

# **Income Tax Assessment Act 1997**

## **Act No. 38 of 1997 as amended**

This compilation was prepared on 17 December 2010  
taking into account amendments up to Act No. 145 of 2010

**Volume 8** includes: Table of Contents  
Sections 768-100 to 995-1

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section



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## **Chapter 4—International aspects of income tax**

### **Part 4-5—General**

#### **Division 768—Exempt foreign income and gains**

##### **Table of Subdivisions**

768-B	Some items of income that are exempt from income tax
768-G	Reduction in capital gains and losses arising from CGT events in relation to certain voting interests in active foreign companies
768-R	Temporary residents

##### **Subdivision 768-B—Some items of income that are exempt from income tax**

##### **Table of sections**

768-100	Foreign government officials in Australia
768-105	Compensation arising out of Second World War

##### **768-100 Foreign government officials in Australia**

- (1) The amounts of \*ordinary income and \*statutory income covered by the table are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 768-100

<b>Exempt amounts</b>			
<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
1	(a) a representative in Australia of the government of a foreign country; or  (b) a member of the official staff of such a representative; and you are neither an Australian citizen nor ordinarily resident in Australia	(a) your official salary; and  (b) your *ordinary income, and your *statutory income, from a source outside Australia	(a) no Convention listed in subsection (2) applies to the representative; and  (b) the country concerned grants in relation to Australia exemptions from taxes on income that correspond with the exemption in this item
2	(a) an officer of the government of a *Commonwealth of Nations country; and  (b) temporarily in Australia to render service on behalf of that country, or an *Australian government agency, in accordance with an *arrangement between the governments of that country and of the Commonwealth or of a State or Territory	(a) your official salary; and  (b) your *ordinary income, and your *statutory income, from a source outside Australia	that country exempts from income tax the salaries of officers of the government of the Commonwealth temporarily in that country for similar purposes in accordance with a similar arrangement

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



(2) The Conventions are:

- (a) the Vienna Convention on Diplomatic Relations, as having the force of law because of the *Diplomatic Privileges and Immunities Act 1967*;
- (b) the Vienna Convention on Consular Relations, as having the force of law because of the *Consular Privileges and Immunities Act 1972*.

Note: Those Conventions have the force of law in Australia because of those Acts and achieve substantially the same effect as item 1 of the table: see Article 34 of the Vienna Convention on Diplomatic Relations and Article 49 of the Vienna Convention on Consular Relations.

### **768-105 Compensation arising out of Second World War**

(1) A payment to you is exempt from income tax if:

- (a) you are an Australian resident at the time when it would otherwise be included in your assessable income; and
- (b) the payment is from a source in a foreign country; and
- (c) the payment is in connection with:
  - (i) any wrong or injury; or
  - (ii) any loss of, or damage to, property; or
  - (iii) any other detriment;  
suffered by you or another individual as a result of:
    - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
    - (v) persecution during the Second World War by any other enemy of the Commonwealth or by a regime covered by subsection (3); or
    - (vi) flight from persecution mentioned in subparagraph (iv) or (v); or
    - (vii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany or against forces of any other enemy of the Commonwealth; and
- (d) the payment is not directly or indirectly from any of your \*associates.

Note: An example of a detriment covered by subparagraph (c)(iii) is if you lost the opportunity to qualify for a pension because your period of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

contribution was cut short because you had to flee persecution by the National Socialist regime.

*Duration of Second World War*

- (2) Subsection (1) applies to:
- (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War;
- in the same way as it applies to the period of the Second World War.

*Regimes associated with an enemy of the Commonwealth*

- (3) This subsection covers a regime that was:
- (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or
  - (e) surrounded by;
- either or both of the following:
- (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.

*Legal personal representative*

- (4) Subsection (1) applies to a payment to:
- (a) your \*legal personal representative; or
  - (b) a trust established by your will;
- in a corresponding way to the way in which it would have applied if:
- (c) the payment had been to you; and
  - (d) if the payment is made after your death—you were still alive.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 768-G—Reduction in capital gains and losses  
arising from CGT events in relation to certain voting  
interests in active foreign companies**

**Guide to Subdivision 768-G**

**768-500 What this Subdivision is about**

If:

- (a) a company has a capital gain or capital loss arising from a CGT event that happens in relation to a share in a foreign company; and
- (b) the company holds a direct voting percentage of 10% or more in the foreign company for a certain period before the CGT event happens;

the gain or loss is reduced by a percentage that reflects the degree to which the assets of the foreign company are used in an active business.

**Table of sections**

**Operative provisions**

768-505 Reducing a capital gain or loss from certain CGT events in relation to certain voting interests

**Active foreign business asset percentage**

768-510 Active foreign business asset percentage

768-515 Choices to apply market value method or book value method

768-520 Market value method—choice made under subsection 768-515(1)

768-525 Book value method—choice made under subsection 768-515(2)

768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies

768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision

768-535 Modified rules for foreign wholly-owned groups

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Types of assets of a foreign company**

- 768-540 Active foreign business assets of a foreign company  
768-545 Assets included in the total assets of a foreign company

**Voting percentages in a company**

- 768-550 Direct voting percentage in a company  
768-555 Indirect voting percentage in a company  
768-560 Total voting percentage in a company

**Operative provisions**

**768-505 Reducing a capital gain or loss from certain CGT events in relation to certain voting interests**

- (1) The \*capital gain or \*capital loss a company (the *holding company*) that is an Australian resident makes from a \*CGT event that happened at a particular time (the *time of the CGT event*) to a \*share in a company (the *foreign disposal company*) that is a foreign resident is reduced if:
- (a) the holding company held a \*direct voting percentage of 10% or more in the foreign disposal company throughout a 12 month period that:
    - (i) began no earlier than 24 months before the time of the CGT event; and
    - (ii) ended no later than that time; and
  - (b) the share is *not*:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); and
  - (c) the CGT event is CGT event A1, B1, C2, E1, E2, G3, J1, K4, K6, K10 or K11.
- (2) The gain or loss is reduced by the \*active foreign business asset percentage (see sections 768-510, 768-530 and 768-535) of the foreign disposal company in relation to the holding company at the time of the CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Active foreign business asset percentage

### 768-510 Active foreign business asset percentage

- (1) The *active foreign business asset percentage* of a company (the *foreign company*) that is a foreign resident, in relation to the holding company mentioned in section 768-505, at the time of the CGT event mentioned in that section, is worked out in accordance with this section.

#### *Market value method*

- (2) Work out that percentage under section 768-520 if:
- (a) the holding company has made a choice under subsection 768-515(1) in relation to the foreign company for that time; and
  - (b) there is sufficient evidence of the \*market value at that time of:
    - (i) all \*assets included in the total assets of the foreign company at that time; and
    - (ii) all \*active foreign business assets of the foreign company at that time.

#### *Book value method*

- (3) Work out that percentage under section 768-525 if:
- (a) the holding company has made a choice under subsection 768-515(2) in relation to the foreign company for that time; and
  - (b) there are \*recognised company accounts of the foreign company for a period that ends no later than that time, but no more than 12 months before that time; and
  - (c) if the foreign company was in existence before the start of the period mentioned in paragraph (b)—there are recognised company accounts of the foreign company for a period that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in paragraph (b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Default method*

- (4) Otherwise, that percentage is:
- (a) 100% (if this section is being applied for the purposes of section 768-505 to reduce a \*capital loss of the holding company); or
  - (b) zero (in any other case).

**768-515 Choices to apply market value method or book value method**

*Choice for market value method*

- (1) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-520.

*Choice for book value method*

- (2) The holding company may choose to work out the \*active foreign business asset percentage of the foreign company for the time of the CGT event under section 768-525.

*Method of making choice*

- (3) The way an entity making a choice under subsection (1) or (2) prepares its \*income tax return is sufficient evidence of the making of the choice.

Note: If an entity does not make a choice under subsection (1) or (2), it will work out the active foreign business asset percentage of the foreign company in accordance with the default method in subsection 768-510(4).

**768-520 Market value method—choice made under subsection 768-515(1)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the \*market value at that time of all \*assets included in the total assets of the foreign company at that time.
- Step 2. Work out the \*market value (see subsection (2)) at that time of all \*active foreign business assets of the foreign company at that time.
- Step 3. Divide the result of step 2 by the result of step 1.
- Step 4. Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5. The **active foreign business asset percentage** is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or
  - (c) if the result of step 4 is 90% or more—100%.

Note 1: If the foreign company is a foreign life insurance company or a foreign general insurance company, the result of step 2 is modified under section 768-530.

Note 2: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

(2) If, at the time of the CGT event:

- (a) an \*active foreign business asset of the foreign company is a \*share in another company (the **subsidiary company**); and
- (b) the subsidiary company is a foreign resident;

then, in working out the \*market value of all \*active foreign business assets of the foreign company at that time for the purposes of step 2 of the method statement in subsection (1), treat the \*market value of the share at that time according to the following table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Market value of a share in subsidiary company**

Item	If:	treat the market value of the share as:
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and  (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's *market value at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

**768-525 Book value method—choice made under subsection 768-515(2)**

- (1) The *active foreign business asset percentage* of the foreign company in relation to the holding company, at the time of the CGT event, is worked out under this section in this way.

*Method statement*

- Step 1. Work out the foreign company's average value of total assets at that time under subsection (2).
- Step 2. Work out the foreign company's average value of active foreign business assets at that time under subsection (3).
- Step 3. Divide the result of step 2 by the result of step 1.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- Step 4. Express the result of step 3 as a percentage, and round that percentage to the nearest whole percentage point (rounding a number ending in .5 upwards).
- Step 5. The *active foreign business asset percentage* is:
- (a) if the result of step 4 is less than 10%—zero; or
  - (b) if the result of step 4 is 10% or more, but less than 90%—that result; or
  - (c) if the result of step 4 is 90% or more—100%.

Note: If the foreign company is a member of a wholly-owned group, section 768-535 may modify the way in which this section operates.

- (2) The foreign company's *average value of total assets* at the time of the CGT event is worked out in this way.

*Method statement*

- Step 1. Work out the sum of the values (see subsection (5)) of every \*asset included in the total assets of the foreign company at the end of the most recent period:
- (a) that ends no later than that time, but no more than 12 months before that time; and
  - (b) for which the foreign company has \*recognised company accounts.
- Step 2. Work out the sum of the values (see subsection (5)) of every \*asset included in the total assets of the foreign company at the end of the most recent period:
- (a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and
  - (b) for which the foreign company has \*recognised company accounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.

Step 3. Work out the sum of the results of steps 1 and 2, and divide that sum by 2.

(3) The foreign company's *average value of active foreign business assets* at that time is worked out in this way.

*Method statement*

Step 1. Work out the sum of the values (see subsections (4) and (5)) of every \*active foreign business asset of the foreign company at the end of the most recent period:

- (a) that ends no later than that time, but no more than 12 months before that time; and
- (b) for which the foreign company has \*recognised company accounts.

Step 2. Work out the sum of the values (see subsections (4) and (5)) of every \*active foreign business asset of the foreign company at the end of the most recent period:

- (a) that ends at least 6 months, but no more than 18 months, before the end of the period mentioned in step 1; and
- (b) for which the foreign company has \*recognised company accounts.

Note: See subsection (6) if the foreign company does not have recognised company accounts for a period mentioned in this step.

Step 3. Work out the sum of the results of steps 1 and 2, and divide that sum by 2.

Note: If the foreign company is a foreign life insurance company or a foreign general insurance company, the results of steps 1 and 2 are modified under section 768-530.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) If an \*active foreign business asset of the foreign company is a \*share in another company (the *subsidiary company*) that is a foreign resident, then, for the purposes of steps 1 and 2 of the method statement in subsection (3), treat the value of the share at a particular time according to the following table.

<b>Value of a share in subsidiary company</b>		
<b>Item</b>	<b>If:</b>	<b>treat the value of the share as:</b>
1	(a) the foreign company has a *direct voting percentage of 10% or more in the subsidiary company at that time; and  (b) the holding company has a *total voting percentage of 10% or more in the subsidiary company at that time	the *share's value (see subsection (5)) at that time, multiplied by the *active foreign business asset percentage of the subsidiary company in relation to the holding company at that time
2	item 1 does not apply	zero

Note: For the purposes of item 1 of the table, it is necessary to work out the active foreign business asset percentage of the subsidiary company before working out the active foreign business asset percentage of the foreign company.

- (5) For the purposes of this section, the value of an asset of a foreign company at the end of a period is taken to be:
- (a) the value of the asset as shown in the \*recognised company accounts of the foreign company for that period; or
  - (b) if the value of the asset is *not* shown in the recognised company accounts of the foreign company for that period—zero.
- (6) The result of:
- (a) step 2 of the method statement in subsection (2); and
  - (b) step 2 of the method statement in subsection (3);
- is taken to be zero if the foreign company does not have \*recognised company accounts for a period mentioned in those steps.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 768-530

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Note: This will only be the case if the foreign company was not in existence before the start of the period mentioned in step 1 of those method statements (see paragraph 768-510(3)(c)).

**768-530 Active foreign business asset percentage—modifications for foreign life insurance companies and foreign general insurance companies**

- (1) If the foreign company is a \*foreign life insurance company or a \*foreign general insurance company, work out its \*active foreign business asset percentage according to section 768-510, but with the modifications set out in subsections (2) and (3).
- (2) Treat a reference in the following provisions to a period as a reference to a \*statutory accounting period of the foreign company:
  - (a) paragraphs 768-510(3)(b) and (c);
  - (b) section 768-525.
- (3) Apply the modifications set out in the following table.

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**Modifications for foreign life insurance companies and foreign general insurance companies**

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<b>Item</b>	<b>The result of this step:</b>	<b>is increased by the amount applicable under subsection (4) for this statutory accounting period:</b>
1	step 2 of the method statement in subsection 768-520(1)	the most recent *statutory accounting period of the foreign company ending at or before the time mentioned in that step
2	step 1 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)
3	step 2 of the method statement in subsection 768-525(3)	the *statutory accounting period mentioned in that step (as modified by subsection (2) of this section)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The amount applicable under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Value of non-active foreign business assets} \times \frac{\text{Active insurance amount}}{\text{Total insurance assets}}$$

where:

**active insurance amount means:**

- (a) if the foreign company is a \*foreign life insurance company—the untainted policy liabilities (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
- (b) if the foreign company is a \*foreign general insurance company—the active general insurance amount worked out under subsection (5) for the statutory accounting period.

**total insurance assets means:**

- (a) if the foreign company is a \*foreign life insurance company—the total assets (within the meaning of subsection 446(2) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period; or
- (b) if the foreign company is a \*foreign general insurance company—the total assets (within the meaning of subsection 446(4) of that Act) of the foreign company for the statutory accounting period.

**value of non-active foreign business assets means:**

- (a) for the purposes of item 1 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-520(1); and
  - (ii) the result of step 2 of that method statement (apart from this section); or
- (b) for the purposes of item 2 of the table in subsection (3)—the difference between:
  - (i) the result of step 1 of the method statement in subsection 768-525(2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the result of step 1 of the method statement in subsection 768-525(3) (apart from this section); or
- (c) for the purposes of item 3 of the table in subsection (3)—the difference between:
  - (i) the result of step 2 of the method statement in subsection 768-525(2); and
  - (ii) the result of step 2 of the method statement in subsection 768-525(3) (apart from this section).

*Active insurance amount for foreign general insurance company*

- (5) The active general insurance amount under this subsection for a \*statutory accounting period of the foreign company is worked out using the following formula:

$$\text{Total general insurance assets} - \text{Net assets} - \text{Tainted outstanding claims} + \text{Solvency amount}$$

where:

**net assets** means the net assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**solvency amount** means the solvency amount (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**tainted outstanding claims** means the tainted outstanding claims (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**total general insurance assets** means the total assets (within the meaning of subsection 446(4) of the *Income Tax Assessment Act 1936*) of the foreign company for the statutory accounting period.

**768-533 Foreign company that is a FIF using CFC calculation method—treatment as AFI subsidiary under this Subdivision**

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the foreign company is a FIF (within the meaning of former section 481 of the *Income Tax Assessment Act 1936*); and
  - (b) the holding company has made a choice under former subsection 559A(1) of the *Income Tax Assessment Act 1936* in relation to the foreign company in respect of a notional accounting period (within the meaning of former section 486 of that Act) of the foreign company that ends in the 2009-10 income year; and
  - (c) because of the choice, the foreign company has been treated under former paragraph 559A(3)(c) of that Act as an AFI subsidiary (within the meaning of that Act) in relation to that holding company; and
  - (d) the holding company makes a choice under subsection (1A) in relation to the foreign company; and
  - (e) the holding company has not failed to make a choice under that subsection for the 2010-11 income year or any later income year.
- (1A) A holding company may make a choice under this subsection in relation to a foreign company if the holding company could have made a choice in relation to the foreign company under former section 559A of the *Income Tax Assessment Act 1936* if it had not been repealed by item 37 of Schedule 1 to the *Tax Laws Amendment (Foreign Source Income Deferral) Act (No. 1) 2010*.
- (2) For the purposes of this Subdivision, treat the foreign company as an AFI subsidiary in relation to that holding company at that time.

### **768-535 Modified rules for foreign wholly-owned groups**

- (1) This section applies if:
  - (a) for the purposes of section 768-505, it is necessary to work out the <sup>\*</sup>active foreign business asset percentage of a company (the ***top foreign company***) in relation to the holding company mentioned in that section, at the time of the CGT event mentioned in that section; and
  - (b) the top foreign company is *not*:
    - (i) an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) a \*foreign life insurance company; or
- (iii) a \*foreign general insurance company; and
- (c) for the purposes of section 768-505, it is also necessary (apart from this section) to work out the active foreign business asset percentage at that time of 1 or more other companies in relation to the holding company, at that time, where:
  - (i) the top foreign company and 1 or more of those other companies (the *subsidiary foreign companies*) are members of a \*wholly-owned group; and
  - (ii) each of the subsidiary foreign companies is a \*100% subsidiary of the top foreign company.
- (2) The holding company may choose to work out the \*active foreign business asset percentage of the top foreign company in accordance with subsections (4) and (6).
- (3) The way an entity making a choice under subsection (2) prepares its \*income tax return is sufficient evidence of the making of the choice.
- (4) If the holding company has made a choice under subsection (2), the provisions mentioned in subsection (5) operate, for the purposes of section 768-505, as if each subsidiary foreign company were a part of the top foreign company, rather than a separate entity.
  - Note 1: This subsection means that certain assets are not treated as active foreign business assets, or as assets included in the total assets, of any of the subsidiary foreign companies or of the top foreign company. For example:
    - (a) a share owned by one of those companies in another of those companies; and
    - (b) a debt owed by one of those companies to another of those companies.
  - Note 2: If an asset (other than an asset mentioned in Note 1) is actually an active foreign business asset, or an asset included in the total assets, of a subsidiary foreign company, it is treated under this subsection as an active foreign business asset, or as an asset included in the total assets, of the top foreign company.
- (5) For the purposes of subsection (4), the provisions are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) section 768-540 (active foreign business assets of a foreign company); and
  - (b) section 768-545 (assets included in the total assets of a foreign company).
- (6) If the holding company has made a choice under subsection (2), then for the purposes of sections 768-510 and 768-525, treat the \*recognised consolidated accounts of the top foreign company and all of the subsidiary foreign companies as the \*recognised company accounts of the top foreign company.

## Types of assets of a foreign company

### 768-540 Active foreign business assets of a foreign company

- (1) An asset is, at a particular time, an *active foreign business asset* of a company (the *foreign company*) that is a foreign resident if, at that time:
- (a) the asset is an \*asset included in the total assets of the company; and
  - (b) the asset satisfies any of these conditions:
    - (i) the asset is used, or held ready for use, by the company in the course of carrying on a \*business;
    - (ii) the asset is goodwill;
    - (iii) the asset is a \*share; and
  - (c) the asset is *not* any of the following:
    - (i) \*taxable Australian property;
    - (ii) a \*membership interest in a company that is an Australian resident;
    - (iii) a membership interest in a \*resident trust for CGT purposes;
    - (iv) an option or right to acquire a membership interest mentioned in subparagraph (ii) or (iii); and
  - (d) the asset is *not* covered by subsection (2); and
  - (e) if the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business—the asset is *not* covered under subsection (4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) An asset is covered by this subsection if it is:
- (a) a financial instrument (other than a \*share or a trade debt); or
  - (b) either:
    - (i) an eligible finance share (within the meaning of Part X of the *Income Tax Assessment Act 1936*); or
    - (ii) a widely distributed finance share (within the meaning of that Part); or
  - (c) an interest in a trust or \*partnership; or
  - (d) a \*life insurance policy; or
  - (e) a right or option in respect of:
    - (i) a financial instrument; or
    - (ii) an interest in a company, trust or partnership; or
    - (iii) a life insurance policy; or
  - (f) cash or cash equivalent; or
  - (g) an asset whose main use in the course of carrying on the \*business mentioned in subparagraph (1)(b)(i) is to \*derive interest, an \*annuity, rent, \*royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the foreign company so that its \*market value has been substantially enhanced; or
    - (ii) its main use for deriving rent was only temporary.
- (3) If, at the time mentioned in subsection (1), the foreign company is an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part), subsection (2) operates as if:
- (a) paragraphs (2)(a) and (f) were omitted; and
  - (b) paragraph (2)(g) did not contain a reference to interest, an \*annuity or foreign exchange gains; and
  - (c) subparagraph (2)(e)(i) were omitted and the following subparagraph were substituted:
    - (i) a financial instrument, other than an asset mentioned in paragraph 450(1)(b) of the *Income Tax Assessment Act 1936*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The asset is covered under this subsection if:
- (a) all of these conditions are satisfied:
    - (i) the asset is an asset mentioned in subparagraph 450(4)(b)(i) or (ii) of the *Income Tax Assessment Act 1936*;
    - (ii) the asset was acquired from another entity;
    - (iii) either of the conditions mentioned in subparagraph 450(6)(c)(i) and (ii) of the *Income Tax Assessment Act 1936* were satisfied in relation to the other entity at the time of the acquisition; or
  - (b) both of these conditions are satisfied:
    - (i) the asset relates to a debt to which factoring income (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of the foreign company relates;
    - (ii) the condition in paragraph 450(8)(b) of the *Income Tax Assessment Act 1936* is satisfied in relation to the debt.

