of the Aberfoyle Limited (Superannuation) Award 1987; and

2 After section 13A

Insert:

13B Interpretation: Notional earnings base where employer contributing to Aberfoyle Award Superannuation Fund

If an employer is contributing for the benefit of the employee in relation to a contribution period to the superannuation fund known as the Aberfoyle Award Superannuation Fund that was established by a trust deed on 18 May 1987, the expression *notional earnings base* has, in relation to the employee, the same meaning as in section 13.

3 Subsection 14(1A)

Omit “or 13A”, substitute “, 13A or 13B”.

4 Subsection 23(4B)

Repeal the formula, substitute:

$$\frac{\text{Actual contribution amount}}{\text{Notional earnings base (see subsection (4C)) of the employee in relation to the current contribution period}} \times \text{Contribution period factor of the employee in relation to the current contribution period} \times \frac{\text{Employment factor of the employee in relation to the current contribution period}}{\text{Employment factor of the employee in relation to the current contribution period}} \times 100\%$$

5 Subsection 23(4C) (before the definition of *employment factor*)

Insert:

contribution period factor, in relation to an employee in the class for a contribution period, means:

- (a) if, in the contribution period, the period for which the employee is employed by the employer under the award is less than the whole of the contribution period—the fraction that represents the period for which the employee is employed by the employer under the award as a proportion of the whole of the contribution period; or
- (b) in any other case—1.

6 Subsection 23(4C)(definition of *Full-time employee's hours in paragraph (b) of the definition of notional earnings base*)

After “the period”, insert “in which the employee is employed”.

7 After subsection 23(4C)

Insert:

(4D) Subject to subsections (6), (6A) and (7), if, during a contribution period, an employer contributes an amount (the *actual contribution amount*) for the benefit of an employee to the Aberfoyle Award Superannuation Fund that was established by a trust deed on 18 May 1987, the charge percentage for the employer, as calculated under section 20 or 21, in respect of the employee for the contribution period, is reduced in accordance with subsection (4E).

(4E) The reduction is in addition to any other reduction under this section or section 22 and its amount is worked out using the formula:

$$\frac{\text{Actual contribution amount}}{\text{Notional earnings base (see subsection (4F))} \times \text{Contribution period factor}} \times \frac{\text{Employment factor}}{\text{factor}} \times 100\%$$

(4F) In subsection (4E):

contribution period factor means:

- (a) if, in the contribution period, the period for which the employer contributes for the benefit of the employee to the Aberfoyle Award Superannuation Fund is less than the whole of the contribution period—the fraction that represents the period for which the employer so contributes as a proportion of the whole of the contribution period; or
- (b) in any other case—1.

employment factor means:

- (a) if, in the contribution period, the period for which the employee is employed by the employer is greater than the period for which the employer contributes for the benefit of the employee to the Aberfoyle Award Superannuation Fund—the fraction that represents the period for which the employer so contributes as a proportion of the period of employment; or
- (b) in any other case—1.

notional earnings base means:

- (a) if the employee is a full-time employee—the notional earnings base of the employee within the meaning of section 13; or
- (b) if the employee is a part-time employee—the amount worked out using the formula:

$$\frac{\text{Number of hours employed}}{\text{Full-time employee's hours}} \times \text{Notional earnings base (within the meaning of section 13)}$$

where:

full-time employee's hours means the number of ordinary hours of work for which an equivalent full-time employee would have been employed in the period in which the employee is employed in the contribution period.

number of hours employed means the number of hours for which the employee is employed in the contribution period.

8 Paragraph 23(5)(b)

Omit “subsection (2), (3), (4) or (4A)”, substitute “subsection (2), (3), (4), (4A) or (4D)”.

9 Application

- (1) The amendments made by items 1, 2, 3, 7 and 8 apply in relation to assessments of superannuation guarantee shortfall for the year beginning on 1 July 1995 and for all earlier years.
- (2) The amendments made by items 4, 5, and 6 apply in relation to assessments of superannuation guarantee shortfall for the year beginning on 1 July 1994 and for all later years.

Schedule 4—Tax file numbers

Part 1—Superannuation Industry (Supervision) Act 1993

1 Section 4 (table, after entry relating to Part No. 25)

Insert:

25A	tax file numbers
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2 At the end of subsection 19(4)

Add:

Note: The approved form of written notice may require the trustee to set out the tax file number of the fund. See subsection 299U(1).