#### **768-545 Assets included in the total assets of a foreign company**

- (1) At a particular time, an asset is an ***asset included in the total assets*** of a company (the ***foreign company***) that is a foreign resident if:
- (a) the asset is a \*CGT asset at that time; and
  - (b) the foreign company owns the asset at that time; and
  - (c) if at that time the foreign company is *not* an AFI subsidiary (within the meaning of Part X of the *Income Tax Assessment Act 1936*) whose sole or principal business is financial intermediary business (within the meaning of that Part)—the asset is *not* a foreign company derivative asset covered by subsection (2).
- (2) An asset is a foreign company derivative asset covered by this subsection if:
- (a) the asset is an \*arrangement covered by subsection (3), unless the regulations declare the asset *not* to be a foreign company derivative asset covered by this subsection; or
  - (b) the regulations declare the asset to be a foreign company derivative asset covered by this subsection.
- (3) An \*arrangement is covered by this subsection if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and
  - (b) that future time is not less than the number of days, prescribed by regulations made for the purposes of paragraph 761D(1)(b) of the *Corporations Act 2001*, after the day on which the arrangement is entered into; and
  - (c) the amount of the consideration, or the value of the arrangement, is ultimately determined, \*derived from or varies by reference to (wholly or in part) the value or amount of something else (of any nature whatsoever and whether or not deliverable), including, for example, one or more of the following:
    - (i) an asset;
    - (ii) a rate (including an interest rate or exchange rate);
    - (iii) an index;
    - (iv) a commodity; and
  - (d) subsection (4) does not apply in relation to the arrangement.
- (4) An \*arrangement under which one person has an obligation to buy, and another person has an obligation to sell, property is not an arrangement covered by subsection (3) merely because the arrangement provides for the consideration to be varied by reference to a general inflation index such as the Consumer Price Index.

## **Voting percentages in a company**

### **768-550 Direct voting percentage in a company**

- (1) An entity's *direct voting percentage* at a particular time in a company is:
- (a) if the entity has a voting interest (within the meaning of section 334A of the *Income Tax Assessment Act 1936*) in the foreign company at that time amounting to a percentage of the voting power of the company—that percentage; or
  - (b) otherwise—zero.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) In applying section 334A of the *Income Tax Assessment Act 1936* for the purposes of subsection (1) of this section, assume that:
- (a) the entity is a company; and
  - (b) the entity is not the beneficial owner of a \*share in the company if a trust or partnership is interposed between the entity and the company.

### **768-555 Indirect voting percentage in a company**

- (1) An entity's *indirect voting percentage* at a particular time in a company (the *subsidiary company*) is worked out by multiplying:
- (a) the entity's \*direct voting percentage (if any) in another company (the *intermediate company*) at that time;
- by:
- (b) the sum of:
    - (i) the intermediate company's direct voting percentage (if any) in the subsidiary company at that time; and
    - (ii) the intermediate company's indirect voting percentage (if any) in the subsidiary company at that time (as worked out under one or more other applications of this section).
- (2) If there is more than one intermediate company to which subsection (1) applies at that time, the entity's *indirect voting percentage* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate companies.

### **768-560 Total voting percentage in a company**

An entity's *total voting percentage* at a particular time in a company is the sum of:

- (a) the entity's \*direct voting percentage in the company at that time; and
- (b) the entity's \*indirect voting percentage in the company at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 768-R—Temporary residents**

### **Guide to Subdivision 768-R**

#### **768-900 What this Subdivision is about**

This Subdivision modifies the general tax rules for people in Australia who are temporary residents, whether Australian residents or foreign residents.

Generally foreign income derived by temporary residents is non-assessable non-exempt income and capital gains and losses they make are also disregarded for CGT purposes. There are some exceptions for employment-related income and capital gains on shares and rights acquired under employee share schemes.

Temporary residents are also partly relieved of record-keeping obligations in relation to the controlled foreign company rules.

Interest paid by temporary residents is not subject to withholding tax and may be non-assessable non-exempt income for a foreign resident.

#### **Table of sections**

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768-980	Interest paid by temporary resident

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 768-905 Objects

The objects of this Subdivision are to:

- (a) provide \*temporary residents with tax relief on most foreign source income and capital gains; and
- (b) relieve the burdens associated with complying with certain record-keeping obligations and interest withholding tax obligations.

### 768-910 Income derived by temporary resident

- (1) The following are \*non-assessable non-exempt income:
  - (a) the \*ordinary income you \*derive directly or indirectly from a source other than an \*Australian source if you are a \*temporary resident when you derive it;
  - (b) your \*statutory income (other than a \*net capital gain) from a source other than an Australian source if you are a temporary resident when you derive it.

This subsection has effect subject to subsections (3) and (5).

Note: A capital gain or loss you make may be disregarded under section 768-915.

- (2) For the purposes of paragraph (1)(b):
  - (a) if you have statutory income because a particular circumstance occurs, you derive the statutory income at the time when the circumstance occurs; and
  - (b) if you have statutory income because a number of circumstances occur, you derive the statutory income at the time when the last of those circumstances occurs.

#### *Exception to subsection (1)*

- (3) However, the following are not \*non-assessable non-exempt income under subsection (1):
  - (a) the \*ordinary income you \*derive directly or indirectly from a source other than an \*Australian source to the extent that it is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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remuneration, for employment undertaken, or services provided, while you are a \*temporary resident;

- (b) your \*statutory income (other than a \*net capital gain) from a source other than an Australian source to the extent that it relates to employment undertaken, or services provided, while you are a temporary resident;
- (c) an amount included in your assessable income under Division 86.

Note: This subsection only makes an amount not non-assessable non-exempt income under subsection (1). It does not prevent that amount from being non-assessable non-exempt income under some other provision of this Act or the *Income Tax Assessment Act 1936*.

### **768-915 Certain capital gains and capital losses of temporary resident to be disregarded**

A \*capital gain or \*capital loss you make from a \*CGT event is disregarded if:

- (a) you are a \*temporary resident when, or immediately before, the CGT event happens; and
- (b) you would not make a capital gain or loss from the CGT event, or the capital gain or loss from the CGT event would have been disregarded under Division 855, if you were a foreign resident when, or immediately before, the CGT event happens.

### **768-950 Individual becoming an Australian resident**

Section 855-45 does not apply to your becoming an Australian resident if you are a \*temporary resident immediately after you become an Australian resident.

### **768-955 Temporary resident who ceases to be temporary resident but remains an Australian resident**

- (1) If you are a \*temporary resident and you then cease to be a temporary resident (but remain, at that time, an Australian resident), there are rules relevant to each \*CGT asset that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) you owned just before you ceased to be a temporary resident;  
and
  - (b) is not \*taxable Australian property; and
  - (c) you \*acquired on or after 20 September 1985.
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time you cease to be a \*temporary resident) is its \*market value at that time.
- (3) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it at the time you ceased to be a \*temporary resident.
- (4) This section does not apply to an \*ESS interest if:
- (a) Subdivision 83A-C (about employee share schemes) applies to the interest; and
  - (b) the \*ESS deferred taxing point for the interest has not yet occurred.

#### **768-960 Temporary resident not attributable taxpayer for purposes of controlled foreign companies rules**

For the purposes of Part X of the *Income Tax Assessment Act 1936* (which deals with the attribution of income in respect of controlled foreign companies), you are taken not to be an \*attributable taxpayer in relation to a \*CFC or \*CFT at any time you are a \*temporary resident.

#### **768-970 Modification of rules for accruals system of taxation of certain non-resident trust estates**

At any time when you are a \*temporary resident, you are taken not to be a resident for the purposes of section 102AAZD of the *Income Tax Assessment Act 1936*.

#### **768-980 Interest paid by temporary resident**

Interest that is paid by a \*temporary resident:

- (a) is an amount to which section 128B (liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) is \*non-assessable non-exempt income if the interest is:
  - (i) \*derived by a foreign resident; and
  - (ii) is not derived from carrying on \*business in Australia at or through a \*permanent establishment in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 770—Foreign income tax offsets**

### **Table of Subdivisions**

Guide to Division 770

770-A Entitlement rules for foreign income tax offsets

770-B Amount of foreign income tax offset

770-C Rules about payment of foreign income tax

770-D Administration

### **Guide to Division 770**

#### **770-1 What this Division is about**

You may get a non-refundable tax offset for foreign income tax paid on your assessable income.

There is a limit on the amount of the tax offset.

A resident of a foreign country does not get the offset for some foreign income taxes.

You may also get the offset for foreign income tax paid on some amounts that are not taxed in Australia.

#### **770-5 Object**

- (1) The object of this Division is to relieve double taxation where:
  - (a) you have paid foreign income tax on amounts included in your assessable income; and
  - (b) you would, apart from this Division, pay Australian income tax on the same amounts.
- (2) To achieve this object, this Division gives you a tax offset to reduce or eliminate Australian income tax otherwise payable on those amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 770-A—Entitlement rules for foreign income tax offsets

### Table of sections

#### Basic entitlement rule for foreign income tax offset

770-10 Entitlement to foreign income tax offset

770-15 Meaning of *foreign income tax*, *credit absorption tax* and *unitary tax*

### Basic entitlement rule for foreign income tax offset

#### 770-10 Entitlement to foreign income tax offset

- (1) You are entitled to a \*tax offset for an income year for \*foreign income tax. An amount of foreign income tax counts towards the tax offset for the year if you paid it in respect of an amount that is all or part of an amount included in your assessable income for the year.

Note 1: The offset is for the income year in which your assessable income included an amount in respect of which you paid foreign income tax—even if you paid the foreign income tax in another income year.

Note 2: If the foreign income tax has been paid on an amount that is part non-assessable non-exempt income and part assessable income for you for the income year, only a proportionate share of the foreign income tax (the share that corresponds to the part that is assessable income) will count towards the tax offset (excluding the operation of subsection (2)).

Note 3: For offshore banking units, the amount of foreign income tax paid in respect of offshore banking income is reduced: see subsection 121EG(3A) of the *Income Tax Assessment Act 1936*.

#### *Taxes paid on section 23AI or 23AK amounts*

- (2) An amount of \*foreign income tax counts towards the \*tax offset for you for the year if you paid it in respect of an amount that is your \*non-assessable non-exempt income under either section 23AI or 23AK of the *Income Tax Assessment Act 1936* for the year.

Note 1: Sections 23AI and 23AK of the *Income Tax Assessment Act 1936* provide that amounts paid out of income previously attributed from a controlled foreign company or a foreign investment fund are non-assessable non-exempt income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: Foreign income taxes covered by this subsection are direct taxes (for example, a withholding tax on a dividend payment) and not underlying taxes, only some of which are covered by section 770-135.

*Exception for certain residence-based foreign income taxes*

- (3) An amount of \*foreign income tax you paid does not count towards the \*tax offset for the year if you paid it:
- (a) to a foreign country because you are a resident of that country for the purposes of a law relating to the foreign income tax; and
  - (b) in respect of an amount derived from a source outside that country.

*Exception for previously complying funds and previously foreign funds*

- (4) An amount of \*foreign income tax paid by a \*superannuation provider in relation to a \*superannuation fund does not count towards the \*tax offset for the year if:
- (a) the tax was paid in respect of an amount included in the fund's assessable income under table item 2 or 3 in section 295-320; and
  - (b) the provider paid the tax before the start of the income year.

Note: Table items 2 and 3 in section 295-320 include additional amounts in the assessable income of superannuation funds that change their status from complying to non-complying or from foreign to Australian.

*Exception for credit absorption tax and unitary tax*

- (5) An amount of \*credit absorption tax or \*unitary tax you paid does not count towards the \*tax offset for the year.

**770-15 Meaning of *foreign income tax*, *credit absorption tax* and *unitary tax***

- (1) ***Foreign income tax*** means tax that:
- (a) is imposed by a law other than an \*Australian law; and
  - (b) is:
    - (i) tax on income; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) tax on profits or gains, whether of an income or capital nature; or
- (iii) any other tax, being a tax that is subject to an agreement having the force of law under the *International Tax Agreements Act 1953*.

Note: Foreign income tax includes only that which has been correctly imposed in accordance with the relevant foreign law or, where the foreign jurisdiction has a tax treaty with Australia (having the force of law under the *International Tax Agreements Act 1953*), has been correctly imposed in accordance with that tax treaty.

- (2) ***Credit absorption tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country to the extent that the tax would not have been payable if the entity concerned or another entity had not been entitled to an offset in respect of the tax under this Division.
- (3) ***Unitary tax*** means a tax imposed by a law of a foreign country, or of any part of, or place in, a foreign country, being a law which, for the purposes of taxing income, profits or gains of a company derived from sources within that country, takes into account, or is entitled to take into account, income, losses, outgoings or assets of the company (or of a company that for the purposes of that law is treated as being associated with the company) derived, incurred or situated outside that country, but does not include tax imposed by that law if that law only takes those matters into account:
  - (a) if such an associated company is a resident of the foreign country for the purposes of the law of the foreign country; or
  - (b) for the purposes of granting any form of relief in relation to tax imposed on dividends received by one company from another company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 770-B—Amount of foreign income tax offset****Guide to Subdivision 770-B****770-65 What this Subdivision is about**

The amount of your tax offset is based on the amount of foreign income tax you have paid.

However, there is a limit on the maximum amount of your offset. The limit is the greater of \$1,000 and an amount worked out under this Subdivision. This amount is based on a comparison between your tax liability and the tax liability you would have if certain foreign-taxed and foreign-sourced income and related deductions were disregarded.

You may choose to use the limit of \$1,000 and not work out this amount.

There is an increase in the limit to ensure foreign income tax paid on some amounts that are not taxed always forms part of the offset.

**Table of sections****Operative provisions**

770-70	Amount of foreign income tax offset
770-75	Foreign income tax offset limit
770-80	Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the <i>Income Tax Assessment Act 1936</i> apply

**Operative provisions****770-70 Amount of foreign income tax offset**

The amount of your \*tax offset for the year is the sum of the \*foreign income tax you paid that counts towards the offset for the year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 770-75

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Note 1: The amount of foreign income tax you paid may be affected by Subdivision 770-C.

Note 2: The amount of the offset might be increased under section 770-230 of the *Income Tax (Transitional Provisions) Act 1997*, if you have pre-commencement excess foreign income tax.

**770-75 Foreign income tax offset limit**

- (1) There is a limit (the *offset limit*) on the amount of your \*tax offset for a year. If your tax offset exceeds the offset limit, reduce the offset by the amount of the excess.
- (2) Your offset limit is the greater of:
  - (a) \$1,000; and
  - (b) this amount:
    - (i) the amount of income tax payable by you for the income year; *less*
    - (ii) the amount of income tax that would be payable by you for the income year if the assumptions in subsection (4) were made.

Note 1: If you do not intend to claim a foreign income tax offset of more than \$1,000 for the year, you do not need to work out the amount under paragraph (b).

Note 2: The amount of the offset limit might be increased under section 770-80.

- (3) For the purposes of paragraph (2)(b), work out the amount of income tax payable by you, or that would be payable by you, disregarding any \*tax offsets.
- (4) Assume that:
  - (a) your assessable income did not include:
    - (i) so much of any amount included in your assessable income as represents an amount in respect of which you paid \*foreign income tax that counts towards the \*tax offset for the year; and
    - (ii) any other amounts of \*ordinary income or \*statutory income from a source other than an \*Australian source; and
  - (b) you were not entitled to any deductions that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) are \*debt deductions that are attributable to an \*overseas permanent establishment of yours; or
- (ii) are deductions (other than debt deductions) that are reasonably related to amounts covered by paragraph (a) for that year.

Note: You must also assume you were not entitled to any deductions for certain converted foreign losses: see section 770-35 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: If an entity has paid foreign income tax on a capital gain that comprises part of its net capital gain, only that capital gain on which foreign income tax has been paid is disregarded.

**770-80 Increase in offset limit for tax paid on amounts to which section 23AI or 23AK of the *Income Tax Assessment Act 1936* apply**

Your offset limit under subsection 770-75(2) is increased by any amounts of \*foreign income tax that count towards the \*tax offset for you for the year because of subsection 770-10(2).

**Subdivision 770-C—Rules about payment of foreign income tax**

**Table of sections**

**Rules about when foreign tax is paid**

- 770-130 When foreign income tax is considered paid—taxes paid by someone else
- 770-135 Foreign income tax paid by CFCs on attributed amounts

**Rules about when foreign tax is considered not paid**

- 770-140 When foreign income tax is considered not paid—anti-avoidance rule

**Rules about when foreign tax is paid**

**770-130 When foreign income tax is considered paid—taxes paid by someone else**

- (1) This Act applies to you as if you had paid an amount of \*foreign income tax in respect of an amount (a *taxed amount*) that is all or part of an amount included in your \*ordinary income or \*statutory

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

income if you are covered by subsection (2) or (3) for an amount of foreign income tax paid in respect of the taxed amount.

- (2) You are covered by this subsection for an amount of \*foreign income tax paid in respect of a taxed amount if that foreign income tax has been paid in respect of the taxed amount by another entity under an \*arrangement with you or under the law relating to the foreign income tax.

Example: You are a partner in a partnership and the partnership pays foreign income tax on the partnership income.

- (3) You are covered by this subsection for an amount of \*foreign income tax paid in respect of the taxed amount to the extent that:
- (a) the taxed amount is taken, because of section 6B of the *Income Tax Assessment Act 1936* (the **1936 Act**), to be attributable to another amount of income of a particular kind or source; and
  - (b) foreign income tax has been paid in respect of the other amount of income; and
  - (c) the taxed amount is less than it would have been if that tax had not been paid.

Example: Aust Co (an Australian resident) is the sole beneficiary of an Australian resident trust H and is presently entitled to all the income of trust H. Trust H owns shares in For Co (a foreign company). For Co pays a dividend to trust H and the dividend is subject to withholding tax in For Co's country of residence.

Trust H allocates to Aust Co, the dividend, as well as other Australian source income trust H earned in the year (none of which was subject to foreign income tax). Aust Co is treated as having paid the foreign income tax paid by For Co under subsection 770-130(3). The foreign income tax is treated as paid in respect of the amount included in Aust Co's assessable income that is attributable to the dividend.

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

- (1) This Division applies to an entity (other than a \*CFC) as if it had paid an amount of \*foreign income tax worked out under subsection (7) in respect of an amount included in its assessable income if:
- (a) the amount is included in its assessable income as described in subsection (2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the conditions in subsections (3), (5) and (6) are satisfied.
- (2) An amount is included in an entity's assessable income as described in this subsection if the entity is a company and the amount is included under:
- (a) section 456 (a *section 456 case*) of the 1936 Act in relation to a \*CFC and a statutory accounting period; or
  - (b) section 457 (a *section 457 case*) of that Act in relation to a CFC.

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

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

*Tax paid condition*

- (3) An amount of \*foreign income tax, income tax or \*withholding tax (the *tax amount*) must have been paid:
- (a) for a section 456 case—by the \*CFC in respect of an amount included in the notional assessable income of the CFC for the statutory accounting period; or
  - (b) for a section 457 case—by the CFC.

Note: Section 770-130 deems foreign income tax to have been paid in certain circumstances.

- (4) For the purposes of paragraphs (3)(a) and (b), the tax amount includes an amount that is taken to have been paid by the \*CFC under subsection 393(4) of the 1936 Act (about tax paid on reinsurance premiums).

*Association condition*

- (5) If the entity is a company, it must have an \*attribution percentage of 10% or more:
- (a) for a section 456 case—in relation to the \*CFC at the end of the statutory accounting period; or
  - (b) for a section 457 case—in relation to the CFC at the residence-change time (within the meaning of section 457 of the 1936 Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Amount of foreign income tax*

- (7) The amount worked out under this subsection is:
- (a) for a section 456 case—the sum of all the tax amounts for the statutory accounting period multiplied by the company's \*attribution percentage in relation to the \*CFC at the time mentioned in paragraph (5)(a); or
  - (b) for a section 457 case—the sum of all the tax amounts to the extent they are attributable to the amount included in the company's assessable income under section 457 of the 1936 Act.

*Grossing-up of attributed amount*

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

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

## **Rules about when foreign tax is considered not paid**

### **770-140 When foreign income tax is considered not paid— anti-avoidance rule**

Despite anything else in this Division, this Act applies to you as if you had *not* paid an amount of \*foreign income tax to the extent that you or any other entity become entitled to:

- (a) a refund of the foreign income tax; or
- (b) any other benefit worked out by reference to the amount of the foreign income tax (other than a reduction in the amount of the foreign income tax).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 770-D—Administration**

### **Table of sections**

770-190 Amendment of assessments

### **770-190 Amendment of assessments**

- (1) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this Division for an income year if:
  - (a) an event described in subsection (2) (an *amendment event*) happens after the time you lodged your \*income tax return for that year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after the amendment event.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

- (2) The following are amendment events:
  - (a) you pay an amount of \*foreign income tax that counts towards your \*tax offset for the year;
  - (b) there is an increase in an amount of foreign income tax you paid that counts towards your offset for the year;
  - (c) there is a reduction in an amount of foreign income tax you paid that counts towards your offset for the year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 775—Foreign currency gains and losses**

### **Table of Subdivisions**

	Guide to Division 775
775-A	Objects of this Division
775-B	Realisation of forex gains or losses
775-C	Roll-over relief for facility agreements
775-D	Qualifying forex accounts that pass the limited balance test
775-E	Retranslation for qualifying forex accounts
775-F	Retranslation under foreign exchange retranslation election under Subdivision 230-D

### **Guide to Division 775**

#### **775-5 What this Division is about**

Your assessable income includes a forex realisation gain you make as a result of a forex realisation event.

You can deduct a forex realisation loss that you make as a result of a forex realisation event.

There are 5 main types of forex realisation events:

- (a) forex realisation event 1 happens if you dispose of foreign currency, or a right to receive foreign currency, to another entity;
- (b) forex realisation event 2 happens if you cease to have a right to receive foreign currency (otherwise than because you disposed of the right to another entity);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) forex realisation event 3 happens if you cease to have an obligation to receive foreign currency;
- (d) forex realisation event 4 happens if you cease to have an obligation to pay foreign currency;
- (e) forex realisation event 5 happens if you cease to have a right to pay foreign currency.

There are special rules for certain short-term forex realisation gains and losses.

You may choose roll-over relief for certain facility agreements.

You may elect to receive concessional tax treatment for a qualifying forex account that passes the limited balance test.

You may choose retranslation for a qualifying forex account.

### **Subdivision 775-A—Objects of this Division**

#### **Table of sections**

775-10 Objects of this Division

#### **775-10 Objects of this Division**

The objects of this Division are as follows:

- (a) to recognise \*foreign currency gains and losses for income tax purposes;
- (b) to quantify those gains and losses by reference to the change in the Australian dollar value of rights and obligations;
- (c) to treat certain foreign currency denominated financing facilities that are the economic equivalent of a loan as if the relevant facility were a loan;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) to reduce compliance costs by not requiring the recognition of certain low-value foreign currency gains and losses that involve substantial calculations.

### **Subdivision 775-B—Realisation of forex gains or losses**

#### **Table of sections**

775-15	Forex realisation gains are assessable
775-20	Certain forex realisation gains are exempt income
775-25	Certain forex realisation gains are non-assessable non-exempt income
775-27	Certain forex realisation gains are non-assessable non-exempt income
775-30	Forex realisation losses are deductible
775-35	Certain forex realisation losses are disregarded
775-40	Disposal of foreign currency or right to receive foreign currency—forex realisation event 1
775-45	Ceasing to have a right to receive foreign currency—forex realisation event 2
775-50	Ceasing to have an obligation to receive foreign currency—forex realisation event 3
775-55	Ceasing to have an obligation to pay foreign currency—forex realisation event 4
775-60	Ceasing to have a right to pay foreign currency—forex realisation event 5
775-65	Only one forex realisation event to be counted
775-70	Tax consequences of certain short-term forex realisation gains
775-75	Tax consequences of certain short-term forex realisation losses
775-80	You may choose not to have sections 775-70 and 775-75 apply to you
775-85	Forex cost base of a right to receive foreign currency
775-90	Forex entitlement base of a right to pay foreign currency
775-95	Proceeds of assuming an obligation to pay foreign currency
775-100	Net costs of assuming an obligation to receive foreign currency
775-105	Currency exchange rate effect
775-110	Constructive receipts and payments
775-115	Economic set-off to be treated as legal set-off
775-120	Non-arm's length transactions
775-125	CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3
775-130	Certain deductions not allowable
775-135	Right to receive or pay foreign currency
775-140	Obligation to pay or receive foreign currency
775-145	Application of forex realisation events to currency and fungible rights and obligations

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 775-150 Transitional election
- 775-155 Applicable commencement date
- 775-160 Exception—event happens before the applicable commencement date
- 775-165 Exception—currency or right acquired, or obligation incurred, before the applicable commencement date
- 775-168 Exception—disposal or redemption of traditional securities
- 775-175 Application to things happening before commencement

**775-15 Forex realisation gains are assessable**

*Basic rule*

- (1) Your assessable income for an income year includes a \*forex realisation gain you make as a result of a \*forex realisation event that happens during that year.

*Exceptions*

- (2) However, your assessable income does not include a \*forex realisation gain to the extent that it:
  - (a) is a gain of a private or domestic nature; and
  - (b) is not covered by an item of the table:

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**Forex realisation gains to which this subsection does not apply**

Item	You make the forex realisation gain as a result of this event...	happening to...	and the following condition is satisfied...
1	forex realisation event 1 or 2	*foreign currency or a right, or a part of a right, to receive foreign currency	a gain that would result from the occurrence of a *realisation event in relation to the foreign currency, or to the right, or the part of the right, would, apart from this Division, be taken into account under Part 3-1 or 3-3

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-15

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**Forex realisation gains to which this subsection does not apply**

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<b>Item</b>	<b>You make the forex realisation gain as a result of this event...</b>	<b>happening to...</b>	<b>and the following condition is satisfied...</b>
2	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
3	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-70 provides for additional exceptions.

Note: Section 775-70 is about the tax consequences of certain short-term forex realisation gains.

*No double taxation*

(4) To the extent that a \*forex realisation gain would be included in your assessable income under this section and another provision of this Act, the gain is only included in your assessable income under this section.

Note: Under section 230-20, foreign exchange gains from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**775-20 Certain forex realisation gains are exempt income**

A \*forex realisation gain you make is \*exempt income to the extent that, if it had been a \*forex realisation loss, it would have been made in gaining or producing exempt income.

**775-25 Certain forex realisation gains are non-assessable non-exempt income**

A \*forex realisation gain you make is \*non-assessable non-exempt income to the extent that, if it had been a \*forex realisation loss, it would have been made in gaining or producing non-assessable non-exempt income.

**775-27 Certain forex realisation gains are non-assessable non-exempt income**

Sections 775-20 and 775-25 apply to a \*forex realisation gain only if, had it been a \*forex realisation loss, it would have been disregarded under section 775-35.

**775-30 Forex realisation losses are deductible**

*Basic rule*

- (1) You can deduct from your assessable income for an income year a \*forex realisation loss that you make as a result of a \*forex realisation event that happens during that year.

*Exceptions*

- (2) However, you cannot deduct a \*forex realisation loss under this section to the extent that it:
  - (a) is a loss of a private or domestic nature; and
  - (b) is not covered by an item of the table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 775-30

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**Forex realisation losses to which this subsection does not apply**

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<b>Item</b>	<b>You make the forex realisation loss as a result of this event...</b>	<b>happening to...</b>	<b>and the following condition is satisfied...</b>
1	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
2	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-75 provides for additional exceptions.

Note: Section 775-75 is about the tax consequences of certain short-term forex realisation losses.

*No double deductions*

(4) To the extent that this section and another provision of this Act would allow you a deduction for a \*forex realisation loss, you can only deduct the loss under this section.

Note: Under section 230-20, foreign exchange losses from a Division 230 financial arrangement are dealt with under Division 230 and not under this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **775-35 Certain forex realisation losses are disregarded**

- (1) A \*forex realisation loss you make as a result of forex realisation event 1, 2 or 5 is disregarded to the extent that it is made in gaining or producing \*exempt income or \*non-assessable non-exempt income.
- (2) A \*forex realisation loss you make as a result of forex realisation event 3, 4 or 6 is disregarded to the extent that:
  - (a) it is made in gaining or producing \*exempt income or \*non-assessable non-exempt income; and
  - (b) the obligation, or the part of the obligation, does not give rise to a deduction.

### **775-40 Disposal of foreign currency or right to receive foreign currency—forex realisation event 1**

#### *Forex realisation event 1*

- (1) **Forex realisation event 1** is \*CGT event A1 that happens if you dispose of:
  - (a) \*foreign currency; or
  - (b) a right, or a part of a right, to receive foreign currency.

Note: For extended meaning of **right to receive foreign currency**, see section 775-135.

#### *Disposal*

- (2) For the purposes of this section, use subsection 104-10(2) to work out whether you have disposed of:
  - (a) \*foreign currency; or
  - (b) a right, or a part of a right, to receive foreign currency.

Note: Under subsection 104-10(2), a disposal requires a change of ownership.

#### *Time of event*

- (3) For the purposes of this section, subsection 104-10(3) is modified so that the time of the event is when:
  - (a) the \*foreign currency is disposed of; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the right, or the part of the right, is disposed of.

*Forex realisation gain*

- (4) You make a **forex realisation gain** if:
- (a) you make a \*capital gain from the event; and
  - (b) some or all of the capital gain is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the capital gain as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

- (5) For the purposes of paragraph (4)(a), Part 3-1 is modified so that section 118-20 is disregarded in working out the \*capital gain.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

*Forex realisation loss*

- (6) You make a **forex realisation loss** if:
- (a) you make a \*capital loss from the event; and
  - (b) some or all of the capital loss is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the capital loss as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*No indexation of cost base*

- (7) For the purposes of this section, disregard Division 114.

Note: Division 114 deals with indexation of the cost base.

*Foreign currency hedging gains and losses*

- (8) For the purposes of this section, disregard section 118-55.

Note: Section 118-55 deals with foreign currency hedging gains and losses.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Capital proceeds*

- (9) For the purposes of this section, if the \*capital proceeds from the event are more or less than the \*market value of:
- (a) the \*foreign currency; or
  - (b) the right, or the part of the right;
- the capital proceeds from the event are taken to be the market value. (The market value is worked out as at the time of the event.)

**775-45 Ceasing to have a right to receive foreign currency—forex realisation event 2**

*Forex realisation event 2*

- (1) **Forex realisation event 2** happens if:
- (a) you cease to have a right, or a part of a right, to receive \*foreign currency; and
  - (b) the right, or the part of the right, is one of the following:
    - (i) a right, or a part of a right, to receive, or that represents, \*ordinary income or \*statutory income (other than statutory income that is assessable under this Division or Division 102);
    - (ii) a right, or a part of a right, created or acquired in return for your ceasing to \*hold a \*depreciating asset;
    - (iii) a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency or foreign currency;
    - (iv) a right, or a part of a right, created or acquired in return for the occurrence of a \*realisation event in relation to a \*CGT asset you own, and none of subparagraphs (i), (ii) and (iii) applies; and
  - (c) you did not cease to have the right, or the part of the right, because you disposed of the right or the part of the right (within the meaning of section 775-40).

Note 1: Disposals are dealt with by section 775-40 (forex realisation event 1).

Note 2: For extended meaning of **right to receive foreign currency**, see section 775-135.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Time of event*

- (2) The time of the event is when you cease to have the right or the part of the right.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount you receive in respect of the event happening exceeds the \*forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For **forex cost base**, see section 775-85.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the amount you receive in respect of the event happening falls short of the \*forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For **forex cost base**, see section 775-85.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

- (5) You make a **forex realisation loss** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the event happens because an option to buy \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
- (b) you were capable of exercising the option immediately before the event happened.

The amount of the *forex realisation loss* is the amount you paid in return for the grant or acquisition of the option.

*Non-cash benefit*

- (6) The amount you receive in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you receive.

*Tax recognition time*

- (7) For the purposes of this section, the *tax recognition time* is worked out using the table:

<b>Tax recognition time</b>		
<b>Item</b>	<b>If the right, or part of the right, is...</b>	<b>the tax recognition time is...</b>
1	a right, or a part of a right, to receive, or that represents, *ordinary income or *statutory income (other than statutory income that is assessable under this Division or Division 102)	(a) in the case of ordinary income—when the ordinary income is *derived; or (b) in the case of statutory income—when the requirement first arose to include the statutory income in your assessable income.
2	a right, or a part of a right, created or acquired in return for your ceasing to *hold a *depreciating asset	when you stop holding the asset.
3	a right, or a part of a right, referred to in subsection 775-165(3) (which deals with extensions of loans)	the extension time referred to in that subsection.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Tax recognition time</b>		
<b>Item</b>	<b>If the right, or part of the right, is...</b>	<b>the tax recognition time is...</b>
4	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency, where item 3 does not apply	when the amount is paid.
5	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of *foreign currency, where item 3 does not apply	when the amount is paid.
6	a right, or a part of a right, created in return for the occurrence of a *realisation event in relation to a *CGT asset you own, and none of the above items apply	when the realisation event occurs.

Note: Subsection 775-260(1) modifies the tax recognition time if forex realisation event 2 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.

**775-50 Ceasing to have an obligation to receive foreign currency—forex realisation event 3**

*Forex realisation event 3*

- (1) **Forex realisation event 3** happens if:
- (a) you cease to have an obligation, or a part of an obligation, to receive \*foreign currency; and
  - (b) the obligation, or the part of the obligation, is one of the following:
    - (i) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay foreign currency;
    - (ii) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay Australian currency;

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) an obligation, or a part of an obligation, under an option to sell foreign currency.

Note 1: For extended meaning of *obligation to receive foreign currency*, see section 775-140.

Note 2: For extended meaning of *right to pay foreign currency*, see section 775-135.

*Time of event*

- (2) The time of the event is when you cease to have the obligation or the part of the obligation.

*Forex realisation gain*

- (3) You make a *forex realisation gain* if:
- (a) the amount you receive in respect of the event happening exceeds the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation gain* is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For *net costs of assuming the obligation*, see section 775-100.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

- (4) You make a *forex realisation gain* if:
- (a) the event happens because an option to sell \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) if the option had been exercised immediately before the event, you would have been obliged to buy the foreign currency.

The amount of the *forex realisation gain* is the amount you received in return for granting or assuming obligations under the option.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Forex realisation loss*

- (5) You make a **forex realisation loss** if:
- (a) the amount you receive in respect of the event happening falls short of the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For **net costs of assuming the obligation**, see section 775-100.

Note 2: For **tax recognition time**, see subsection (7).

Note 3: For **currency exchange rate effect**, see section 775-105.

*Non-cash benefit*

- (6) The amount you receive in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you receive.

*Tax recognition time*

- (7) For the purposes of this section, the **tax recognition time** is the time when you received an amount in respect of the event happening.

*Right to pay Australian currency*

- (8) To avoid doubt, for the purposes of this section, a **right to pay Australian currency** includes a right to pay Australian currency, where the right is subject to a contingency.

**775-55 Ceasing to have an obligation to pay foreign currency—forex realisation event 4**

*Forex realisation event 4*

- (1) **Forex realisation event 4** happens if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) you cease to have an obligation, or a part of an obligation, to pay \*foreign currency; and
- (b) any of the following applies:
  - (i) the obligation, or the part of the obligation, is an expense or outgoing that you deduct;
  - (ii) the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*);
  - (iii) the obligation, or the part of the obligation, is an element in the calculation of a net amount that is deductible (other than under Division 5 of Part III of the *Income Tax Assessment Act 1936*);
  - (iv) you incurred the obligation, or the part of the obligation, in return for the acquisition of a \*CGT asset;
  - (v) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the \*cost base of a CGT asset;
  - (vi) you incurred the obligation, or the part of the obligation, in return for your starting to hold a \*depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;
  - (vii) you incurred the obligation, or the part of the obligation, as the second element of the \*cost of a depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;
  - (viii) you incurred the obligation, or the part of the obligation, as a \*project amount;
  - (ix) you incurred the obligation, or the part of the obligation, in return for receiving an amount of Australian currency or foreign currency;
  - (x) you incurred the obligation, or the part of the obligation, in return for the creation or acquisition of a right to receive an amount of Australian currency or foreign currency;
  - (xi) the obligation, or the part of the obligation, is under an option to buy foreign currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: For extended meaning of *obligation to pay foreign currency*, see section 775-140.

*Time of event*

- (2) The time of the event is when you cease to have the obligation or the part of the obligation.

*Forex realisation gain*

- (3) You make a *forex realisation gain* if:
- (a) the amount you paid in respect of the event happening falls short of the proceeds of assuming the obligation or the part of the obligation (the proceeds are worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation gain* is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For *proceeds of assuming the obligation*, see section 775-95.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

- (4) You make a *forex realisation gain* if:
- (a) the event happens because an option to buy \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) if the option had been exercised immediately before the event, you would have been obliged to sell the foreign currency.

The amount of the *forex realisation gain* is the amount you received in return for granting or assuming obligations under the option.

*Forex realisation loss*

- (5) You make a *forex realisation loss* if:
- (a) the amount you paid in respect of the event happening exceeds the proceeds of assuming the obligation or the part

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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of the obligation (the proceeds are worked out as at the tax recognition time); and

- (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation loss* is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For *proceeds of assuming the obligation*, see section 775-95.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

*Non-cash benefit*

- (6) The amount you paid in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you paid.

*Tax recognition time*

- (7) For the purposes of this section, the *tax recognition time* is worked out using the table:

<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
1	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and  (b) the obligation, or the part of the obligation, was not incurred: (i) in return for the acquisition of an item of *trading stock; or (ii) in return for your starting to hold a *depreciating asset; and  (c) the obligation, or the part of the obligation, was not incurred as the second element of the cost of a depreciating asset	the time when the expense or outgoing became deductible.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
2	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and  (b) the obligation, or the part of the obligation, was incurred in return for the acquisition of an item of *trading stock	the time when the item becomes part of your trading stock on hand.
3	the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the <i>Income Tax Assessment Act 1936</i> )	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
4	the obligation, or the part of the obligation, is an element in the calculation of a net amount that is deductible (other than under Division 5 of Part III of the <i>Income Tax Assessment Act 1936</i> )	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
5	(a) you incurred the obligation, or the part of the obligation: (i) in return for your starting to hold a *depreciating asset; or (ii) as the second element of the cost of a depreciating asset; and (b) you deduct an amount under Division 40 or 328 for the depreciating asset	(a) in the case of the acquisition of a depreciating asset—when you began to hold the depreciating asset (worked out under Division 40); or  (b) in the case of the second element of the cost of a depreciating asset—when you incurred the relevant expenditure.
6	you incurred the obligation, or the part of the obligation, as a *project amount	the first time when any part of the amount became deductible.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



<b>Tax recognition time</b>		
<b>Item</b>	<b>In this case...</b>	<b>the tax recognition time is...</b>
7	the obligation, or the part of the obligation, is referred to in subsection 775-165(5) (which deals with extension of loans)	the extension time referred to in that subsection.
8	you incurred the obligation, or the part of the obligation, in return for: (a) receiving Australian currency or *foreign currency; or (b) the creation or acquisition of a right to receive an amount of Australian currency or foreign currency; where item 7 does not apply	the time when you received the currency.
9	(a) you incurred the obligation, or the part of the obligation, in return for the acquisition of a *CGT asset; and (b) none of the above items apply	the time when you acquired the CGT asset (worked out under Division 109).
10	(a) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) none of the above items apply	the time of the transaction under which you incurred the obligation.

Note 1: Foreign currency is a CGT asset. If you acquire foreign currency as the borrower under a loan, item 8 will apply to your obligation to repay the foreign currency borrowed under the loan.

Note 2: If you have made a choice for roll-over relief for a facility agreement, and forex realisation event 7 (material variation of a facility agreement) happens, subsection 775-220(6) modifies the tax recognition time for an obligation under a security that was in existence under the agreement at the time of that event.

Note 3: Subsection 775-260(2) modifies the tax recognition time if forex realisation event 4 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.

Note 4: If you have made a choice for roll-over relief for a facility agreement, a forex realisation gain or forex realisation loss you make under the

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

agreement as a result of forex realisation event 4 is disregarded—see section 775-200.

**775-60 Ceasing to have a right to pay foreign currency—forex realisation event 5**

*Forex realisation event 5*

- (1) **Forex realisation event 5** happens if:
- (a) you cease to have a right, or a part of a right, to pay \*foreign currency; and
  - (b) the right, or the part of the right, is one of the following:
    - (i) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay foreign currency;
    - (ii) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay Australian currency;
    - (iii) a right, or a part of a right, under an option to sell foreign currency.

Note 1: For extended meaning of **right to pay foreign currency**, see section 775-135.

Note 2: For extended meaning of **obligation to pay foreign currency**, see section 775-140.

*Time of event*

- (2) The time of the event is when you cease to have the right or the part of the right.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount you pay in respect of the event happening falls short of the \*forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The amount of the *forex realisation gain* is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For *forex entitlement base*, see section 775-90.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

*Forex realisation loss*

- (4) You make a *forex realisation loss* if:
- (a) the amount you pay in respect of the event happening exceeds the \*forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the *forex realisation loss* is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For *forex entitlement base*, see section 775-90.

Note 2: For *tax recognition time*, see subsection (7).

Note 3: For *currency exchange rate effect*, see section 775-105.

- (5) You make a *forex realisation loss* if:
- (a) the event happens because an option to sell \*foreign currency expires without having been exercised, or is cancelled, released or abandoned; and
  - (b) you were capable of exercising the option immediately before the event happened.