3 At the end of paragraph 36(1)(a)

Add:

Note: The approved form of return may require the trustee to set out the tax file number of the entity. See subsection 299U(2).

4 At the end of subsection 40(3)

Add:

Note: A statement of the tax file number of the entity may accompany the particulars of the notice. See subsection 299U(3).

5 At the end of subsection 225(2)

Add:

Note: The approved form of statement may require the trustee to set out:

- (a) the tax file number of any beneficiary of the fund to whom the statement relates, who has quoted his or her tax file number to the trustee; and
- (b) the tax file number of the fund

(see subsection 299U(4)).

6 Subsections 225(3) and (4)

Repeal the subsections.

7 Paragraph 226(b)

Omit “, which may include the tax file numbers of those persons”.

8 At the end of section 226

Add:

Note: The particulars of a person may include the person’s tax file number. See subsection 299U(5).

9 Sections 245, 246 and 247

Repeal the sections.

10 At the end of subsection 248(2)

Add:

Note: The approved form of application may require the person to set out his or her tax file number. See subsection 299U(6).

11 Subsections 248(3) and 252(2)

Repeal the subsections.

12 At the end of section 252

Add:

Note: The approved form of application may require the person to set out his or her tax file number. See subsection 299U(7).

13 At the end of subsection 254(1)

Add:

Note: The prescribed information may include the tax file number of the entity. See subsection 299U(8).

14 At the end of subsection 254(2)

Add:

Note: The information may include the tax file number of the entity. See subsection 299U(9).

15 After Part 25

Insert:

Part 25A—Tax file numbers

Division 1—Quotation of employee’s tax file number

299A Employee may quote to employer

An employee may quote his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act.

Note: Section 299P sets out the method of quoting.

299B Employer may inform trustee of tax file number

If:

(a) either:

- (i) before the commencement of this section, an employer made a contribution to an eligible superannuation entity or a regulated exempt public sector superannuation scheme for the benefit of an employee; or
- (ii) after the commencement of this section, an employer makes such a contribution; and

(b) after the commencement of this section, the employee quotes or first quotes his or her tax file number to the employer in connection with the operation or the possible future operation of this Act;

the employer may inform the trustee of the entity or scheme, as the case may be, of the employee’s tax file number.

299C Employer must inform trustee of tax file number

(1) If:

- (a) after the commencement of this section, an employee quotes or first quotes his or her tax file number to his or her employer in connection with the operation or the possible future operation of this Act; and
- (b) after the employee quotes or first quotes the tax file number, the employer makes a contribution to an eligible superannuation entity for the benefit of the employee; and
- (c) the employer has not previously informed the trustee of the entity of the employee’s tax file number;

the employer must inform the trustee of the entity of the employee's tax file number before the required time (see subsection (2)).

- (2) The *required time* is:
 - (a) if the quotation or first quotation of the tax file number takes place more than 14 days before the employer makes the contribution—the end of the day on which the employer makes the contribution; or
 - (b) in any other case—the end of the 14th day after the day on which the quotation or first quotation of the tax file number takes place.
- (3) If the employer intentionally or recklessly contravenes subsection (1), the employer is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Division 2—Quotation, use and transfer of beneficiary's tax file number

299D Eligible superannuation entity or regulated exempt public sector superannuation scheme beneficiary, or applicant, may quote tax file number

A beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme may quote his or her tax file number to the trustee of the entity or scheme in connection with the operation or the possible future operation of this Act.

Note: Section 299P sets out the method of quoting.

299E Trustee may request beneficiary's or applicant's tax file number

- (1) The trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme may, at any time, request, in a manner approved by the Commissioner, a beneficiary, or an applicant to become a beneficiary, of the entity or scheme to quote his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act.

No obligation to quote tax file number

- (2) If the trustee requests a beneficiary or applicant to quote his or her tax file number to the trustee, the beneficiary or applicant is not obliged to comply with the request.

299F Trustee must request person who is beneficiary at commencement to quote tax file number

- (1) Subject to subsection (3), if:
 - (a) a person is a beneficiary of an eligible superannuation entity at the commencement of this section; and
 - (b) the person is not taken by section 299S or 299T to have quoted his or her tax file number to the trustee at or before that commencement;

the trustee must, before the required time (see subsection (2)) in relation to the beneficiary, request, in a manner approved by the Commissioner, the person to quote his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act.