The amount of the *forex realisation loss* is the amount you paid in return for the grant or acquisition of the option.

*Non-cash benefit*

- (6) The amount you pay in respect of the event happening can include a \*non-cash benefit. Use the \*market value of the benefit to work out the amount you pay.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Tax recognition time*

- (7) For the purposes of this section, the **tax recognition time** is the time when you pay an amount in respect of the event happening.

*Obligation to pay Australian currency*

- (8) To avoid doubt, for the purposes of this section, an **obligation to pay Australian currency** includes an obligation to pay Australian currency, where the obligation is subject to a contingency.

**775-65 Only one forex realisation event to be counted**

*Option to buy foreign currency*

- (1) The following table applies to an option to buy a particular \*foreign currency if the exercise price is payable in another foreign currency:

<b>Option to buy foreign currency</b>			
<b>Item</b>	<b>If you are...</b>	<b>and both of these events happen when the option is exercised...</b>	<b>this is the result...</b>
1	the entity who is capable of exercising the option	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	the entity who is capable of exercising the option	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.
3	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Option to sell foreign currency*

- (2) The following table applies to an option to sell a particular \*foreign currency if the exercise price is payable in another foreign currency:

<b>Option to sell foreign currency</b>			
<b>Item</b>	<b>If you are...</b>	<b>and both of these events happen when the option is exercised...</b>	<b>this is the result...</b>
1	the entity who is capable of exercising the option	(a) forex realisation event 3; (b) forex realisation event 5	ignore forex realisation event 3.
2	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

*Forward contracts*

- (3) The following table applies to a contract to buy a particular \*foreign currency in return for another foreign currency:

<b>Forward contracts</b>		
<b>Item</b>	<b>If both of these events happen when the contract is carried out...</b>	<b>this is the result...</b>
1	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Residual rule*

- (4) If:
- (a) 2 or more of forex realisation events 1, 2, 3, 4 and 5 happen to you at the same time in relation to the same rights and/or obligations; and
  - (b) none of the above subsections applies;
- apply the forex realisation event that is most appropriate, and ignore the remaining event or events.

**775-70 Tax consequences of certain short-term forex realisation gains**

- (1) The following table has effect unless you have made a choice under section 775-80:

<b>Tax consequences of certain short-term forex realisation gains</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	<p>you make a *forex realisation gain as a result of forex realisation event 2, and:</p> <ul style="list-style-type: none"> <li>(a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and</li> <li>(b) item 6 of the table in subsection 775-45(7) applies; and</li> <li>(c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event</li> </ul>	<ul style="list-style-type: none"> <li>(a) the forex realisation gain is not included in your assessable income under section 775-15; and</li> <li>(b) CGT event K10 happens.</li> </ul>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation gains**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
2	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for the acquisition of a *CGT asset; or (ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) item 9 of the table in subsection 775-55(7) applies; and (c) the foreign currency became due for payment within 12 months after the time when: (i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or (ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) both the *cost base and the *reduced cost base of the CGT asset are reduced by an amount equal to the forex realisation gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Tax consequences of certain short-term forex realisation gains</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
3	<p>you make a *forex realisation gain as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p>(i) in return for your starting to hold a *depreciating asset; or</p> <p>(ii) as the second element of the cost of a depreciating asset; and</p> <p>(b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and</p> <p>(c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure</p>	<p>(a) the forex realisation gain is not included in your assessable income under section 775-15; and</p> <p>(b) if:</p> <p>(i) the forex realisation event happens in the income year in which the asset's *start time occurs; and</p> <p>(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p>the asset's *cost is reduced (but not below zero) by an amount equal to the forex realisation gain; and</p> <p>(c) if:</p> <p>(i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and</p> <p>(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p>the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain; and</p> <p>(d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain.</p>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Tax consequences of certain short-term forex realisation gains**

Item	In this case...	this is the result...
4	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred as a project amount; and (b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount; and (c) the project amount is allocated to a project pool	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) the pool value of the project pool for the income year in which you incurred the project amount is reduced (but not below zero) by an amount equal to the forex realisation gain.

*Additional result where forex realisation gain exceeds cost etc.*

(2) The following table has effect:

**Additional result where forex realisation gain exceeds cost etc.**

Item	If...	and the following conditions are satisfied...	this is the result...
1	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in the income year in which the asset's *start time occurs; and (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and (c) the forex realisation gain exceeds the asset's *cost	the excess is included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Additional result where forex realisation gain exceeds cost etc.</b>			
<b>Item</b>	<b>If...</b>	<b>and the following conditions are satisfied...</b>	<b>this is the result...</b>
2	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and  (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and  (c) the forex realisation gain exceeds the asset's *opening adjustable value for the income year in which the forex realisation event happens	the excess is included in your assessable income.
3	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the asset is allocated to a pool under Subdivision 40-E or 328-D; and  (b) the forex realisation gain exceeds the opening pool balance of the pool for the income year in which the forex realisation event happens	the excess is included in your assessable income.
4	item 4 of the table in subsection (1) applies in relation to a project amount	the forex realisation gain exceeds the pool value of the project pool for the income year in which you incurred the project amount	the excess is included in your assessable income.

- (3) To the extent that a \*forex realisation gain:
- (a) would have been included in your assessable income under section 775-15 if this section had not been enacted; and
  - (b) would, apart from this subsection, be included in your assessable income under another provision of this Act;
- the gain is not included in your assessable income under that other provision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**775-75 Tax consequences of certain short-term forex realisation losses**

- (1) The following table has effect unless you have made a choice under section 775-80:

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<b>Tax consequences of certain short-term forex realisation losses</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	you make a *forex realisation loss as a result of forex realisation event 2, and:  (a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and  (b) item 6 of the table in subsection 775-45(7) applies; and  (c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event	(a) the forex realisation loss is not deductible under section 775-30; and  (b) CGT event K11 happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Tax consequences of certain short-term forex realisation losses</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
2	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p style="padding-left: 20px;">(i) in return for the acquisition of a *CGT asset; or</p> <p style="padding-left: 20px;">(ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and</p> <p>(b) item 9 of the table in subsection 775-55(7) applies; and</p> <p>(c) the foreign currency became due for payment within 12 months after the time when:</p> <p style="padding-left: 20px;">(i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or</p> <p style="padding-left: 20px;">(ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) both the *cost base and the *reduced cost base of the CGT asset are increased by an amount equal to the *forex realisation loss.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Tax consequences of certain short-term forex realisation losses**

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Item	In this case...	this is the result...
3	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred:</p> <p style="padding-left: 20px;">(i) in return for your starting to hold a *depreciating asset; or</p> <p style="padding-left: 20px;">(ii) as the second element of the cost of a depreciating asset; and</p> <p>(b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and</p> <p>(c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) if:</p> <p style="padding-left: 20px;">(i) the forex realisation event happens in the income year in which the asset's *start time occurs; and</p> <p style="padding-left: 20px;">(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p style="padding-left: 20px;">the asset's *cost is increased by an amount equal to the forex realisation loss; and</p> <p>(c) if:</p> <p style="padding-left: 20px;">(i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and</p> <p style="padding-left: 20px;">(ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D;</p> <p style="padding-left: 20px;">the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss; and</p> <p>(d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax consequences of certain short-term forex realisation losses</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
4	<p>you make a *forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) the obligation to pay *foreign currency was incurred as a project amount; and</p> <p>(b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount</p>	<p>(a) the forex realisation loss is not deductible under section 775-30; and</p> <p>(b) the pool value of the project pool for the income year in which you incurred the project amount is increased by an amount equal to the forex realisation loss.</p>

(2) To the extent that:

- (a) section 775-30 would have allowed you a deduction for a \*forex realisation loss if this section had not been enacted; and
  - (b) apart from this subsection, another provision of this Act would allow you a deduction for the loss;
- you cannot deduct the loss under that other provision.

**775-80 You may choose not to have sections 775-70 and 775-75 apply to you**

- (1) You may choose not to have sections 775-70 and 775-75 apply to you.
- (2) A choice must be in writing.
- (3) A choice must be made:
  - (a) if you were in existence at the start of the applicable commencement date:
    - (i) within 90 days after the applicable commencement date; or
    - (ii) within 30 days after the commencement of this subsection; or
  - (b) if you came into existence within 90 days after the start of the applicable commencement date:
    - (i) within 90 days after you came into existence; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) within 30 days after the commencement of this subsection; or
- (c) if the Commissioner allows a longer period—within that longer period.

Note: For *applicable commencement date*, see section 775-155.

- (4) A choice has effect from the start of the applicable commencement date.
- (5) A choice may not be revoked.

### **775-85 Forex cost base of a right to receive foreign currency**

The *forex cost base* of a right, or a part of a right, to receive \*foreign currency is the total of:

- (a) the money you:
    - (i) paid; or
    - (ii) are required to pay; or
    - (iii) would be required to pay in the event of the exercise of an option;in respect of acquiring the right or part of the right; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) provided; or
    - (ii) are required to provide; or
    - (iii) would be required to provide in the event of the exercise of an option;in respect of acquiring the right or part of the right;
- reduced by any amounts that are deductible under a provision of this Act other than this Division.

### **775-90 Forex entitlement base of a right to pay foreign currency**

The *forex entitlement base* of a right, or a part of a right, to pay \*foreign currency is the total of:

- (a) the money you:
  - (i) are entitled to receive; or
  - (ii) would be entitled to receive in the event of the exercise of an option;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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in respect of the discharge or satisfaction of the right or the part of the right; and

- (b) the \*market value of any \*non-cash benefit you:
  - (i) are entitled to acquire or obtain; or
  - (ii) would be entitled to acquire or obtain in the event of the exercise of an option;

in respect of the discharge or satisfaction of the right or the part of the right;

reduced by:

- (c) any amounts that you paid to acquire the right or the part of the right, where the amounts are not deductible under a provision of this Act other than this Division; and
- (d) the market value of any non-cash benefit that you provided to acquire the right or the part of the right, where the market value is not deductible under a provision of this Act other than this Division.

**775-95 Proceeds of assuming an obligation to pay foreign currency**

For the purposes of this Division, the *proceeds* of assuming an obligation, or a part of an obligation, to pay \*foreign currency are the total of:

- (a) the money you:
  - (i) received; or
  - (ii) are entitled to receive; or
  - (iii) would be entitled to receive in the event of the exercise of an option;

in return for incurring the obligation or the part of the obligation; and

- (b) the \*market value of any \*non-cash benefit you:
  - (i) acquired or obtained; or
  - (ii) are entitled to acquire or obtain; or
  - (iii) would be entitled to acquire or obtain in the event of the exercise of an option;

in return for incurring the obligation or the part of the obligation;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

**775-100 Net costs of assuming an obligation to receive foreign currency**

- (1) For the purposes of this Division, the *net costs* of assuming an obligation, or a part of an obligation, to receive \*foreign currency are the total of:
- (a) the money you:
    - (i) are required to pay; or
    - (ii) would be required to pay in the event of the exercise of an option;in respect of the fulfilment of the obligation or the part of the obligation; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) are required to provide; or
    - (ii) would be required to provide in the event of the exercise of an option;in respect of the fulfilment of the obligation or the part of the obligation;
- reduced by the amount worked out under subsection (2).
- (2) The amount worked out under this subsection is the total of:
- (a) the money you:
    - (i) received; or
    - (ii) are entitled to receive;because you incurred the obligation or the part of the obligation; and
  - (b) the \*market value of any \*non-cash benefit you:
    - (i) received or obtained; or
    - (ii) are entitled to receive or obtain;because you incurred the obligation or the part of the obligation;
- reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) To avoid doubt, paragraphs (2)(a) and (b) do not apply to money or a \*non-cash benefit that you:
- (a) received or obtained; or
  - (b) are entitled to receive or obtain;
- because of the fulfilment of the obligation or the part of the obligation.

### **775-105 Currency exchange rate effect**

- (1) A *currency exchange rate effect* is:
- (a) any currency exchange rate fluctuations; or
  - (b) a difference between:
    - (i) an expressly or implicitly agreed currency exchange rate for a future date or time; and
    - (ii) the applicable currency exchange rate at that date or time.
- (2) To work out whether there is a currency exchange rate effect and (if so), the extent of that effect, use whichever of the following translation rules is applicable to you:
- (a) the translation rules in section 960-50 (the standard rules);
  - (b) the translation rules in section 960-80 (the functional currency rules).

### **775-110 Constructive receipts and payments**

For the purposes of this Subdivision, if an entity (the *payer*) did not actually pay an amount to another entity (the *recipient*), but the amount was applied or dealt with in any way on the recipient's behalf or as the recipient directs (including by discharging all or a part of an obligation owed by the recipient), then:

- (a) the payer is taken to have paid the amount as soon as it is applied or dealt with; and
- (b) the recipient is taken to have received the amount as soon as it is applied or dealt with.

Note: The set-off of an obligation to pay an amount against a right to receive an amount is an example of how this section would operate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**775-115 Economic set-off to be treated as legal set-off**

If the economic effect of an \*arrangement is to provide for the set-off, in whole or in part, of one or more amounts against one or more other amounts, this Subdivision applies as if:

- (a) the parties to the arrangement had the respective rights and obligations that they would have had if the provision for economic set-off were structured as a provision for legal set-off of rights and obligations; and
- (b) if the economic set-off happens—the parties were taken, under section 775-110, to have paid and received the respective amounts that they would have paid and received if the economic set-off were structured as a legal set-off of rights and obligations.

**775-120 Non-arm's length transactions**

If:

- (a) you and another entity did not deal with each other at arm's length in connection with a transaction that is relevant to working out:
  - (i) whether you make a \*forex realisation gain or a \*forex realisation loss; or
  - (ii) the amount of any \*forex realisation gain or a \*forex realisation loss made by you; and
- (b) apart from this section, a particular amount is more or less than it would have been if you and the other entity had been dealing with each other at arm's length;

this Subdivision applies to you as if that amount were the amount it would have been if you and the other entity had been dealing with each other at arm's length.

**775-125 CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3**

If you acquire \*foreign currency as a result of forex realisation event 2 or 3:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the first element of the foreign currency's \*cost base is replaced by the foreign currency's \*market value at the time you received the foreign currency; and
- (b) the first element of the foreign currency's \*reduced cost base is replaced by the foreign currency's market value at the time you received the foreign currency.

### 775-130 Certain deductions not allowable

If:

- (a) an amount is included in your assessable income under this Division; and
- (b) if this Division had not been enacted, the amount would not have been included in your assessable income under any other provision of this Act (other than Division 102); and
- (c) if this section had not been enacted, a deduction would be allowable to you under a provision listed in the table in subsection 51AAA(2) of the *Income Tax Assessment Act 1936*; and
- (d) if the amount had not been included in your assessable income under this Division, the deduction would not be allowable;

the deduction is not allowable.

### 775-135 Right to receive or pay foreign currency

#### *Extended meaning of right to receive foreign currency*

- (1) For the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (2) To avoid doubt, for the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive \*foreign currency, where the right is subject to a contingency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Extended meaning of **right to pay foreign currency***

- (3) For the purposes of this Division, a **right to pay foreign currency** includes a right to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (4) To avoid doubt, for the purposes of this Division, a **right to pay foreign currency** includes a right to pay \*foreign currency, where the right is subject to a contingency.

**775-140 Obligation to pay or receive foreign currency**

*Extended meaning of **obligation to pay foreign currency***

- (1) For the purposes of this Division, an **obligation to pay foreign currency** includes an obligation to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (2) To avoid doubt, for the purposes of this Division, an **obligation to pay foreign currency** includes an obligation to pay \*foreign currency, where the obligation is subject to a contingency.

*Extended meaning of **obligation to receive foreign currency***

- (3) For the purposes of this Division, an **obligation to receive foreign currency** includes an obligation to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of \*foreign currency.
- (4) To avoid doubt, for the purposes of this Division, an **obligation to receive foreign currency** includes an obligation to receive \*foreign currency, where the obligation is subject to a contingency.

**775-145 Application of forex realisation events to currency and fungible rights and obligations**

- (1) Forex realisation event 1, 2 or 4 applies in relation to:
  - (a) \*foreign currency; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
  - (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;on a first-in first-out basis.
- (2) The regulations may provide that any or all of forex realisation events 1, 2 and 4 apply, or apply in specified circumstances, to:
  - (a) \*foreign currency; or
  - (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
  - (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;on a weighted average basis (despite subsection (1)).
- (3) The circumstances that may be specified for the purposes of subsection (2) include the circumstance that you have made an election to use a weighted average basis.
- (4) Subsection (3) does not limit subsection (2).

**775-150 Transitional election**

- (1) You may elect to have this section apply to you.
  - Note: For the consequences of an election, see sections 775-160 and 775-165.
- (2) An election must be in writing.
- (3) An election must be made:
  - (a) within 60 days after the applicable commencement date; or
  - (b) within 30 days after the commencement of this subsection.
  - Note: For *applicable commencement date*, see section 775-155.
- (4) An election may not be revoked.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **775-155 Applicable commencement date**

For the purposes of this Division, your *applicable commencement date* is:

- (a) the first day of the 2003-04 income year; or
- (b) if that day is earlier than 1 July 2003—the first day of the 2004-05 income year.

### **775-160 Exception—event happens before the applicable commencement date**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4 or 5 is disregarded if the event happened before the applicable commencement date.

Note: For *applicable commencement date*, see section 775-155.

- (2) Subsection (1) does not apply if:
  - (a) you have made an election under section 775-150; and
  - (b) the Commissioner is satisfied that the event happened under, or as a result of, an \*arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of obtaining the benefit of the operation of subsection (1).

### **775-165 Exception—currency or right acquired, or obligation incurred, before the applicable commencement date**

*Exception—foreign currency acquired before the applicable commencement date*

- (1) A \*forex realisation gain or \*forex realisation loss you make on the disposal of \*foreign currency as a result of forex realisation event 1 is disregarded if:
  - (a) the foreign currency was acquired before the applicable commencement date; and
  - (b) you have not made an election under section 775-150.

For the purposes of paragraph (a), the time of acquisition is worked out under Division 109.

Note: For *applicable commencement date*, see section 775-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception—right acquired before the applicable commencement date*

- (2) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2 or 5 happening to a right or a part of a right is disregarded if:
- (a) the right, or the part of the right;
    - (i) was acquired before the applicable commencement date; or
    - (ii) arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and
  - (b) you have not made an election under section 775-150.

For the purposes of subparagraph (a)(i), the time of acquisition is worked out under Division 109.

Note: For *applicable commencement date*, see section 775-155.

- (3) If:
- (a) at a particular time (the *extension time*) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and
  - (b) either:
    - (i) the contract is separate from the original loan contract; or
    - (ii) the extension amounts to a variation of the original loan contract;

subparagraph (2)(a)(ii) does not apply to a right, or a part of a right, that arises after the extension time and relates to the loan.

Note: For *applicable commencement date*, see section 775-155.

*Exception—obligation incurred before the applicable commencement date*

- (4) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 3 or 4 happening to an obligation or a part of an obligation is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) either:
- (i) you incurred the obligation, or the part of the obligation, before the applicable commencement date; or
  - (ii) the obligation, or the part of the obligation, arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and
- (b) you have not made an election under section 775-150.

Note: For *applicable commencement date*, see section 775-155.

- (5) If:
- (a) at a particular time (the *extension time*) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and
  - (b) either:
    - (i) the contract is separate from the original loan contract; or
    - (ii) the extension amounts to a variation of the original loan contract;

subparagraph (4)(a)(ii) does not apply to an obligation, or a part of an obligation, that arises after the extension time and relates to the loan.

Note: For *applicable commencement date*, see section 775-155.

### **775-168 Exception—disposal or redemption of traditional securities**

A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 2 is disregarded if the event happened because of a disposal or redemption covered by:

- (a) subsection 26BB(4) or (5) of the *Income Tax Assessment Act 1936*; or
- (b) subsection 70B(2B) or (2C) of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **775-175 Application to things happening before commencement**

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Division.

### **Subdivision 775-C—Roll-over relief for facility agreements**

#### **Guide to Subdivision 775-C**

#### **775-180 What this Subdivision is about**

A *facility agreement* is an agreement where:

- (a) you have a right to issue eligible securities and another entity or entities must acquire the securities; and
- (b) the economic effect of the agreement is to enable you to obtain finance in a particular foreign currency.

If you choose roll-over relief for a facility agreement:

- (a) a forex realisation gain or a forex realisation loss you make as a result of forex realisation event 4 is disregarded if the event happens because you discharge your obligation under an eligible security issued by you under the agreement; and
- (b) if you issue an eligible security under the agreement otherwise than as a result of a roll-over—you are taken to have been given a loan (the *notional loan*); and
- (c) if an eligible security is rolled-over under the agreement—the period of the notional loan is extended by the term of the new security; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) forex realisation event 6 happens if you discharge your obligation under the notional loan; and
- (e) forex realisation event 7 happens if a material variation is made to the agreement.

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## Operative provisions

### 775-185 What is a *facility agreement*?

A *facility agreement* is an agreement between an entity (the *first entity*) and another entity or entities under which:

- (a) the first entity has a right to issue \*eligible securities; and
- (b) an entity or entities must acquire the securities;

where the economic effect of the agreement is to enable the first entity to obtain finance in a particular \*foreign currency:

- (c) up to the foreign currency amount specified in the agreement; and
- (d) during the term of the agreement.