Required time

- (2) The **required time** in relation to a beneficiary is the end of the 7th day after the day that is the starting day in relation to the beneficiary.

Exception

- (3) The trustee is not required to make the request if, before the trustee makes the request, and before the required time, the person quotes his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act.

Offence

- (4) If the trustee intentionally or recklessly contravenes the requirement to make the request, the trustee is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

No obligation to quote tax file number

- (5) If the trustee requests the person to quote his or her tax file number to the trustee, the person is not obliged to comply with the request.

Starting day—trustee required to give information to beneficiary

- (6) The starting day, in relation to a beneficiary of an eligible superannuation entity the trustee of which is required under Subdivision 2.4.2 or 2.4.3 of Division 2.4 of Part 2 of the Superannuation Industry (Supervision) Regulations to give information to the beneficiary, is the earlier of:
- (a) the day referred to in whichever of the following subparagraphs is applicable:
 - (i) if the trustee chooses to act under this subparagraph in relation to the beneficiary—the day on which the information referred to in Subdivision 2.4.2 of Division 2.4 of Part 2 of those Regulations is first given to the beneficiary on or after the day on which this section commences;
 - (ii) if the trustee chooses to act under this subparagraph in relation to the beneficiary—the day on which the information referred to in Subdivision 2.4.3 of Division 2.4 of Part 2 of those Regulations is first given to the beneficiary on or after the day on which this section commences;
 - (iii) if the trustee does not choose to act under subparagraph (i) or (ii) in relation to the beneficiary—the day on which information referred to in either of those Subdivisions is first given to the beneficiary on or after the day on which this section commences; or
 - (b) the last day of the period of one year beginning on the day on which this section commences.

Starting day—trustee not required to give information to beneficiary

- (7) The starting day, in relation to a beneficiary of an eligible superannuation entity the trustee of which is not required, under Subdivision 2.4.2 or 2.4.3 of Division 2.4 of Part 2 of the Superannuation Industry (Supervision) Regulations to give

information to the beneficiary, is the day on which this section commences.

299G Trustee must request person becoming beneficiary after commencement to quote tax file number

- (1) Subject to subsection (3), if:
- (a) a person becomes a beneficiary of an eligible superannuation entity after the commencement of this section; and
 - (b) the person has not quoted his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act, by the time he or she becomes a beneficiary;

the trustee must, before the required time (see subsection (2)), request, in a manner approved by the Commissioner, the person to quote his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act.

Required time

- (2) The **required time** is the end of the 7th day after the day on which the person becomes a beneficiary.

Exception

- (3) The trustee is not required to make the request if, before the trustee makes the request, and before the required time, the person quotes his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act.

Offence

- (4) If the trustee intentionally or recklessly contravenes the requirement to make the request, the trustee is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

No obligation to quote tax file number

- (5) If the trustee requests the person to quote his or her tax file number to the trustee, the person is not obliged to comply with the request.

299H Use of tax file number for certain purposes—beneficiaries of eligible superannuation entities

- (1) This section applies if a person who is a beneficiary of an eligible superannuation entity quotes his or her tax file number to the trustee of the entity in connection with the operation or the possible future operation of this Act.

Obligation to record tax file number

- (2) If the trustee does not already have a record of the tax file number, the trustee must, as soon as is reasonably practicable after the quotation, make a record of it.

Obligation to retain and later destroy tax file number

- (3) The trustee must:
- (a) retain the record until the person ceases to be a beneficiary of the entity; and
 - (b) destroy the record as soon as is reasonably practicable after the person ceases to be a beneficiary of the entity.

Use of tax file numbers to locate amounts

- (4) Subject to subsection (5), the trustee may use tax file numbers quoted to the trustee as mentioned in subsection (1) in order to locate, in the records or accounts of the entity, amounts held for the benefit of persons.

Use of tax file number to identify amounts held for the benefit of a particular person

- (5) If the trustee needs to identify the amounts held for the benefit of a particular person:
- (a) the trustee must first use information (other than tax file numbers) to identify the amounts; and
 - (b) the trustee may only use the tax file number quoted by the person to the trustee:
 - (i) if the information referred to in paragraph (a) is insufficient to identify the amounts; or
 - (ii) to confirm the identification of the amounts resulting from the use of the other information.

Offence

- (6) A trustee who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

299J Use of tax file number for certain purposes—beneficiaries of regulated exempt public sector superannuation scheme

- (1) This section applies if a person who is a beneficiary of a regulated exempt public sector superannuation scheme quotes his or her tax file number to the trustee of the scheme in connection with the operation or the possible future operation of this Act.