### 775-190 What is an *eligible security*?

An *eligible security* is:

- (a) a bill of exchange, or a promissory note, that is:
  - (i) non-interest bearing; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) issued at a discount to face value; and
  - (iii) denominated in a particular \*foreign currency; and
  - (iv) for a fixed term; or
- (b) a security that is:
- (i) specified in the regulations; and
  - (ii) denominated in a foreign currency; and
  - (iii) for a fixed term.

**775-195 You may choose roll-over relief for a facility agreement**

- (1) You may choose roll-over relief for a \*facility agreement if:
- (a) you have entered into the agreement; and
  - (b) you have a right to issue \*eligible securities under the agreement; and
  - (c) the economic effect of the agreement is to enable you to obtain finance in a particular \*foreign currency:
    - (i) up to the foreign currency amount specified in the agreement; and
    - (ii) during the term of the agreement.
- (2) A choice must be made:
- (a) within 90 days after the first time you issue an \*eligible security under the \*facility agreement; or
  - (b) within 90 days after the applicable commencement date; or
  - (c) within 30 days after the commencement of this subsection.
- Note: For *applicable commencement date*, see section 775-155.
- (3) If you make a choice within 90 days after the first time you issue an \*eligible security under the \*facility agreement, the choice is taken to have been in effect throughout the period that began immediately before the first time you issued an eligible security under the facility agreement.
- (4) If:
- (a) you make a choice:
    - (i) within 90 days after the applicable commencement date; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) within 30 days after the commencement of this subsection; and
  - (b) subsection (3) does not apply;
- the choice is taken to have been in effect throughout the period that began at whichever is the later of the following times:
- (c) the start of the applicable commencement date;
  - (d) the first time you issued an \*eligible security under the \*facility agreement.

Note: For *applicable commencement date*, see section 775-155.

- (5) A choice must be in writing.
- (6) A choice continues to apply until the \*facility agreement ends.

Note: If forex realisation event 7 happens (material variation of facility agreement), subsection 775-220(5) terminates your choice.

- (7) A choice may not be revoked.

### **775-200 Forex realisation event 4 does not apply**

A \*forex realisation gain or a \*forex realisation loss you make as a result of forex realisation event 4 or 9 is disregarded to the extent to which the event happens because:

- (a) you discharge your obligation under an \*eligible security issued by you under a \*facility agreement; and
- (b) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

### **775-205 What is a *roll-over*?**

A *roll-over* happens under a \*facility agreement if:

- (a) you discharge your obligation under an \*eligible security issued by you under the agreement (the *rolled-over security*); and
- (b) at the same time, you issue a new eligible security (the *new security*) under the agreement; and
- (c) the issue of the new security is related to the discharge of your obligation under the rolled-over security in one of the following ways:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) your obligation under the rolled-over security is wholly or partly set-off against your right to receive the \*foreign currency issue price of the new security;
- (ii) your obligation under the rolled-over security is wholly or partly satisfied by the issue of the new security; and
- (d) you have made a choice for roll-over relief for the agreement, and that choice is in effect; and
- (e) the new security is issued on or after the applicable commencement date; and
- (f) if you have not made an election under section 775-150—the rolled-over security is issued on or after the applicable commencement date.

Note: For *applicable commencement date*, see section 775-155.

**775-210 Notional loan**

- (1) The rules in this section have effect only for the purposes of this Subdivision.

*Notional loan*

- (2) If you issue an \*eligible security under a \*facility agreement otherwise than as a result of a roll-over, you are taken to have been given a loan (the *notional loan*):
  - (a) of a \*foreign currency principal amount equal to the foreign currency face value of the security; and
  - (b) for a period equal to the term of the security; and
  - (c) that is taken to be attached to the security; and
  - (d) the *start time* of which is the time when you issued the security.

Note 1: The period of the notional loan may be extended as the result of a later roll-over—see subsection (3).

Note 2: The notional loan may become attached to a later security as the result of a roll-over—see subsection (3).

Note 3: The foreign currency principal amount of the notional loan may remain the same, or may fall (but not rise), as a result of a later roll-over—see subsection (3).

Note 4: If, at a later time, the security is rolled-over, and the foreign currency face value of the new security exceeds the foreign currency face value

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of the rolled-over security, you are taken to have been given an additional notional loan of a foreign currency principal amount equal to the excess—see subsection (3).

*Effect of roll-over*

- (3) The table has effect if an \*eligible security is rolled-over under a \*facility agreement:

<b>Roll-over of eligible security</b>		
<b>Item</b>	<b>If the foreign currency face value of the new security...</b>	<b>this is the result...</b>
1	equals the *foreign currency face value of the rolled-over security	(a) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and (b) each notional loan attached to the rolled-over security is taken to be attached to the new security.
2	exceeds the *foreign currency face value of the rolled-over security	(a) you are taken to have been given an additional notional loan: <ul style="list-style-type: none"> <li>(i) of a foreign currency principal amount equal to the excess; and</li> <li>(ii) for a period equal to the term of the new security; and</li> <li>(iii) that is taken to be attached to the new security; and</li> <li>(iv) the start time of which is the time when you issued the new security; and</li> </ul> (b) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and (c) each notional loan attached to the rolled-over security is taken to be attached to the new security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Roll-over of eligible security**

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<b>Item</b>	<b>If the foreign currency face value of the new security...</b>	<b>this is the result...</b>
3	falls short of the *foreign currency face value of the rolled-over security, and there is only one notional loan attached to the rolled-over security	(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge so much of your obligation to pay the foreign currency principal amount of the notional loan as equals the shortfall; and (b) the period of the notional loan is extended by the term of the new security; and (c) the notional loan is taken to be attached to the new security.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Roll-over of eligible security**

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Item	If the foreign currency face value of the new security...	this is the result...
4	falls short of the *foreign currency face value of the rolled-over security, and there are 2 or more notional loans attached to the rolled-over security	<p>(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge your obligation to pay so much of the total foreign currency principal amounts of the notional loans as equals the shortfall, and to have done so on a first-in first-out basis, that is to say:</p> <ul style="list-style-type: none"> <li>(i) first, by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date; and</li> <li>(ii) second, if your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date is fully discharged—by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the next start date, and so on; and</li> </ul> <p>(b) the period of each notional loan attached to the rolled-over security that is not fully discharged is extended by the term of the new security; and</p> <p>(c) each notional loan attached to the rolled-over security that is not fully discharged is taken to be attached to the new security.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Consequences if security is not rolled-over*

- (4) If:
- (a) you discharge your obligation under an \*eligible security issued under a \*facility agreement; and
  - (b) the security is not rolled-over at the time of discharge; and
  - (c) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect;
- then, for each notional loan attached to the security, you are taken to have paid a \*foreign currency amount equal to the foreign currency principal amount of the notional loan in order to discharge your obligation to pay the foreign currency principal amount of the notional loan.

*Foreign currency*

- (5) For the purposes of the application of this section to a particular \*facility agreement that provides for the issue of \*eligible securities, **foreign currency** is the \*foreign currency in which the securities are denominated.

Note: Section 960-50 (Australian currency translation rule) does not affect the operation of this section—see subsection 960-50(10). You translate to Australian currency when you apply section 775-215 (forex realisation event 6).

**775-215 Discharge of obligation to pay the principal amount of a notional loan under a facility agreement—forex realisation event 6**

*Forex realisation event 6*

- (1) **Forex realisation event 6** happens if:
- (a) you discharge an obligation, or a part of an obligation, to pay the \*foreign currency principal amount of a notional loan attached to an \*eligible security issued by you under a \*facility agreement; and
  - (b) you have made a choice for roll-over relief for the agreement, and that choice is in effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Time of event*

- (2) The time of the event is when you discharge the obligation or the part of the obligation.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, exceeds the amount you paid in order to discharge the obligation or the part of the obligation; and
  - (b) some or all of the excess is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation gain** is so much of the excess as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, falls short of the amount you paid in order to discharge the obligation or the part of the obligation; and
  - (b) some or all of the shortfall is attributable to a \*currency exchange rate effect.

The amount of the **forex realisation loss** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note: For **currency exchange rate effect**, see section 775-105.

*Exempt income etc.*

- (5) For the purposes of the application of sections 775-20, 775-25 and 775-35 to the event, assume that the notional loan had been an actual loan.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**775-220 Material variation of a facility agreement—forex realisation event 7**

*Forex realisation event 7*

- (1) **Forex realisation event 7** happens if:
- (a) a material variation is made to the terms or conditions of a \*facility agreement; or
  - (b) a material variation is made to the effect of a facility agreement; or
  - (c) a material variation is made to the type or types of security that can be issued under a facility agreement;
- so long as you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

Note: See also subsections (7) and (8).

*Time of the event*

- (2) The time of the event is when the material variation happens.

*Forex realisation gain*

- (3) You make a **forex realisation gain** if:
- (a) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any \*eligible security;exceeds:
  - (b) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any eligible security.

The amount of the **forex realisation gain** is the amount of the excess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: See also subsection (9).

*Forex realisation loss*

- (4) You make a **forex realisation loss** if:
- (a) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any \*eligible security;
- exceeds:
- (b) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
    - (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
    - (ii) not rolled-over any eligible security.

The amount of the **forex realisation loss** is the amount of the excess.

Note: See also subsection (9).

*Termination of choice*

- (5) If forex realisation event 7 happens in relation to a \*facility agreement:
- (a) your choice for roll-over relief for the facility agreement ceases to have effect immediately after the event; and
  - (b) you are not entitled to make a fresh choice for roll-over relief for the facility agreement.

*Modification of tax recognition time*

- (6) If:
- (a) forex realisation event 7 happens in relation to a \*facility agreement; and
  - (b) an \*eligible security issued by you under the facility agreement was in existence at the time of that event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) at a later time, forex realisation event 4 happens because you cease to have an obligation, or a part of an obligation, to pay \*foreign currency under the security;  
section 775-55 applies to you as if the tax recognition time for the obligation, or the part of the obligation, were the time of forex realisation event 7 (despite subsection 775-55(7)).

*Material variation*

- (7) To avoid doubt, if a variation to:
- (a) the terms or conditions of a facility agreement; or
  - (b) the effect of a facility agreement;
- results in the agreement ceasing to be a facility agreement, the variation is taken to be a material variation for the purposes of subsection (1).
- (8) The regulations may provide that a specified kind of variation is taken to be a material variation for the purposes of subsection (1).

*Total amount*

- (9) To avoid doubt, the total amount referred to in paragraph (3)(b) or (4)(b) may be zero.

**Subdivision 775-D—Qualifying forex accounts that pass the limited balance test**

**Guide to Subdivision 775-D**

**775-225 What this Subdivision is about**

You may elect to have this Subdivision apply to one or more qualifying forex accounts held by you.

If you elect to have this Subdivision apply to an account, a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded if the account passes the limited balance test.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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For an account to pass the limited balance test, the combined balance of all the accounts covered by your election must not be more than the foreign currency equivalent of \$250,000.

The limited balance test includes a buffer provision which allows the combined balance to be more than the foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000, for not more than 2 15-day periods in any income year.

## Table of sections

### Operative provisions

- 775-230 Election to have this Subdivision apply to one or more qualifying forex accounts
- 775-235 Variation of election
- 775-240 Withdrawal of election
- 775-245 When does a qualifying forex account *pass the limited balance test?*
- 775-250 Tax consequences of passing the limited balance test
- 775-255 Notional realisation when qualifying forex account starts to pass the limited balance test
- 775-260 Modification of tax recognition time

## Operative provisions

### **775-230 Election to have this Subdivision apply to one or more qualifying forex accounts**

- (1) You may elect to have this Subdivision apply to one or more \*qualifying forex accounts held by you.
- (2) An election must be in writing.
- (2A) If:
  - (a) you make an election within 30 days after the commencement of this subsection; and
  - (b) the election is expressed to have come into effect on a specified day; and
  - (c) the specified day is included in the period:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-235

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- (i) beginning on 1 July 2003; and
  - (ii) ending on the day on which the election is made;  
the election is taken to have come into effect on the specified day.
- (3) An election continues in effect, in relation to a particular account, until:
- (a) you cease to hold the account; or
  - (b) the account ceases to be a \*qualifying forex account; or
  - (c) the election is varied by removing the account; or
  - (d) a withdrawal of the election takes effect;
- whichever happens first.
- Note 1: For variation of election, see section 775-235.  
Note 2: For withdrawal of election, see section 775-240.
- (4) If an election made by you under this section is in effect, you are not entitled to make another election under this section.
- (5) An \*ADI or a \*non-ADI financial institution is not entitled to make an election under this section.

**775-235 Variation of election**

- (1) If you have made an election under section 775-230, you may vary your election by:
- (a) adding one or more \*qualifying forex accounts; or
  - (b) removing one or more qualifying forex accounts.
- (2) A variation must be in writing.
- (3) Removing an account does not prevent you from adding the account in a future variation.

**775-240 Withdrawal of election**

- (1) If you have made an election under section 775-230, you may withdraw your election.
- (2) A withdrawal must be in writing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) Withdrawing an election does not prevent you from making a fresh election under section 775-230 in relation to any or all of the same accounts.

**775-245 When does a qualifying forex account pass the limited balance test?**

*Basic rule*

- (1) For the purposes of this Subdivision, a \*qualifying forex account that you hold *passes the limited balance test* at a particular time if, at that time:
- (a) an election made by you under section 775-230 has effect in relation to:
    - (i) the account; or
    - (ii) the account and one or more other \*qualifying forex accounts; and
  - (b) the total of the credit balances of the account and each of those other accounts (if any) is not more than the \*foreign currency equivalent of \$250,000; and
  - (c) the total of the debit balances of the account and each of those other accounts (if any) is not more than the foreign currency equivalent of \$250,000.

Note: For buffering during an increased balance period, see subsections (2) and (3).

*Buffering during first and second increased balance period*

- (2) For the purposes of this section, an *increased balance period* is a continuous period consisting of:
- (a) an income year; or
  - (b) a particular part of an income year;
- where, at each time during the period, either or both of the following conditions is satisfied:
- (c) the total of the credit balances of the account or accounts covered by your section 775-230 election is more than the \*foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) the total of the debit balances of the account or accounts covered by your section 775-230 election is more than the foreign currency equivalent of \$250,000, but not more than the foreign currency equivalent of \$500,000.

(3) The table has effect:

<b>Increased balance period</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	<p>(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and</p> <p>(b) the duration of the period is 15 days or less; and</p> <p>(c) it is not the case that:</p> <p style="padding-left: 20px;">(i) the period began at the start of the income year; and</p> <p style="padding-left: 20px;">(ii) another increased balance period ended at the end of the previous income year</p>	<p>paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.</p>
2	<p>(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and</p> <p>(b) both:</p> <p style="padding-left: 20px;">(i) the period began at the start of the income year; and</p> <p style="padding-left: 20px;">(ii) another increased balance period ended at the end of the previous income year; and</p> <p>(c) the total duration of those increased balance periods is 15 days or less</p>	<p>paragraphs (1)(b) and (c) do not apply during those increased balance periods.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Increased balance period**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
3	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) it is not the case that: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.
4	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) both: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year; and (c) the total duration of those increased balance periods is more than 15 days	paragraphs (1)(b) and (c) do not apply during the first 15 days of the period that consists of those increased balance periods.
5	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is 15 days or less; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Increased balance period**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
6	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.

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*Translation of foreign currency*

- (4) For the purposes of the application of section 960-50 to this section, work out the \*foreign currency equivalent of an amount of Australian currency as at a particular time in an income year by translating the foreign currency to Australian currency at the average exchange rate for the third month that preceded the income year.

*Debit balances*

- (5) For the purposes of this section, a debit balance is to be expressed as a positive amount.

Note: For example, if you owe \$1,100 on a credit card account, the debit balance of that account is \$1,100.

**775-250 Tax consequences of passing the limited balance test**

- (1) A \*forex realisation gain or a \*forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if the event happens in relation to a \*qualifying forex account that:
- (a) you hold at the time of the event; and
  - (b) passes the limited balance test at the time of the event.
- (2) If CGT event C1 or C2 happens in relation to a \*qualifying forex account that:
- (a) you hold at the time of the event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) passes the limited balance test at the time of the event; disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

### **775-255 Notional realisation when qualifying forex account starts to pass the limited balance test**

#### *Credit balance*

- (1) For the purposes of this Division, if:
- (a) you hold a \*qualifying forex account; and
  - (b) at a particular time:
    - (i) the account starts to pass the limited balance test; and
    - (ii) the account has a credit balance; and
    - (iii) you have one or more rights to receive a total amount of \*foreign currency represented by the credit balance of the account;
- you are treated as:
- (c) having ceased to have those rights at that time; and
  - (d) having re-acquired those rights immediately after that time.

Note: This means that forex realisation event 2 will happen when the account starts to pass the limited balance test.

#### *Debit balance*

- (2) For the purposes of this Division, if:
- (a) you hold a \*qualifying forex account; and
  - (b) at a particular time:
    - (i) the account starts to pass the limited balance test; and
    - (ii) the account has a debit balance; and
    - (iii) you have one or more obligations to pay a total amount of \*foreign currency represented by the debit balance of the account;
- you are treated as:
- (c) having ceased to have those obligations at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) having started to again owe those obligations immediately after that time.

Note: This means that forex realisation event 4 will happen when the account starts to pass the limited balance test.

### **775-260 Modification of tax recognition time**

#### *Forex realisation event 2*

- (1) If:
  - (a) forex realisation event 2 happens in relation to a \*qualifying forex account that:
    - (i) you hold at the time of the event; and
    - (ii) does not pass the limited balance test at the time of the event; and
  - (b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-45(7), happened at a time when the account passed the limited balance test;section 775-45 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-45(7)).

#### *Forex realisation event 4*

- (2) If:
  - (a) forex realisation event 4 happens in relation to a \*qualifying forex account that:
    - (i) you hold at the time of the event; and
    - (ii) does not pass the limited balance test at the time of the event; and
  - (b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-55(7), happened at a time when the account passed the limited balance test;section 775-55 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-55(7)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 775-E—Retranslation for qualifying forex accounts**

### **Guide to Subdivision 775-E**

#### **775-265 What this Subdivision is about**

If you choose retranslation for a qualifying forex account:

- (a) a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded; and
- (b) forex realisation event 8 enables any gains or losses to be worked out on a retranslation basis.

#### **Table of sections**

##### **Operative provisions**

- 775-270 You may choose retranslation for a qualifying forex account
- 775-275 Withdrawal of choice
- 775-280 Tax consequences of choosing retranslation for an account
- 775-285 Retranslation of gains and losses relating to a qualifying forex account—  
forex realisation event 8

#### **Operative provisions**

##### **775-270 You may choose retranslation for a qualifying forex account**

- (1) You may choose retranslation for a \*qualifying forex account held by you.
- (1A) A choice under subsection (1) does not apply to a \*qualifying forex account held by you if a \*foreign exchange retranslation election by you is in effect in relation to the account under Subdivision 230-D.
- (2) A choice must be in writing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 775-275

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- (2A) If:
- (a) either:
    - (i) you make a choice within 30 days after the commencement of the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*; or
    - (ii) you make a choice within 90 days after the commencement of Part 1 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*; and
  - (b) the choice is expressed to have come into effect on a specified day; and
  - (c) the specified day is included in the period:
    - (i) beginning on 1 July 2003; and
    - (ii) ending on the day on which the choice is made;
- the choice is taken to have come into effect on the specified day.
- (3) A choice continues in effect until:
- (a) you cease to hold the account; or
  - (b) the account ceases to be a \*qualifying forex account; or
  - (c) a withdrawal of the choice takes effect;
- whichever happens first.

Note: For withdrawal of choice, see section 775-275.

**775-275 Withdrawal of choice**

- (1) If you have made a choice for retranslation for a \*qualifying forex account held by you, you may withdraw your choice.
- (2) A withdrawal must be in writing.
- (3) Withdrawing a choice does not prevent you from making a fresh choice under section 775-270.

**775-280 Tax consequences of choosing retranslation for an account**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the event happens in relation to a \*qualifying forex account that you hold; and
  - (b) you have made a choice for retranslation for the account; and
  - (c) the choice is in effect when the event happens.
- (2) If:
- (a) CGT event C1 or C2 happens in relation to a \*qualifying forex account that you hold at the time of the event; and
  - (b) you have made a choice for retranslation for the account; and
  - (c) the choice is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

### **775-285 Retranslation of gains and losses relating to a qualifying forex account—forex realisation event 8**

#### *Forex realisation event 8*

- (1) **Forex realisation event 8** happens if:
- (a) you have made a choice for retranslation for a \*qualifying forex account held by you; and
  - (b) that choice was in effect throughout a continuous period (the **retranslation period**) consisting of:
    - (i) an income year; or
    - (ii) a particular part of an income year; and
  - (c) either:
    - (i) there is a positive retranslation amount for the account for the retranslation period (worked out under subsection (2)); or
    - (ii) there is a negative retranslation amount for the account for the retranslation period (worked out under subsection (3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Retranslation amount*

- (2) If the amount worked out using the formula in subsection (4) is a positive amount, that amount is a **positive retranslation amount** for the account for the retranslation period.
- (3) If the amount worked out using the formula in subsection (4) is a negative amount, that amount is a **negative retranslation amount** for the account for the retranslation period.
- (4) Work out an amount for the account for the retranslation period using the formula:

Closing balance of account for the retranslation period	–	Opening balance of account for the retranslation period	–	Total deposits made to account during the retranslation period	+	Total withdrawals made from account during the retranslation period
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- (5) For the purposes of subsection (4), a debit balance is to be expressed as a negative amount (for example, a debit balance of \$50,000 is to be expressed as – \$50,000).