Trustee may record tax file number

- (2) If the trustee does not already have a record of the tax file number, the trustee may make a record of it.

Obligation to retain and later destroy tax file number

- (3) The trustee must:
- (a) retain the record until the person ceases to be a beneficiary of the scheme; and
 - (b) destroy the record as soon as is reasonably practicable after the person ceases to be a beneficiary of the scheme.

Use of tax file numbers to locate amounts

- (4) Subject to subsection (5), the trustee may use tax file numbers quoted to the trustee as mentioned in subsection (1) in order to locate, in the records or accounts of the scheme, amounts held for the benefit of persons.

Use of tax file numbers to identify amounts held for the benefit of a particular person

- (5) If the trustee needs to identify the amounts held for the benefit of a particular person:
- (a) the trustee must first use information (other than tax file numbers) to identify the amounts; and
 - (b) the trustee may only use the tax file number quoted by the person to the trustee:

- (i) if the information referred to in paragraph (a) is insufficient to identify the amounts; or
- (ii) to confirm the identification of the amounts resulting from the use of the other information.

Offence

- (6) A trustee who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

299K Use of tax file number for certain purposes—applicants to become beneficiaries of eligible superannuation entities

- (1) This section applies if a person who is an applicant to become a beneficiary of an eligible superannuation entity quotes his or her tax file number to the trustee of the entity in connection with the operation or the possible future operation of this Act.

Obligation to record tax file number

- (2) If the trustee does not already have a record of the tax file number, the trustee must, as soon as is reasonably practicable after the quotation, make a record of it.

Obligation to retain and later destroy tax file number

- (3) The trustee must:
 - (a) retain the record until the time (the *last retention time*) at which:
 - (i) if the person becomes a beneficiary of the entity—the person ceases to be a beneficiary of the entity; or
 - (ii) if not—the person ceases to be an applicant; and
 - (b) destroy the record as soon as is reasonably practicable after the last retention time.

Use of tax file numbers to locate amounts

- (4) Subject to subsection (5), the trustee may use tax file numbers quoted to the trustee as mentioned in subsection (1) in order to locate, in the records or accounts of the entity, amounts held for the benefit of persons.

Use of tax file numbers to identify amounts held for the benefit of a particular person

- (5) If the trustee needs to identify the amounts held for the benefit of a particular person:
- (a) the trustee must first use information (other than tax file numbers) to identify the amounts; and
 - (b) the trustee may only use the tax file number quoted by the person to the trustee:
 - (i) if the information referred to in paragraph (a) is insufficient to identify the amounts; or
 - (ii) to confirm the identification of the amounts resulting from the use of the other information.

Offence

- (6) A trustee who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

299L Use of tax file number for certain purposes—applicants to become beneficiaries of regulated exempt public sector superannuation schemes

- (1) This section applies if a person who is an applicant to become a beneficiary of a regulated exempt public sector superannuation scheme quotes his or her tax file number to the trustee of the scheme in connection with the operation or the possible future operation of this Act.

Trustee may record tax file number

- (2) If the trustee does not already have a record of the tax file number, the trustee may make a record of it.

Obligation to retain and later destroy tax file number

- (3) The trustee must:
- (a) retain the record until the time (the *last retention time*) at which:
 - (i) if the person becomes a beneficiary of the scheme—the person ceases to be a beneficiary of the scheme; or

- (ii) if not—the person ceases to be an applicant; and
- (b) destroy the record as soon as is reasonably practicable after the last retention time.

Use of tax file numbers to locate amounts

- (4) Subject to subsection (5), the trustee may use tax file numbers quoted to the trustee as mentioned in subsection (1) in order to locate, in the records or accounts of the scheme, amounts held for the benefit of persons.

Use of tax file numbers to identify amounts held for the benefit of a particular person

- (5) If the trustee needs to identify the amounts held for the benefit of a particular person:
 - (a) the trustee must first use information (other than tax file numbers) to identify the amounts; and
 - (b) the trustee may only use the tax file number quoted by the person to the trustee:
 - (i) if the information referred to in paragraph (a) is insufficient to identify the amounts; or
 - (ii) to confirm the identification of the amounts resulting from the use of the other information.