*Forex realisation gain*

- (6) You make a **forex realisation gain** if there is a positive retranslation amount for the account for the retranslation period. The amount of the **forex realisation gain** is the positive retranslation amount.

*Forex realisation loss*

- (7) You make a **forex realisation loss** if there is a negative retranslation amount for the account for the retranslation period. The amount of the **forex realisation loss** is the negative retranslation amount.
- (8) For the purposes of subsection (7), reverse a negative amount (for example, a negative retranslation amount of – \$50,000 will become a forex realisation loss of \$50,000).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Translation of foreign currency*

- (9) For the purposes of the application of section 960-50 to this section:
- (a) if a retranslation period for an account did not begin immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the start of the first-mentioned retranslation period; and
  - (b) if a retranslation period for an account began immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the other retranslation period; and
  - (c) the closing balance of an account for a retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the retranslation period; and
  - (d) each deposit is to be translated to Australian currency at the exchange rate applicable at the time of the deposit; and
  - (e) each withdrawal is to be translated to Australian currency at the exchange rate applicable at the time of the withdrawal.

*Deposits*

- (10) For the purposes of this section, a **deposit** includes any amount paid or transferred into the account.

*Withdrawals*

- (11) For the purposes of this section, a **withdrawal** includes any amount paid, advanced, drawn or transferred out of the account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 775-F—Retranslation under foreign exchange  
retranslation election under Subdivision 230-D**

**Guide to Subdivision 775-F**

**775-290 What this Subdivision is about**

If you have made a foreign exchange retranslation election under Subdivision 230-D:

- (a) a forex realisation gain or a forex realisation loss you make in relation to an arrangement that is not a Division 230 financial arrangement as a result of forex realisation event 1 to 5 or 8 is disregarded; and
- (b) forex realisation event 9 enables any gains or losses to be worked out on a retranslation basis.

**Table of sections**

775-295	When this Subdivision applies
775-300	Tax consequences of choosing retranslation for arrangement
775-305	Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9
775-310	When election ceases to apply to arrangement
775-315	Balancing adjustment when election ceases to apply to arrangement

**775-295 When this Subdivision applies**

- (1) A <sup>\*</sup>foreign exchange retranslation election applies to an <sup>\*</sup>arrangement for the purposes of this Subdivision if:
- (a) you start to have the arrangement after the start of the income year in which the election is made; and
  - (b) the arrangement is recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the arrangement is one in relation to which you are required by:
- (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
  - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial reports referred to in paragraph 230-255(2)(a), amounts in profit or loss (if any) that are attributable to changes in currency exchange rates.
- (2) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if:
- (a) the election is made by the \*head company of a \*consolidated group or \*MEC group; and
  - (b) the election specifies that the election is not to apply to \*financial arrangements in relation to \*life insurance business carried on by a member of the consolidated group or MEC group; and
  - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (3) The \*foreign exchange retranslation election does not apply to an \*arrangement for the purposes of this Subdivision if the arrangement is associated with a business of a kind specified in regulations made for the purposes of subsection 230-270(4).

### **775-300 Tax consequences of choosing retranslation for arrangement**

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4, 5 or 8 is disregarded if:
- (a) the event happens in relation to an \*arrangement that you hold; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the election is in effect when the event happens.
- (2) If:
- (a) CGT event C1 or C2 happens in relation to an \*arrangement that you hold at the time of the event; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

**775-305 Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9**

*Forex realisation event 9*

- (1) **Forex realisation event 9** happens in relation to an \*arrangement during an income year if:
- (a) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (b) you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-265(1)(c)); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a \*foreign law;
- to recognise, in the financial report referred to in paragraph 230-255(2)(a) for that income year, amounts in profit or loss (if any) in relation to the arrangement that are attributable to changes in currency exchange rates.

The **forex realisation event 9** is taken to have happened in the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Forex realisation gain*

- (2) You make a **forex realisation gain** if the standard referred to in paragraph (1)(b) requires you to recognise an amount of gain in profit or loss in relation to the \*arrangement. That amount of the **forex realisation gain** is the amount the standard requires you to recognise.

*Forex realisation loss*

- (3) You make a **forex realisation loss** if the \*accounting standard referred to in paragraph (1)(b) requires you to recognise an amount of loss in profit or loss in relation to the \*arrangement. That amount of the **forex realisation loss** is the amount that the accounting standard requires you to recognise.

*Section does not apply to amounts previously recognised in equity*

- (4) Subsections (1), (2) and (3) do not apply to amounts that have previously been required by the standards referred to in paragraph 230-255(2)(a) to be recognised in equity.

**775-310 When election ceases to apply to arrangement**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to an \*arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 775-295(1)(b) or (c) during that income year.
- (2) If the election ceases to apply to an \*arrangement under subsection (1), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 775-295(1)(b) and (c) are satisfied once more in relation to the arrangement).

**775-315 Balancing adjustment when election ceases to apply to arrangement**

- (1) This section applies if:
- (a) you make a \*foreign exchange retranslation election; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the election ceases to have effect or ceases to apply to an \*arrangement.
- (2) You are taken, for the purposes of this Division, to have:
- (a) disposed of the \*arrangement for its fair value immediately before the election ceases to have effect or ceases to apply to the arrangement; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect or ceases to apply to the arrangement.

Note: Paragraph (a) means that there would be a forex realisation event 9 in relation to the arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 802—Foreign residents' income with an underlying foreign source**

### **Table of Subdivisions**

802-A Conduit foreign income

### **Subdivision 802-A—Conduit foreign income**

#### **Guide to Subdivision 802-A**

#### **802-5 What this Subdivision is about**

A distribution that an Australian corporate tax entity makes to a foreign resident is not subject to dividend withholding tax, and is not assessable income, to the extent that the entity declares it to be conduit foreign income.

An Australian corporate tax entity has an amount that is non-assessable non-exempt income if it receives a distribution including conduit foreign income from another such entity and it makes a distribution including conduit foreign income.

This Subdivision sets out the method of working out an entity's conduit foreign income.

It also discourages streaming of distributions to entities that can take advantage of the receipt of conduit foreign income.

#### **Table of sections**

##### **Operative provisions**

802-10	Objects
802-15	Foreign residents—exempting CFI from Australian tax
802-17	Trust estates and foreign resident beneficiaries—exempting CFI from Australian tax

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 802** Foreign residents' income with an underlying foreign source

Section 802-10

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802-20	Distributions between Australian corporate tax entities—non-assessable non-exempt income
802-25	Conduit foreign income of an Australian corporate tax entity
802-30	Foreign source income amounts
802-35	Capital gains and losses
802-40	Effect of foreign income tax offset on conduit foreign income
802-45	Previous declarations of conduit foreign income
802-50	Receipt of an unfranked distribution from another Australian corporate tax entity
802-55	No double benefits
802-60	No streaming of distributions

**Operative provisions**

**802-10 Objects**

The objects of this Subdivision are:

- (a) to encourage the establishment in Australia of regional holding companies for foreign groups; and
- (b) to improve Australia's attractiveness as a continuing base for its multinational companies;

by providing relief from tax on \*distributions by \*Australian corporate tax entities to \*members who are foreign residents or other Australian corporate tax entities if those distributions relate to \*conduit foreign income.

**802-15 Foreign residents—exempting CFI from Australian tax**

- (1) So much of the \*unfranked part of a \*frankable distribution made by an \*Australian corporate tax entity that the entity declares, in its \*distribution statement, to be \*conduit foreign income:
  - (a) is not assessable income and is not \*exempt income of a foreign resident; and
  - (b) is an amount to which section 128B (Liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply.
- (2) The declaration must be made on or before the day on which the \*distribution is made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: For a private company, this rule may bring forward the time at which the company is required to make its distribution statement: see section 202-75.

### **802-17 Trust estates and foreign resident beneficiaries—exempting CFI from Australian tax**

#### *Foreign resident beneficiaries*

- (1) So much of a share of the net income of a trust as is reasonably attributable to the whole or a part of the \*unfranked part of a \*frankable distribution made by an \*Australian corporate tax entity that the entity declares, in its \*distribution statement, to be \*conduit foreign income:
- (a) is not assessable income and is not \*exempt income of a beneficiary of the trust who:
    - (i) is a foreign resident; and
    - (ii) is presently entitled to the share of the income of the trust; and
  - (b) is an amount to which section 128B (Liability to withholding tax) of the *Income Tax Assessment Act 1936* does not apply.

Note: A frankable distribution to which a part of the net income of a trust is reasonably attributable may be made by the Australian corporate tax entity to the trust directly, or to the trust indirectly through one or more interposed trusts.

- (2) The declaration must be made on or before the day on which the \*distribution is made.

Note: For a private company, this rule may bring forward the time at which the company is required to make its distribution statement: see section 202-75.

#### *Trusts*

- (3) The trustee of a trust is not to be assessed (and pay tax) under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* in respect of so much of the net income of the trust as is \*non-assessable non-exempt income of a beneficiary of the trust under subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**802-20 Distributions between Australian corporate tax entities—  
non-assessable non-exempt income**

- (1) An \*Australian corporate tax entity (the *receiving entity*) has an amount that is not assessable income and is not \*exempt income for an income year if:
- (a) it receives from another Australian corporate tax entity a \*frankable distribution that has an \*unfranked part; and
  - (b) the \*distribution statement for the \*distribution declares an amount (a *received CFI amount*) of the unfranked part to be \*conduit foreign income; and
  - (c) the receiving entity, after the start of the income year but before the due day for lodging its \*income tax return for that income year:
    - (i) makes a frankable distribution that has an unfranked part; and
    - (ii) declares an amount (a *declared CFI amount*) of the unfranked part to be conduit foreign income.
- (2) The amount that is not assessable income and is not \*exempt income is the lesser of:
- (a) the sum of the received CFI amounts that the receiving entity receives during the income year (the *total received CFI amounts*); and
  - (b) the amount worked out using this formula:

$$\text{Total received CFI amounts} \times \frac{\text{Total declared CFI amounts}}{\text{Total received CFI amounts} - \text{Related expenses}}$$

where:

*related expenses* means the receiving entity's expenses that are reasonably related to the total received CFI amounts.

*total declared CFI amounts* means the sum of the declared CFI amounts in distributions made by the receiving entity before the due day for lodging its \*income tax return for the income year.

Example: AusCo 1 and AusCo 2 are both Australian corporate tax entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

AusCo 1 pays an unfranked dividend of \$80 to AusCo 2. AusCo 1 declares all of the \$80 to be its conduit foreign income (so the \$80 is a received CFI amount).

AusCo 2 has \$5 of deductible expenses relating to the \$80 dividend.

AusCo 2 pays an unfranked dividend of \$30. AusCo 2 declares \$15 of the \$30 to be conduit foreign income (so the \$15 is a declared CFI amount).

The amount that is not assessable income and is not exempt income for AusCo 2 (assuming there are no other received CFI amounts or declared CFI amounts) is:

$$\$80 \times \frac{\$15}{\$75} = \$16$$

The remaining \$64 is included in AusCo 2's assessable income and it can deduct \$4 (the part of the expenses related to the \$64).

- (3) If the receiving entity's expenses that are reasonably related to the total received CFI amounts equal or exceed the total received CFI amounts for an income year, the total received CFI amounts is not assessable income and is not \*exempt income of the receiving entity for the income year.
- (4) If a declared CFI amount is taken into account in working out an amount of \*non-assessable non-exempt income of an entity for an income year, that amount cannot be taken into account for the entity for a later income year.
- (5) Work out how much \*conduit foreign income in a \*frankable distribution flows through a trust or a partnership in the same way that you work out the \*share of a \*franking credit on a \*franked distribution that flows through a trust or a partnership. That amount is treated as a received CFI amount under this section.

Note: See sections 207-50, 207-55 and 207-57 for the share of a franking credit on a franked distribution that flows through a trust or a partnership.

### **802-25 Conduit foreign income of an Australian corporate tax entity**

An \*Australian corporate tax entity's *conduit foreign income* at a particular time (the *relevant time*) is worked out by applying sections 802-30 to 802-55.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 802-30

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Note: Subdivision 715-U modifies the single entity and the entry history rule for the purposes of working out conduit foreign income for consolidated groups and MEC groups.

**802-30 Foreign source income amounts**

- (1) Work out the amount of the entity's \*ordinary income and \*statutory income derived by the entity that has been, is or will be included in an income statement or similar statement of the entity or of another entity and that would not be included in the entity's assessable income if the entity:
- (a) for a company or a \*corporate limited partnership—were a foreign resident at the relevant time; or
  - (b) for a \*corporate unit trust or \*public trading trust—were not a \*resident unit trust for the income year in which the relevant time occurs.

Note: Income statements are prepared under the Framework for the Preparation and Presentation of Financial Statements (which is referred to in the Australian Accounting Standards).

- (2) Reduce the subsection (1) amount by any part of that amount that is or will be included in the entity's assessable income (apart from section 802-20).
- (3) Add to the amount remaining after subsection (2) these amounts:
- (a) if the entity receives from another \*Australian corporate tax entity a \*frankable distribution that has an \*unfranked part—any amount declared in the \*distribution statement for that \*distribution to be \*conduit foreign income;
  - (b) an amount that is treated as a received CFI amount for the purposes of section 802-20 because of subsection 802-20(5);
  - (c) an amount that is \*non-assessable non-exempt income under section 23AJ of the *Income Tax Assessment Act 1936* and that would be not be included under subsection (1).
- (4) Reduce the amount remaining after subsection (3) by these amounts:
- (a) an amount that is \*non-assessable non-exempt income under section 23AI or 23AK of the *Income Tax Assessment Act 1936*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) an amount that is not included in the entity's assessable income because of the operation of paragraph 99B(2)(e) of that Act;
- (c) the amount worked out using the formula:

$$\text{Available franking credit} \times \frac{(1 - \text{*Corporate tax rate})}{\text{*Corporate tax rate}}$$

where:

***available franking credit*** means any part of the amount remaining after subsection (3) to the extent to which a \*franking credit arises or will arise for the entity.

- (5) Reduce the amount remaining after subsection (4) by any of the entity's expenses that are reasonably related to that amount, except expenses the entity has deducted or can deduct under this Act. In applying this subsection to an amount covered by paragraph (3)(a), assume that amount is \*non-assessable non-exempt income.
- (6) The result is an amount included in the entity's ***conduit foreign income***.
- (7) This section applies to an entity as if it had derived an amount if the amount has been applied for its benefit (including by discharging all or part of a debt it owes) or as it directs.

## 802-35 Capital gains and losses

### *Capital gains*

- (1) The entity's ***conduit foreign income*** includes these amounts:
  - (a) the amount by which a \*capital gain of the entity is reduced because of the operation of section 768-505;
  - (b) a capital gain that is disregarded because of the operation of subsection 23AH(3) of the *Income Tax Assessment Act 1936*;
  - (c) the amount of a capital gain that is disregarded as a result of the operation of an international tax sharing treaty (as defined in subsection 136AA(1) of the *Income Tax Assessment Act 1936*).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Capital losses*

- (2) The entity's *conduit foreign income* is reduced by these amounts:
- (a) the amount by which a \*capital loss of the entity is reduced because of the operation of section 768-505;
  - (b) a capital loss that is disregarded because of the operation of subsection 23AH(4) of the *Income Tax Assessment Act 1936*;
  - (c) the amount of a capital loss that is disregarded as a result of the operation of an international tax sharing treaty (as defined in subsection 136AA(1) of the *Income Tax Assessment Act 1936*).

*Timing rule*

- (3) The adjustments are made under this section at the end of the income year in which the \*CGT event occurred.

**802-40 Effect of foreign income tax offset on conduit foreign income**

The entity's *conduit foreign income* includes an amount if a tax offset arose for the entity under Division 770 for the income year immediately before the one in which the relevant time occurs. The amount is worked out using the formula:

$$\text{Offset} \times \frac{(1 - \text{*Corporate tax rate})}{\text{*Corporate tax rate}}$$

**802-45 Previous declarations of conduit foreign income**

The entity's *conduit foreign income* is reduced if:

- (a) the entity makes a \*frankable distribution that has an \*unfranked part; and
- (b) the entity declares an amount of the unfranked part to be conduit foreign income.

The amount of the reduction is the amount so declared.

Note: If the amount declared is less than the amount available for declaration, the difference is available for a later declaration.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**802-50 Receipt of an unfranked distribution from another Australian corporate tax entity**

- (1) The entity's *conduit foreign income* is reduced if:
  - (a) the entity (the *receiving entity*) receives from another \*Australian corporate tax entity a \*frankable distribution that has an \*unfranked part; and
  - (b) the \*distribution statement for the \*distribution declares an amount (the *declared amount*) of the unfranked part to be conduit foreign income; and
  - (c) some or all of the declared amount is not \*non-assessable non-exempt income under section 802-20.
- (2) The amount of the reduction is the amount that is not \*non-assessable non-exempt income under section 802-20 less any expenses reasonably related to that amount.

**802-55 No double benefits**

An amount cannot be both:

- (a) an unfranked non-portfolio dividend credit for an entity under section 46FB of the *Income Tax Assessment Act 1936*; and
- (b) counted towards:
  - (i) the entity's \*conduit foreign income; and
  - (ii) the entity's \*non-assessable non-exempt income under section 802-20.

**802-60 No streaming of distributions**

- (1) Subsection (2) has effect if:
  - (a) an \*Australian corporate tax entity makes one or more \*frankable distributions in a \*franking period; and
  - (b) at least one of the \*distributions has an \*unfranked part; and
  - (c) the entity declares an amount of the unfranked part to be \*conduit foreign income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 802-60

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- (2) If the entity does not, for that \*franking period, declare the same proportion of \*conduit foreign income for all \*membership interests and \*non-share equity interests then, instead of the amount that it declared to be conduit foreign income on those \*distributions, it is taken to have declared under section 802-45 the greater amount that it would have declared had it declared that same proportion on all those distributions.

Note: Breaching subsection (2) may make the entity subject to a penalty under section 288-80 in Schedule 1 to the *Taxation Administration Act 1953* (about over declaring conduit foreign income).

Example: There are 10,000 membership interests in AusCo Limited, 7,500 held by foreign residents and 2,500 held by Australian residents. It has \$1,800 of conduit foreign income.

AusCo makes an unfranked distribution of 50 cents per membership interest to all of its members. It declares \$1,500 of the distribution to be conduit foreign income for its 7,500 foreign membership interests (20 cents per membership interest or 40% of each distribution) and none for its Australian membership interests.

AusCo is taken to have declared the same proportion (40% of each distribution) of conduit foreign income for its Australian membership interests (which amounts to \$500 of conduit foreign income). It is therefore taken to have declared \$2,000 of conduit foreign income. This is an over-declaration of \$200 and a penalty under section 288-80 in Schedule 1 to the *Taxation Administration Act 1953* will apply.

- (3) For the purposes of subsection (2), ignore \*membership interests and \*non-share equity interests that do not carry a right to receive \*distributions (other than distributions on winding up).
- (4) Despite subsection (2), an entity that receives a \*frankable distribution that has an \*unfranked part is entitled to rely on the \*distribution statement made by the entity that made the distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 820—Thin capitalisation rules**

### **Table of Subdivisions**

	Guide to Division 820
820-A	Preliminary
820-B	Thin capitalisation rules for outward investing entities (non-ADI)
820-C	Thin capitalisation rules for inward investing entities (non-ADI)
820-D	Thin capitalisation rules for outward investing entities (ADI)
820-E	Thin capitalisation rules for inward investing entities (ADI)
820-EA	Some financial entities may choose to be treated as ADIs
820-FA	How the thin capitalisation rules apply to consolidated groups and MEC groups
820-FB	Grouping branches of foreign banks and foreign financial entities with a consolidated group, MEC group or single Australian resident company
820-G	Calculating the average values
820-H	Control of entities
820-HA	Controlled foreign entity debt and controlled foreign entity equity
820-I	Associate entities
820-J	Equity interests in trusts and partnerships
820-K	Zero-capital amounts
820-KA	Cost-free debt capital and excluded equity interests
820-L	Record keeping requirements

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Guide to Division 820

### 820-1 What this Division is about

This Division applies to foreign controlled Australian entities, Australian entities that operate internationally and foreign entities that operate in Australia.

Financing expenses that an entity can otherwise deduct from its assessable income may be disallowed under this Division in the following circumstances:

- for an entity that is not an authorised deposit-taking institution for the purposes of the *Banking Act 1959* (an *ADI*)—the entity’s debt exceeds the prescribed level (and the entity is therefore “thinly capitalised”);
- for an entity that is an ADI—the entity’s capital is less than the prescribed level (and the entity is therefore “thinly capitalised”).