Offence

- (6) A trustee who intentionally or recklessly contravenes a requirement of this section is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

299M Trustee of eligible superannuation entity must inform other trustee of tax file number for certain purposes

- (1) This section applies if:
 - (a) there is an amount in an eligible superannuation entity for the benefit of a beneficiary; and
 - (b) the beneficiary has quoted (whether as a beneficiary or applicant) his or her tax file number to the trustee of the entity in connection with the operation or the possible future operation of this Act.

Transfer of benefits to another eligible superannuation entity or to a regulated exempt public sector superannuation scheme

- (2) Subject to subsection (3), if the trustee transfers any of the amount to another eligible superannuation entity or to a regulated exempt public sector superannuation scheme for the benefit of the beneficiary, the trustee must, at the time of the transfer and in the manner approved by the Commissioner, inform the trustee of the other eligible superannuation entity or of the regulated exempt public sector superannuation scheme of the beneficiary's tax file number.

Exception

- (3) Subsection (2) does not apply where an amount is transferred to another eligible superannuation entity or to a regulated exempt public superannuation scheme if, before the transfer, the beneficiary gives the trustee a written statement requesting the trustee not to inform any other trustee of the beneficiary's tax file number.

Offence

- (4) A trustee who intentionally or recklessly contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

299N Trustee of regulated exempt public sector superannuation scheme may inform other trustee of tax file number for certain purposes

- (1) This section applies if:
- (a) there is an amount in a regulated exempt public sector superannuation scheme for the benefit of a beneficiary; and
 - (b) the beneficiary has quoted (whether as a beneficiary or applicant) his or her tax file number to the trustee of the scheme in connection with the operation or the possible future operation of this Act.

Transfer of benefits to another regulated exempt public sector superannuation scheme or to an eligible superannuation entity

- (2) Subject to subsection (3), if the trustee transfers any of the amount to another regulated exempt public sector superannuation scheme or to an eligible superannuation entity for the benefit of the beneficiary, the trustee may inform the trustee of the other regulated exempt public sector superannuation scheme or of the eligible superannuation entity in the manner approved by the Commissioner of the beneficiary's tax file number.

Exception

- (3) Subsection (2) does not apply where an amount is transferred to another regulated exempt public sector superannuation scheme or to an eligible superannuation entity if, before the transfer, the beneficiary gives the trustee a written statement requesting the trustee not to inform any other trustee of the beneficiary's tax file number.

Offence

- (4) If:
- (a) the trustee (the **first trustee**) of a regulated exempt public sector superannuation scheme (the **first scheme**) intentionally informs the trustee (the **second trustee**) of another regulated exempt public sector superannuation scheme or of an eligible superannuation entity of the tax file number of a beneficiary of the first scheme; and
 - (b) the first trustee knows that, because of subsection (3), the trustee is not empowered by subsection (2) to inform the second trustee of that number;
- the first trustee is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

**Division 3—Method of quotation of tax file numbers,
including deemed quotation****299P Method of quoting tax file number**

A person quotes his or her tax file number to another person in connection with the operation or the possible future operation of this Act if:

- (a) the person informs the other person of the number in a manner approved by the Commissioner; or
- (b) the person is taken to have quoted the number to the other person in connection with the operation or the possible future operation of this Act under any of the following provisions of this Division.

299Q Employee taken to have quoted to trustee where trustee informed by employer

If:

- (a) an employee is a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme; and
- (b) the employer informs the trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the employee's tax file number in accordance with section 299B or 299C;

the employee is:

- (c) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act; and
- (d) taken to have quoted the tax file number at the time when the employer informs the trustee.

299R Beneficiary or applicant taken to have quoted to trustee where trustee informed by another trustee

- (1) If the trustee (the *first trustee*) of an eligible superannuation entity (the *first entity*) informs the trustee (the *second trustee*) of another eligible superannuation entity or of a regulated exempt public sector superannuation scheme of the tax file number of a

beneficiary of the first entity in accordance with subsection 299M(2), the beneficiary is:

- (a) taken to have quoted the tax file number to the second trustee in connection with the operation or the possible future operation of this Act; and
 - (b) taken to have quoted that tax file number at the time when the first trustee informs the second trustee.
- (2) If the trustee (the *first trustee*) of a regulated exempt public sector superannuation scheme (the *first scheme*) informs the trustee (the *second trustee*) of another regulated exempt public sector superannuation scheme or of an eligible superannuation entity of the tax file number of a beneficiary of the first scheme in accordance with subsection 299N(2), the beneficiary is:
- (a) taken to have quoted the tax file number to the second trustee in connection with the operation or the possible future operation of this Act; and
 - (b) taken to have quoted that tax file number at the time when the first trustee informs the second trustee.

299S Person claiming benefit taken to have quoted to trustee where he or she provided tax file number in connection with claim

- (1) This section applies if:
- (a) before the commencement of this section, a person who considered that he or she was entitled to a benefit applied to a trustee of an eligible superannuation entity for payment of the benefit under section 248 or 252 and set out his or her tax file number in the application; or
 - (b) after the commencement of this section, a person who considers that he or she is entitled to a benefit applies to a trustee of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme for payment of the benefit and sets out in a manner approved by the Commissioner his or her tax file number in the application.
- (2) The beneficiary is:
- (a) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act; and

- (b) taken to have quoted that tax file number at the time when the trustee received or receives the application.

299T Beneficiary taken to have quoted if he or she quoted for other purposes

If a beneficiary, or an applicant to become a beneficiary, of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to a trustee of the entity or scheme under:

- (a) subsection 225(4) or 245(2) of this Act, as in force immediately before its amendment by the *Taxation Laws Amendment Act (No. 2) 1996*; or
- (b) a provision of the *Income Tax Assessment Act 1936*; or
- (c) a provision of the repealed Part IIIA of the *Occupational Superannuation Standards Act 1987* (including a provision as it continues to apply because of the *Taxation Laws Amendment (Superannuation) Act 1992*);

then, for the purposes of this Act, as in force after the commencement of this section, the beneficiary is:

- (d) taken to have quoted the tax file number to the trustee in connection with the operation or the possible future operation of this Act; and
- (e) taken to have quoted that tax file number to the trustee at the later of the time at which the quotation took place and the commencement of this section.

Division 4—Provision of tax file numbers in forms etc.

299U Forms etc. may require tax file number

Election notice

- (1) The approved form of written notice by the trustee of a fund for the purposes of subsection 19(4) may require the notice to contain the tax file number of the fund.

Annual return

- (2) The approved form of return by the trustee of a superannuation entity for the purposes of paragraph 36(1)(a) may require the return to contain the tax file number of the entity.

Particulars of notice

- (3) Particulars of a notice to the trustee of an entity that are required by subsection 40(3) to be given to the Commissioner of Taxation may be accompanied by a statement of the tax file number of the entity.

Unclaimed money statement

- (4) The approved form of statement by the trustee of a fund for the purposes of subsection 225(2) may require the statement to contain the tax file number of:
- (a) any beneficiary of the fund where:
 - (i) the statement relates to the beneficiary; and
 - (ii) the beneficiary has quoted his or her tax file number to the trustee in connection with the operation or the possible future operation of this Act; and
 - (b) the fund.

Particulars in register

- (5) Particulars of persons that may be included in the register mentioned in section 226 include their tax file numbers.

Claims for benefits from eligible rollover fund

- (6) The approved form of application for the purposes of subsection 248(2) may require the tax file number of the applicant to be set out in the application.

Claims for benefits from eligible transitional fund

- (7) The approved form of application for the purposes of section 252 may require the tax file number of the applicant to be set out in the application.

Prescribed information

- (8) Regulations for the purposes of subsection 254(1) may specify the tax file number of a superannuation entity as prescribed information to be given by the trustee of the entity.

Notice to give information

- (9) Information that may be required to be given by the trustee of a superannuation entity under subsection 254(2) may include the tax file number of the entity.

299V Failure to quote tax file number

For the purposes of paragraph 302(1)(b), a person does not omit a matter or thing from a statement made to a SIS officer (within the meaning of section 301) merely because the person has, in making the statement, failed to quote his or her tax file number.

Division 5—General**299W Definitions**

In this Part, unless the contrary intention appears:

eligible superannuation entity means a regulated superannuation fund or an approved deposit fund.

regulated exempt public sector superannuation scheme means an exempt public sector superannuation scheme in respect of which either of the following applies:

- (a) the trustee of the scheme is a constitutional corporation;
- (b) the sole or primary purpose of the scheme is the provision of old-age pensions.

tax file number has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

299X State insurance

This Part does not apply with respect to State insurance that does not extend beyond the limits of the State concerned.