### Table of sections

820-5	Does this Division apply to an entity?
820-10	Map of Division

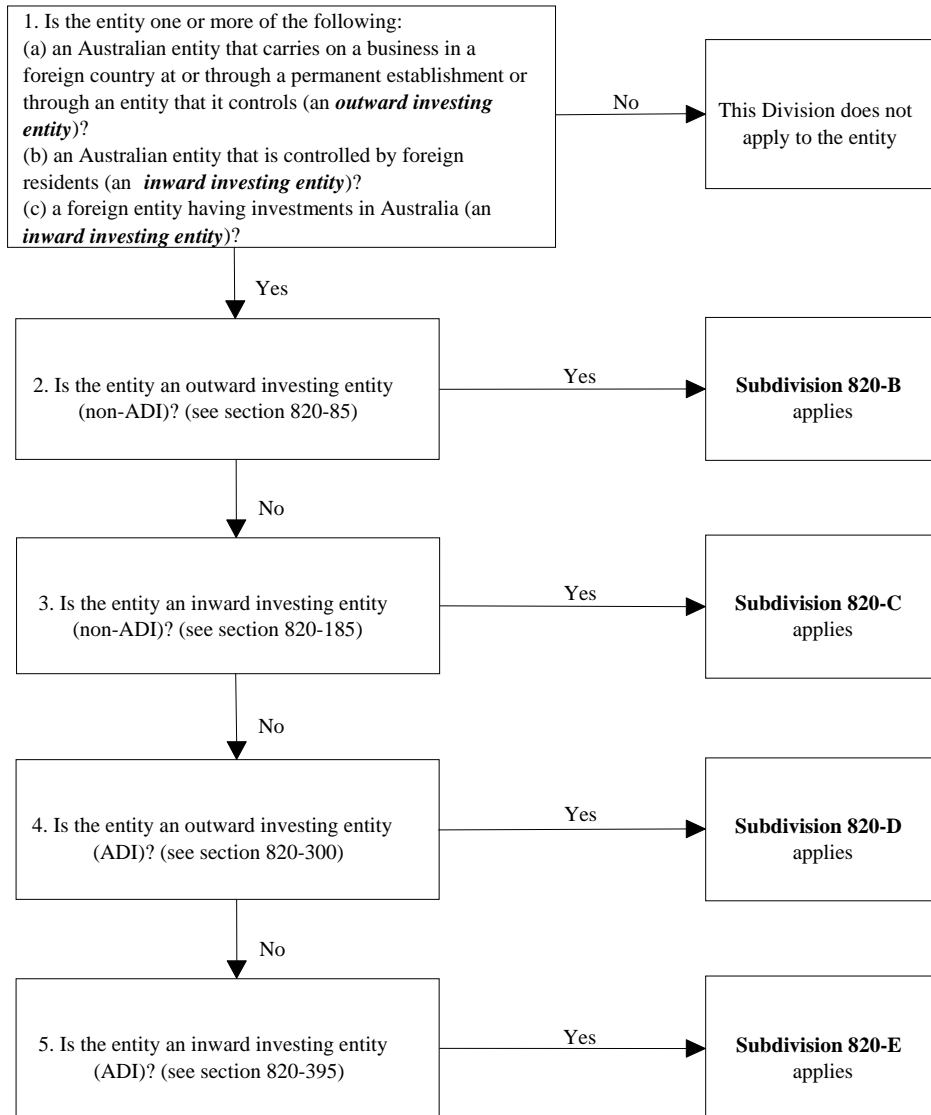
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-5 Does this Division apply to an entity?**

The following diagram shows you how to work out whether this Division applies to an entity.



\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 820-10 Map of Division

The following table sets out a map of this Division.

<b>Map of Division</b>		
<b>Item</b>	<b>This Subdivision:</b>	<b>sets out:</b>
1	Subdivision 820-B or 820-C	(a) the meaning of maximum allowable debt for the Subdivision; and (b) how an entity covered by the Subdivision would have all or a part of its debt deductions disallowed if the maximum allowable debt is exceeded; and (c) the application of these rules in relation to a part of an income year.
2	Subdivision 820-D or 820-E	(a) the meaning of minimum capital amount for the Subdivision; and (b) how an entity covered by the Subdivision would have all or a part of its debt deductions disallowed if the minimum capital amount is not reached; and (c) the application of these rules in relation to a part of an income year.
3A	Subdivision 820-FA	how this Division applies to a consolidated group or MEC group.
3B	Subdivision 820-FB	special rules for grouping foreign bank branches with a consolidated group, MEC group or single Australian resident company.
4	Subdivision 820-G	the methods of calculating the average value of a matter for the purposes of this Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Map of Division**

<b>Item</b>	<b>This Subdivision:</b>	<b>sets out:</b>
5	Subdivision 820-H	the rules for determining: (a) whether or not an Australian entity controls a foreign entity (for the purposes of determining whether or not Subdivision 820-B or 820-D applies to that Australian entity); and (b) whether or not an Australian entity is controlled by a foreign entity (for the purposes of determining whether or not Subdivision 820-C applies to that Australian entity).
5A	Subdivision 820-HA	the meaning of controlled foreign entity debt and controlled foreign entity equity for the purposes of this Division.
6	Subdivision 820-I	the meaning of various concepts about associate entity for the purposes of this Division.
7	Subdivision 820-J	the meaning of equity interests in trusts and partnerships for the purposes of this Division.
8	Subdivision 820-K	the meaning of zero-capital amount for the purposes of this Division.
8A	Subdivision 820-KA	the meaning of cost-free debt capital, and excluded equity interest, for the purposes of this Division.
9	Subdivision 820-L	special record keeping requirements for the purposes of this Division.

**Subdivision 820-A—Preliminary****Table of sections**

820-30	Object of Division
820-32	Exemption for private or domestic assets and non-debt liabilities
820-35	Application—\$250,000 threshold
820-37	Application—assets threshold
820-39	Exemption of certain special purpose entities

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **820-30 Object of Division**

The Object of this Division is to ensure that the following entities do not reduce their tax liabilities by using an excessive amount of \*debt capital to finance their Australian operations:

- (a) \*Australian entities that operate internationally;
- (b) Australian entities that are foreign controlled;
- (c) \*foreign entities that operate in Australia.

### **820-32 Exemption for private or domestic assets and non-debt liabilities**

This Division does not apply to:

- (a) an asset that is used (or held for use) wholly or principally for private or domestic purposes; or
- (b) a \*non-debt liability that is wholly or principally of a private or domestic nature.

### **820-35 Application—\$250,000 threshold**

Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if the total debt deductions of that entity and all its \*associate entities for that year are \$250,000 or less.

### **820-37 Application—assets threshold**

- (1) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if:
  - (a) the entity is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for a period that is all or any part of that year; and
  - (b) the entity is not also an \*inward investing entity (non-ADI) or an \*inward investing entity (ADI) for all or any part of that period; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the result of applying the following formula is equal to or greater than 0.9:

$$\frac{\text{Sum of the average Australian assets of the entity and the average Australian assets of each of the entity's *associates}}{\text{Sum of the average total assets of the entity and the average total assets of each of the entity's associates}}$$

where:

***average Australian assets:***

- (a) of an \*Australian entity—is the average value, for that year, of all the assets of the entity, other than:
- (i) any assets attributable to the entity's \*overseas permanent establishments; or
  - (ii) any \*debt interests held by the entity, to the extent to which any value of the interests is all or a part of the \*controlled foreign entity debt of the entity; or
  - (iii) any \*equity interests or debt interests held by the entity, to the extent to which any value of the interests is all or a part of the \*controlled foreign entity equity of the entity; or
  - (iv) any debt interests that are \*issued by \*associates of the entity, that are \*on issue, and that are held by the entity; or
  - (v) any equity interests that the entity holds in associates of the entity; and
- (b) of a \*foreign entity—is the average value, for that year, of all the assets of the entity that are:
- (i) located in Australia; or
  - (ii) attributable to the entity's \*Australian permanent establishments; or
  - (iii) debt interests held by the entity, to the extent to which the interests are covered by subsection (2); or
  - (iv) equity interests held by the entity, to the extent to which the interests are covered by subsection (3);
- other than:
- (v) any debt interests that are issued by associates of the entity, that are on issue, and that are held by the entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (vi) any equity interests that the entity holds in associates of the entity.

*average total assets* of an entity is the average value, for that year, of all the assets of the entity, other than:

- (a) any \*debt interests that are \*issued by \*associates of the entity, that are \*on issue, and that are held by the entity; or
- (b) any \*equity interests that the entity holds in associates of the entity.

*Foreign entity—debt interest issued by an Australian entity*

- (2) If a \*foreign entity holds a \*debt interest that:

- (a) was \*issued by an \*Australian entity; and
- (b) is \*on issue;

this subsection covers the interest to the extent to which the interest is not attributable to any \*overseas permanent establishments of the Australian entity.

*Foreign entity—equity interest in an Australian entity*

- (3) If a \*foreign entity holds an \*equity interest in an \*Australian entity, this subsection covers the interest to the extent to which the interest is not attributable to any \*overseas permanent establishments of the Australian entity.

### **820-39 Exemption of certain special purpose entities**

- (1) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if the entity meets the conditions in subsection (3) throughout the income year.
- (2) Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year that is an amount incurred by the entity during a part of that year, if the entity meets the conditions in subsection (3) throughout that part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The conditions are:
- (a) the entity is one established for the purposes of managing some or all of the economic risk associated with assets, liabilities or investments (whether the entity assumes the risk from another entity or creates the risk itself); and
  - (b) the total value of \*debt interests in the entity is at least 50% of the total value of the entity's assets; and
  - (c) the entity is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances.
- (4) The condition in paragraph (3)(c) can be met without the rating agency determining that the entity meets those criteria.

Note 1: While an entity meets the conditions in subsection (3), it is treated for the purposes of this Division as *not* being a member of a consolidated group or MEC group (see section 820-584).

Note 2: An entity that does not qualify for the exemption in this section may still be a securitisation vehicle under subsection 820-942(2), in which case the value of its securitised assets will count towards its zero-capital amount under Subdivision 820-K.

*Multi-tier special purpose entities*

- (5) An entity is taken to meet the conditions in subsection (3) throughout a period that is all or part of an income year, if the entity is one of 2 or more entities that together satisfy the condition that, assuming:
- (a) each of the entities had been a division or part of the same entity (the *notional entity*), rather than a separate entity, throughout that period; and
  - (b) the notional entity had consisted only of those divisions and parts throughout that period;
- the notional entity would meet the conditions in subsection (3) throughout that period.

### **820-40 Meaning of *debt deduction***

- (1) ***Debt deduction***, of an entity and for an income year, is a cost incurred by the entity in relation to a \*debt interest issued by the entity, to the extent to which:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the cost is:
    - (i) interest, an amount in the nature of interest, or any other amount that is calculated by reference to the time value of money; or
    - (ii) the difference between the \*financial benefits received, or to be received, by the entity under the \*scheme giving rise to the debt interest and the financial benefits provided, or to be provided, under that scheme; or
    - (iii) any amount directly incurred in obtaining or maintaining the financial benefits received, or to be received, by the entity under the scheme giving rise to the debt interest; or
    - (iv) any other expense incurred by the entity that is specified in the regulations made for the purposes of this subparagraph; and
  - (b) the entity can, apart from this Division, deduct the cost from its assessable income for that year;
- (2) A cost covered by paragraph (1)(a) includes, but is not limited to, any of the following:
- (a) an amount in substitution for interest;
  - (b) a discount in respect of a security;
  - (c) a fee or charge in respect of a debt, including application fees, line fees, service fees, brokerage and stamp duty in respect of document registration or security for the debt interest;
  - (d) an amount that is taken under an \*income tax law to be an amount of interest in respect of a lease, a hire purchase arrangement or any other \*arrangement specified in that law;
  - (e) any loss in respect of:
    - (i) a reciprocal purchase agreement (otherwise known as a repurchase agreement);
    - (ii) a sell-buyback arrangement;
    - (iii) a securities loan arrangement;
  - (f) any amount covered by paragraph (1)(a) that has been assigned or is dealt with in any way on behalf of the party who would otherwise be entitled to that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) To avoid doubt, the following amounts that are incurred by an entity in relation to a <sup>\*</sup>debt interest issued by the entity are not covered by paragraph (1)(a):
- (a) losses and outgoings directly associated with hedging or managing the financial risk in respect of the debt interest;
  - (b) losses incurred by the entity in relation to which the following apply:
    - (i) the losses would otherwise be a cost covered by subparagraph (1)(a)(ii); but
    - (ii) the benefits mentioned in that subparagraph are measured in a foreign currency or a unit of account other than Australian currency (for example, ounces of gold) and the losses have arisen only because of changes in the rate of converting that foreign currency or that unit of account into Australian currency;
  - (c) salary or wages;
  - (d) rental expenses for a lease if the lease is not a debt interest;
  - (e) an expense specified in the regulations made for the purposes of this paragraph.

### **Subdivision 820-B—Thin capitalisation rules for outward investing entities (non-ADI)**

#### **Guide to Subdivision 820-B**

##### **820-65 What this Subdivision is about**

This Subdivision sets out the thin capitalisation rules that apply to an Australian entity that has certain types of overseas investments and is not an authorised deposit-taking institution (an **ADI**). These rules deal with the following matters:

- how to work out the entity's maximum allowable debt for an income year;
- how all or a part of the debt deductions claimed by the entity may be disallowed if the maximum allowable debt is exceeded;

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- how to apply these rules to a period that is less than an income year.

## Table of sections

### Operative provisions

820-85	Thin capitalisation rule for outward investing entities (non-ADI)
820-90	Maximum allowable debt
820-95	Safe harbour debt amount—outward investor (general)
820-100	Safe harbour debt amount—outward investor (financial)
820-105	Arm's length debt amount
820-110	Worldwide gearing debt amount
820-115	Amount of debt deduction disallowed
820-120	Application to part year periods

## Operative provisions

### 820-85 Thin capitalisation rule for outward investing entities (non-ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that year:
- (a) the entity is an \*outward investing entity (non-ADI) (see subsection (2)); and
  - (b) the entity's \*adjusted average debt (see subsection (3)) exceeds its \*maximum allowable debt (see section 820-90).

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-115.

Note 3: For the rules that apply to an entity that is an outward investing entity (non-ADI) for only a part of an income year, see section 820-120 in conjunction with subsection (2) of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 4: A consolidated group or MEC group may be an outward investing entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Outward investing entity (non-ADI)*

- (2) The entity is an **outward investing entity (non-ADI)** for a period that is all or a part of an income year if, and only if, it is:
- (a) an \*outward investor (general) for that period (as set out in items 1 and 3 of the following table); or
  - (b) an \*outward investor (financial) for that period (as set out in items 2 and 4 of that table).

<b>Outward investing entity (non-ADI)</b>			
<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
1	the entity (the <b>relevant entity</b> ) is one or both of the following throughout a period that is all or a part of an income year: (a) an *Australian controller of at least one *Australian controlled foreign entity (not necessarily the same Australian controlled foreign entity throughout that period); (b) an Australian entity that carries on a *business at or through at least one *overseas permanent establishment (not necessarily the same permanent establishment throughout that period)	the relevant entity is not a *financial entity, nor an *ADI, at any time during that period	the relevant entity is an <b>outward investor (general)</b> for that period
2	the entity (the <b>relevant entity</b> ) satisfies this column in item 1	the relevant entity is a *financial entity throughout that period	the relevant entity is an <b>outward investor (financial)</b> for that period

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Outward investing entity (non-ADI)</b>			
<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
3	(a) the entity (the <i>relevant entity</i> ) is an *Australian entity throughout a period that is all or a part of an income year; and (b) throughout that period, the relevant entity is an *associate entity of another Australian entity; and (c) that other Australian entity is an *outward investing entity (non-ADI) or an *outward investing entity (ADI) for that period	the relevant entity is not a *financial entity, nor an *ADI, at any time during that period	the relevant entity is an <i>outward investor (general)</i> for that period
4	the entity (the <i>relevant entity</i> ) and another Australian entity satisfy this column in item 3	the relevant entity is a *financial entity throughout that period	the relevant entity is an <i>outward investor (financial)</i> for that period

Note 1: To determine whether an entity is an Australian controller of an Australian controlled foreign entity, see Subdivision 820-H.

Note 2: The rules that apply to an outward investor (general) are different from those that apply to an outward investor (financial) in some instances. For example, see sections 820-95 and 820-100.

*Adjusted average debt*

- (3) The entity's *adjusted average debt* for an income year is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

Step 1. Work out the average value, for that year (the *relevant year*), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- Step 2. Reduce the result of step 1 by the average value, for the relevant year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for the relevant year, of all the \*controlled foreign entity debt of the entity.
- Step 4. If the entity is a \*financial entity throughout the relevant year, add to the result of step 3 the average value, for the relevant year, of the entity's \*borrowed securities amount.
- Step 5. Add to the result of step 4 the average value, for the relevant year, of the \*cost-free debt capital of the entity. The result of this step is the ***adjusted average debt***.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (4) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.

### **820-90 Maximum allowable debt**

*Entity is not also an inward investment vehicle (general) or inward investment vehicle (financial)*

- (1) The entity's ***maximum allowable debt*** for an income year is the greatest of the following amounts if the entity is not also an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for all or any part of that year:
- (a) the \*safe harbour debt amount;
  - (b) the \*arm's length debt amount;
  - (c) unless the entity has \*worldwide equity of a negative amount—the \*worldwide gearing debt amount.

Note: The safe harbour debt amount and the worldwide gearing debt amount differ depending on whether the entity is an outward investor (general)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or an outward investor (financial), see sections 820-95, 820-100 and 820-110.

*Entity is also an inward investment vehicle (general) or inward investment vehicle (financial)*

- (2) The entity's **maximum allowable debt** for an income year is the greater of the following amounts if the entity is also an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for all or any part of that year:
- (a) the \*safe harbour debt amount;
  - (b) the \*arm's length debt amount.

Note: The safe harbour debt amount differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see sections 820-95 and 820-100.

### **820-95 Safe harbour debt amount—outward investor (general)**

If the entity is an \*outward investor (general) for the income year, the **safe harbour debt amount** is the result of applying the method statement in this section. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 6. Reduce the result of step 5 by the average value, for that year, of all the \*non-debt liabilities of the entity. If the result of this step is a negative amount, it is taken to be nil.
- Step 7. Multiply the result of step 6 by  $\frac{3}{4}$ .
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **safe harbour debt amount**.

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$100 million.

The average values of its relevant associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity and non-debt liabilities are \$10 million, \$8 million, \$5 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through the application of steps 2 to 6) leaves \$70 million. Multiplying \$70 million by  $\frac{3}{4}$  results in \$52.5 million. As the average value of the company's associate entity excess amount is \$4.5 million, the safe harbour debt amount is therefore \$57 million.

### **820-100 Safe harbour debt amount—outward investor (financial)**

- (1) If the entity is an \*outward investor (financial) for the income year, the **safe harbour debt amount** is the lesser of the following amounts:
- (a) the \*total debt amount (worked out under subsection (2));
  - (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Total debt amount*

- (2) The **total debt amount** is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 6. Reduce the result of step 5 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 7. Reduce the result of step 6 by the average value, for that year, of the entity's \*zero-capital amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 8. Multiply the result of step 7 by <sup>20/21</sup>.
- Step 9. Add to the result of step 8 the average value, for that year, of the entity's \*zero-capital amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 10. Add to the result of step 9 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the ***total debt amount***.

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$160 million.

The average values of its relevant associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and zero capital amount are \$5 million, \$5 million, \$9 million, \$6 million, \$5 million and \$4 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 7) leaves \$126 million. Multiplying \$126 million by <sup>20/21</sup> results in \$120 million. Adding the average zero capital amount of \$4 million results in \$124 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$124 million.

*Adjusted on-lent amount*

- (3) The ***adjusted on-lent amount*** is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*controlled foreign entity debt of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*controlled foreign entity equity of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 6. Reduce the result of step 5 by the amount (the **average on-lent amount**) which is the average value, for that year, of the entity's \*on-lent amount (other than \*controlled foreign entity debt of the entity). If the result of this step is a negative amount, it is taken to be nil.
- Step 7. Multiply the result of step 6 by  $\frac{3}{4}$ .
- Step 8. Add to the result of step 7 the average on-lent amount.
- Step 9. Reduce the result of step 8 by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 10. Add to the result of step 9 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **adjusted on-lent amount**.

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$160 million.

The average values of its relevant associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and on-lent amount are \$5 million, \$9 million, \$6 million, \$5 million and \$35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 6) leaves \$100 million. Multiplying \$100 million by  $\frac{3}{4}$  results in \$75 million. Adding the average on-lent amount of \$35 million results in \$110 million. Reducing the result of step 8 by the associate entity debt amount of \$5 million equals \$105 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$105 million.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-105 Arm's length debt amount**

- (1) The *arm's length debt amount* is a notional amount that, having regard to the factual assumptions set out in subsection (2) and the relevant factors mentioned in subsection (3), would satisfy both paragraphs (a) and (b):
- (a) the amount represents a notional amount of \*debt capital that:
    - (i) the entity would reasonably be expected to have throughout the income year; and
    - (ii) would give rise to an amount of \*debt deductions of the entity for that or any other income year; and
    - (iii) would be attributable to the entity's Australian business as mentioned in subsection (2);
  - (b) commercial lending institutions that were not \*associates of the entity (the *notional lenders*) would reasonably be expected to have entered into \*schemes that would:
    - (i) give rise to \*debt interests that constituted that notional amount of debt capital of the entity; and
    - (ii) provide for terms and conditions for the debt interests that would reasonably be expected to have applied if the entity and the notional lenders had been dealing at arm's length with each other throughout the income year mentioned in subparagraph (1)(a)(i).