299Y Trustee of former regulated exempt public sector superannuation scheme to destroy records of tax file numbers

- (1) If an exempt public sector superannuation scheme ceases to be a regulated exempt public sector superannuation scheme and does not become an eligible superannuation entity, the trustee of the scheme must, as soon as is reasonably practicable, destroy all records of tax file numbers of beneficiaries, or of applicants to become beneficiaries, of the scheme that are kept by the trustee.
- (2) A trustee of an exempt public sector superannuation scheme who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 100 penalty units.

16 At the end of paragraph 302(1)(b)

Add:

Note: In the case of a person failing to quote his or her tax file number, see section 299V.

17 Subsection 302(3)

Repeal the subsection.

18 Subsection 383(2)

After “subsections 225(4) and 245(2)”, insert “, as in force immediately before their repeal by the *Taxation Laws Amendment Act (No. 2) 1996*,”.

Part 2—Income Tax Assessment Act 1936

19 At the beginning of Subdivision D of Division 14 of Part III

Insert:

140RA Commissioner may use tax file numbers in his or her possession for the purposes of this Subdivision

The Commissioner may use for the purposes of this Subdivision a person's tax file number that has been provided to the Commissioner for any other purpose.

20 At the end of subsection 140R(4)

Add "and the Commissioner has not otherwise found out the recipient's tax file number".

21 At the end of subparagraph 140T(1)(b)(ii)

Add "and the Commissioner has not otherwise found out the person's tax file number".

22 Subsection 140T(2)

After "tax file number", insert "and the Commissioner has not otherwise found out that tax file number".

23 Paragraph 202(i)

Repeal the paragraph, substitute:

(i) to facilitate:

- (i) the administration of Parts 22 and 25A of the *Superannuation Industry (Supervision) Act 1993* in relation to individuals; and
- (ii) the administration of that Act in relation to superannuation entities (within the meaning of that Act) or regulated exempt public sector superannuation schemes (within the meaning of Part 25A of that Act); and

24 At the end of Division 4 of Part VA

Add:

202DH Tax file number quoted for superannuation purposes taken to be quoted for purposes of the taxation of eligible termination payments

- (1) If a person (the *first person*) who is a beneficiary of an eligible superannuation entity or of a regulated exempt public sector superannuation scheme has quoted his or her tax file number to the trustee of the entity or scheme in connection with the operation or possible future operation of the *Superannuation Industry (Supervision) Act 1993*, the first person is taken, so long as he or she continues to be such a beneficiary, to have quoted that tax file number to the trustee of the entity or scheme as mentioned in subregulation 98(8) and regulation 100 of the Income Tax Regulations.
- (2) In this section, *eligible superannuation entity* and *regulated exempt public sector superannuation scheme* have the same meanings as in Part 25A of the *Superannuation Industry (Supervision) Act 1993*.

Schedule 5—Amendment of the Fringe Benefits Tax Assessment Act 1986

1 Paragraph 58P(1)(e)

Omit “small”, substitute “less than \$100”.

2 Application

The amendment made by this Schedule applies to a benefit provided after the commencement of the Schedule.

Schedule 6—Amendment of the Taxation Laws Amendment Act (No. 4) 1995

1 Subitems 36(1) and (2) of Schedule 1

Repeal the subitems, substitute:

- (1) The amendments made by items 22, 29 and 30 apply to disposals of assets on or after 1 July 1995.
- (2) The amendment made by item 23 applies to interests acquired after the commencement of this item.

2 Subitem 37(1) of Schedule 1

Omit “on or after 20 September 1985”, substitute “after 7.30 p.m. on 9 May 1995”.

3 Subitem 37(2) of Schedule 1

Repeal the subitem, substitute:

- (2) The amendments made by item 25 and subitem (1) of this item are to be disregarded in determining the application of Part IIIA of the Income Tax Assessment Act 1936 in relation to disposals of assets at or before 7.30 p.m. on 9 May 1995.

4 Item 1 of Schedule 2

Omit “Paragraph 46L(3)(b)”, substitute “Paragraph 46M(3)(b)”.

5 Item 2 of Schedule 2

Omit “Subparagraph 46L(4)(a)(ii)”, substitute “Subparagraph 46M(4)(a)(ii)”.

*[Minister’s second reading speech made in—
House of Representatives on 27 June 1996
Senate on 9 September 1996]*

I HEREBY CERTIFY that the above is a fair print of the Taxation Laws Amendment Bill (No. 2) 1996 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
1996

(98/96)