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that amount:
- (a) the entity's commercial activities in connection with Australia (the *Australian business*) during that year do not include:
    - (i) any \*business carried on by the entity at or through its \*overseas permanent establishments; and
    - (ii) the holding of any \*associate entity debt, \*controlled foreign entity debt or \*controlled foreign entity equity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the entity had carried on the Australian business that it actually carried on during that year;
- (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
- (d) except as stated in paragraph (1)(b) and paragraphs (e), (f) and (g) of this subsection, the entity had carried on the Australian business in the same circumstances as what actually existed during that year;
- (e) any guarantee, security or other form of credit support provided to the entity in relation to the Australian business during that year:
  - (i) by its \*associates; or
  - (ii) by the use of assets of the entity that are attributable to the entity's overseas permanent establishments;is taken not to have been received by the entity;
- (f) the entity's only activities during that year were the Australian business;
- (g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining whether or not an amount satisfies paragraphs (1)(a) and (b):
  - (a) the functions performed, the assets used, and the risks assumed, by the entity in relation to the Australian business throughout that year;
  - (b) the terms and conditions of the \*debt capital that the entity actually had in relation to the Australian business throughout that year;
  - (c) the nature of, and title to, any assets of the entity attributable to the Australian business that were available to the entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- throughout that year as security for its debt capital for that business;
- (d) the purposes for which \*schemes for debt capital had been actually entered into by the entity in relation to the Australian business throughout that year;
  - (e) the entity's capacity to meet all its liabilities in relation to the Australian business (whether during that year or at any other time);
  - (f) the profit of the entity (within the meaning of the \*accounting standards), and the return on its capital, in relation to the Australian business (whether during that year or at any other time);
  - (g) the debt to equity ratios of the following throughout that year:
    - (i) the entity;
    - (ii) the entity in relation to the Australian business;
    - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
  - (h) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
  - (i) the way in which the entity financed its commercial activities (other than the Australian business) throughout that year;
  - (j) the general state of the Australian economy throughout that year;
  - (k) all of the above factors existing at the time when the entity last entered into a scheme that gave rise to an actual \*debt interest attributable to the Australian business that remains \*on issue throughout that year;
  - (l) any other factors which are specified in the regulations made for the purposes of this section, including factors specific to an \*outward investor (general) or an \*outward investor (financial).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

**820-110 Worldwide gearing debt amount**

*Outward investor (general)*

- (1) If the entity is an \*outward investor (general) for the income year, the **worldwide gearing debt amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Divide the average value of all the entity's \*worldwide debt for the income year by the average value of all the entity's \*worldwide equity for that year.
- Step 2. Multiply the result of step 1 by  $^{12}/_{10}$ .
- Step 3. Add 1 to the result of step 2.
- Step 4. Divide the result of step 2 by the result of step 3.
- Step 5. Multiply the result of step 4 in this method statement by the result of step 6 in the method statement in section 820-95.
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **worldwide gearing debt amount**.

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of worldwide debt of \$83.4 million and an average value of worldwide equity of \$27 million. The result of applying steps 1 and 2 is therefore 3.706. Dividing 3.706 by 4.706 (through applying steps 3 and 4) and multiplying the result by \$70 million (which is the result of step 6 in the method statement in section 820-95) equals \$55.13

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

million. As the average value of the company's associate entity excess amount is \$4.5 million, the worldwide gearing debt amount is therefore \$59.63 million.

*Outward investor (financial)*

- (2) If the entity is an \*outward investor (financial) for that year, the **worldwide gearing debt amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Divide the average value of all the entity's \*worldwide debt for the income year by the average value of all the entity's \*worldwide equity for that year.
- Step 2. Multiply the result of step 1 by  $12/10$ .
- Step 3. Add 1 to the result of step 2.
- Step 4. Divide the result of step 2 by the result of step 3.
- Step 5. Multiply the result of step 4 in this method statement by the result of step 7 in the method statement in subsection 820-100(2).
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*zero-capital amount (other than any zero-capital amount that is attributable to the entity's \*overseas permanent establishments).
- Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **worldwide gearing debt amount**.

Example: GLM Limited, a company that is an Australian entity, has an average value of worldwide debt of \$120 million and an average value of worldwide equity of \$40 million. The result of applying steps 1 and 2 is therefore 3.6. Dividing 3.6 by 4.6 (through applying steps 3 and 4) and multiplying the result by \$126 million (which is the result of step 7 of the method statement in subsection 820-100(2)) equals \$98.61 million. The average value of zero-capital amount (see step 7 of the method statement in subsection 820-100(2)) is \$4 million. Adding that

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

amount to \$98.61 million results in \$102.61 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore \$102.61 million.

### 820-115 Amount of debt deduction disallowed

The amount of \*debt deduction disallowed under subsection 820-85(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Excess debt}}{\text{Average debt}}$$

where:

**average debt** means the sum of:

- (a) the average value, for the income year, of the entity's \*debt capital that is covered by step 1 of the method statement in subsection 820-85(3); and
- (b) the average value, for that year, of the entity's \*cost-free debt capital that is covered by step 5 of that method statement; (disregarding any amount that is attributable to the entity's \*overseas permanent establishments in working out the average values).

**debt deduction** means each \*debt deduction covered by subsection 820-85(1).

**excess debt** means the amount by which the entity's \*adjusted average debt for that year (see subsection 820-85(3)) exceeds its \*maximum allowable debt for that year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-120 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity), if:
  - (a) the entity is an \*outward investing entity (non-ADI) for that period; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the entity's \*adjusted average debt for that period exceeds the entity's \*maximum allowable debt for that period.

Note: To determine whether an entity is an outward investing entity (non-ADI) for that period, see subsection 820-85(2).

- (2) The entity's **adjusted average debt** for that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to the entity's \*overseas permanent establishments.

*Method statement*

- Step 1. Work out the average value, for that period, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.
- Step 2. Reduce the result of step 1 by the average value, for that period, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that period, of all the \*controlled foreign entity debt of the entity.
- Step 4. If the entity is a \*financial entity throughout that period, add to the result of step 3 the average value, for that period, of the entity's \*borrowed securities amount.
- Step 5. Add to the result of step 4 the average value, for that period, of the \*cost-free debt capital of the entity. The result of this step is the **adjusted average debt**.

- (3) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.
- (4) For the purposes of determining:
- (a) the \*maximum allowable debt for the period mentioned in subsection (1); and
  - (b) the amount of each \*debt deduction to be disallowed;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 820-180

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sections 820-90 to 820-115 apply in relation to that entity and that period with the modifications set out in the following table:

Modifications of sections 820-90 to 820-115		
Item	Provisions	Modifications
1	Sections 820-90 to 820-115	A reference to an income year is taken to be a reference to that period
2	Section 820-115	A reference to subsection 820-85(1) is taken to be a reference to subsection (1) of this section
3	Section 820-115	<i>adjusted average debt</i> is taken to have the meaning given by subsection (2) of this section <i>average debt</i> is taken to be the sum of: (a) the average value, for that period, of the entity's *debt capital that is covered by step 1 of the method statement in subsection (2) of this section; and (b) the average value, for that period, of the entity's *cost-free debt capital that is covered by step 5 of that method statement; (disregarding any amount that is attributable to the entity's *overseas permanent establishments in working out the average values).

**Subdivision 820-C—Thin capitalisation rules for inward investing entities (non-ADI)**

**Guide to Subdivision 820-C**

**820-180 What this Subdivision is about**

This Subdivision sets out the thin capitalisation rules that apply to a foreign entity or a foreign controlled Australian entity that is not an authorised deposit-taking institution (an *ADI*). These rules deal with the following matters:

- how to work out the entity's maximum allowable debt for an income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- how all or a part of the debt deductions claimed by the entity may be disallowed if the maximum allowable debt is exceeded;
- how to apply these rules to a period that is less than an income year.

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## Operative provisions

### 820-185 Thin capitalisation rule for inward investing entities (non-ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year if:
  - (a) the entity is an \*inward investing entity (non-ADI) for that year (see subsection (2)), but is not also an \*outward investing entity (non-ADI) (see section 820-85) for all or any part of that year; and
  - (b) for that year, the entity's \*adjusted average debt (see subsection (3)) exceeds its \*maximum allowable debt (see section 820-190).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 820** Thin capitalisation rules

Section 820-185

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- Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.
- Note 2: To work out the amount to be disallowed, see section 820-220.
- Note 3: For the rules that apply to an entity that is an outward investing entity (non-ADI) as well as an inward investing entity (non-ADI), see Subdivision 820-B.
- Note 4: For the rules that apply to an entity that is an inward investing entity (non-ADI) for only a part of an income year, see section 820-225 in conjunction with subsection (2) of this section.
- Note 5: To calculate an average value for the purposes of this Division, see Subdivision 820-G.
- Note 6: A consolidated group or MEC group may be an inward investing entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Inward investing entity (non-ADI)*

- (2) The entity is an ***inward investing entity (non-ADI)*** for a period that is all or a part of an income year if, and only if, it is:
- (a) an \*inward investment vehicle (general) for that period (as set out in item 1 of the following table); or
  - (b) an \*inward investment vehicle (financial) for that period (as set out in item 2 of that table); or
  - (c) an \*inward investor (general) for that period (as set out in item 3 of that table); or
  - (d) an \*inward investor (financial) for that period (as set out in item 4 of that table).

<b>Inward investing entity (non-ADI)</b>			
<b>Item</b>	<b>If the entity is a:</b>	<b>and the entity:</b>	<b>the entity is an:</b>
1	*foreign controlled Australian entity throughout a period that is all or a part of an income year	is not a *financial entity, nor an *ADI, at any time during that period	<b><i>inward investment vehicle (general)</i></b> for that period
2	*foreign controlled Australian entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<b><i>inward investment vehicle (financial)</i></b> for that period

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**Inward investing entity (non-ADI)**

<b>Item</b>	<b>If the entity is a:</b>	<b>and the entity:</b>	<b>the entity is an:</b>
3	*foreign entity throughout a period that is all or a part of an income year	is not a *financial entity, nor an *ADI, at any time during that period	<i>inward investor (general)</i> for that period
4	*foreign entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<i>inward investor (financial)</i> for that period

Note 1: To determine whether an entity is a foreign controlled Australian entity, see Subdivision 820-H.

Note 2: The rules that apply to these 4 types of entities are different in some instances. For example, see sections 820-195 to 820-210.

Note 3: An entity covered by item 3 or 4 of the table may be required to keep certain records, see Subdivision 820-L.

*Adjusted average debt*

- (3) The entity's *adjusted average debt* for an income year is the result of applying the method statement in this subsection.

*Method statement*

Step 1. Work out the average value, for that year (the *relevant year*), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

Step 2. Reduce the result of step 1 by the average value, for the relevant year, of:

- (a) if the entity is an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for that year—all the \*associate entity debt of the entity; or

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if the entity is an \*inward investor (general) or an \*inward investor (financial) for that year—all the associate entity debt of the entity, to the extent that it is attributable to the entity's \*Australian permanent establishments.

Step 3. If the entity is a \*financial entity throughout the relevant year, add to the result of step 2 the average value, for the relevant year, of the entity's \*borrowed securities amount.

Step 4. Add to the result of step 3 the average value, for the relevant year, of the \*cost-free debt capital of the entity. The result of this step is the *adjusted average debt*.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (4) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.

### 820-190 Maximum allowable debt

The entity's *maximum allowable debt* for an income year is the greater of the following amounts:

- (a) the \*safe harbour debt amount;  
(b) the \*arm's length debt amount.

Note: The safe harbour debt amount differs depending on whether the entity is an inward investment vehicle (general), inward investment vehicle (financial), inward investor (general) or inward investor (financial), see sections 820-195 to 820-215.

### 820-195 Safe harbour debt amount—inward investment vehicle (general)

If the entity is an \*inward investment vehicle (general) for the income year, the *safe harbour debt amount* is the result of applying the method statement in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the *safe harbour debt amount*.

Example: ALWZ Ltd, a company that is an Australian entity, has an average value of assets of \$100 million.

The average values of its associate entity debt, associate entity equity and non-debt liabilities are \$10 million, \$5 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. As the average value of the company's associate entity excess amount is \$2 million, the safe harbour debt amount is therefore \$62 million.

**820-200 Safe harbour debt amount—inward investment vehicle (financial)**

- (1) If the entity is an \*inward investment vehicle (financial) for the income year, the *safe harbour debt amount* is the lesser of the following amounts:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the \*total debt amount (worked out under subsection (2));
- (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

*Total debt amount*

- (2) The **total debt amount** is the result of the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 5. Reduce the result of step 4 by the average value, for that year, of the entity's \*zero-capital amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 6. Multiply the result of step 5 by <sup>20</sup>/<sub>21</sub>.
- Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*zero-capital amount.
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **total debt amount**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of \$120 million.

The average values of its associate entity debt, associate entity equity, its non-debt liabilities and its zero-capital amount are \$5 million, \$3 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 5) leaves \$105 million. Multiplying \$105 million by <sup>20</sup>/<sub>21</sub> results in \$100 million. Adding the zero-capital amount of \$5 million to \$100 million results in \$105 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$105 million.

*Adjusted on-lent amount*

- (3) The **adjusted on-lent amount** is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for the income year, of all the assets of the entity.
- Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.
- Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity.
- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*non-debt liabilities of the entity.
- Step 4. Reduce the result of step 3 by the amount (the **average on-lent amount**) which is the average value, for that year, of the entity's \*on-lent amount. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by <sup>3</sup>/<sub>4</sub>.
- Step 6. Add to the result of step 5 the average on-lent amount.
- Step 7. Reduce the result of step 6 by the average value, for that year, of all the \*associate entity debt of the entity.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **adjusted on-lent amount**.

Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of \$120 million.

The average values of its associate entity equity, non-debt liabilities and on-lent amount are \$3 million, \$2 million and \$35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. Adding the average on-lent amount of \$35 million results in \$95 million. Reducing \$95 million by the associate entity debt amount of \$5 million results in \$90 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$90 million.

### 820-205 Safe harbour debt amount—inward investor (general)

If the entity is an \*inward investor (general) for the income year, the **safe harbour debt amount** is the result of applying the method statement in this section.

*Method statement*

Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):

- (a) assets that are attributable to the entity's \*Australian permanent establishments;
- (b) other assets that are held for the purposes of producing the entity's assessable income.

Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.

Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.
- Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity that have arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the *safe harbour debt amount*.

Example: RJ Corporation is a company that is not an Australian entity. The average value of its Australian investments is \$100 million.

The average value of its relevant associate entity debt, associate entity equity and non-debt liabilities is \$10 million, \$5 million and \$5 million respectively. Deducting those amounts from the result of step 1 leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. As the company does not have any associate entity excess amount, the safe harbour debt amount is therefore \$60 million.

### **820-210 Safe harbour debt amount—inward investor (financial)**

- (1) If the entity is an \*inward investor (financial) for that year, the *safe harbour debt amount* is the lesser of the following amounts:
- (a) the \*total debt amount (worked out under subsection (2));
  - (b) the \*adjusted on-lent amount (worked out under subsection (3)).

However, if the 2 amounts are equal, it is the total debt amount.

*Total debt amount*

- (2) The *total debt amount* is the result of applying the method statement in this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):

(a) assets that are attributable to the entity's  
\*Australian permanent establishments;

(b) other assets that are held for the purposes of producing the entity's assessable income.

Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.

Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments.

Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.

Step 4. Reduce the result of step 3 by the average value, for that year, of all the \*non-debt liabilities of the entity that have arisen because of the Australian investments.

Step 5. Reduce the result of step 4 by the average value, for that year, of the entity's \*zero-capital amount that has arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.

Step 6. Multiply the result of step 5 by <sup>20</sup>/<sub>21</sub>.

Step 7. Add to the result of step 6 the average value, for that year, of the entity's \*zero-capital amount that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the **total debt amount**.

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is \$120 million.

The average value of its relevant associate entity debt, associate entity equity, non-debt liabilities and zero-capital amount are \$5 million, \$2 million, \$3 million and \$5 million respectively. Deducting those amounts from the result of step 1 (through applying steps 2 to 5) leaves \$105 million. Multiplying \$105 million by <sup>20/21</sup> results in \$100 million. Adding the average zero-capital amount of \$5 million results in \$105 million. As the company does not have any associate entity excess amount, the total debt amount is therefore \$105 million.

*Adjusted on-lent amount*

- (3) The **adjusted on-lent amount** is the result of applying the method statement in this subsection.

*Method statement*

Step 1. Work out the average value, for the income year, of all of the following assets of the entity (the **Australian investments**):

- (a) assets that are attributable to the entity's \*Australian permanent establishments;
- (b) other assets that are held for the purposes of producing the entity's assessable income.

Step 1A. Reduce the result of step 1 by the average value, for that year, of all the \*excluded equity interests in the entity.

Step 2. Reduce the result of step 1A by the average value, for that year, of all the \*associate entity equity of the entity that has arisen because of the Australian investments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 3. Reduce the result of step 2 by the average value, for that year, of all the \*non-debt liabilities of the entity that has arisen because of the Australian investments.
- Step 4. Reduce the result of step 3 by the amount (the *average on-lent amount*) which is the average value, for that year, of the \*on-lent amount of the entity (to the extent that it is the value of all or a part of the Australian investments). If the result of this step is a negative amount, it is taken to be nil.
- Step 5. Multiply the result of step 4 by  $\frac{3}{4}$ .
- Step 6. Add to the result of step 5 the average on-lent amount.
- Step 7. Reduce the result of step 6 by the average value, for that year, of all the \*associate entity debt of the entity that has arisen because of the Australian investments. If the result of this step is a negative amount, it is taken to be nil.
- Step 8. Add to the result of step 7 the average value, for that year, of the entity's \*associate entity excess amount. The result of this step is the *adjusted on-lent amount*.

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is \$120 million.

The average value of its relevant associate entity equity, non-debt liabilities and on-lent amount are \$2 million, \$3 million and \$35 million respectively. Deducting those amounts from the result of step 1 (through applying steps 2 to 4) leaves \$80 million. Multiplying \$80 million by  $\frac{3}{4}$  results in \$60 million. Adding the average on-lent amount of \$35 million results in \$95 million. Reducing the result of step 6 by the associate entity debt amount of \$5 million results in \$90 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore \$90 million.

### 820-215 Arm's length debt amount

- (1) The *arm's length debt amount* is a notional amount that, having regard to the factual assumptions set out in subsection (2) and the relevant factors mentioned in subsection (3), would satisfy both paragraphs (a) and (b):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the amount represents a notional amount of \*debt capital that:
  - (i) the entity would reasonably be expected to have throughout the income year; and
  - (ii) would give rise to an amount of \*debt deductions of the entity for that or any other income year; and
  - (iii) would be attributable to the entity's Australian business as mentioned in subsection (2);
- (b) commercial lending institutions that were not \*associates of the entity (the *notional lenders*) would reasonably be expected to have entered into \*schemes that would:
  - (i) give rise to \*debt interests that constituted that notional amount of debt capital of the entity; and
  - (ii) provide for terms and conditions for the debt interests that would reasonably be expected to have applied if the entity and the notional lenders had been dealing at arm's length with each other throughout the income year mentioned in subparagraph (1)(a)(i).

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that amount:
  - (a) the entity's commercial activities in connection with Australia (the *Australian business*) during that year:
    - (i) if the entity is an \*inward investment vehicle (general) or \*inward investment vehicle (financial) for that year—do not include the holding of any \*associate entity debt; and
    - (ii) if the entity is an \*inward investor (general) or \*inward investor (financial) for that year—consist only of its Australian investments (within the meaning of section 820-205 or 820-210, as appropriate), other than the holding of any associate entity debt that is attributable to its \*Australian permanent establishments;
  - (b) the entity had carried on the Australian business that it actually carried on during that year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
- (d) except as stated in paragraph (1)(b) and paragraphs (e), (f) and (g) of this subsection, the entity had carried on the Australian business in the same circumstances as what actually existed during that year;
- (e) any guarantee, security or other form of credit support provided to the entity in relation to the Australian business during that year:
  - (i) by its \*associates; or
  - (ii) by the use of assets of the entity that are attributable to the entity's overseas permanent establishments;is taken not to have been received by the entity;
- (f) the entity's only activities during that year were the Australian business;
- (g) the entity's only assets and liabilities during that year were those referred to in paragraph (c) of this subsection.

However, the assumptions set out in paragraphs (f) and (g) of this subsection are not to be made in taking into account the relevant factors mentioned in subsection (3).

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining whether or not an amount satisfies paragraphs (1)(a) and (b):
  - (a) the functions performed, the assets used, and the risks assumed, by the entity in relation to the Australian business throughout that year;
  - (b) the terms and conditions of the \*debt capital that the entity actually had in relation to the Australian business throughout that year;
  - (c) the nature of, and title to, any assets of the entity attributable to the Australian business that were available to the entity throughout that year as security for its debt capital for that business;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the purposes for which \*schemes for debt capital had been actually entered into by the entity in relation to the Australian business throughout that year;
- (e) the entity's capacity to meet all its liabilities in relation to the Australian business (whether during that year or at any other time);
- (f) the profit of the entity (within the meaning of the \*accounting standards), and the return on its capital, in relation to the Australian business (whether during that year or at any other time);
- (g) the debt to equity ratios of the following throughout that year:
  - (i) the entity;
  - (ii) the entity in relation to the Australian business;
  - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (h) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (i) the general state of the Australian economy throughout that year;
- (j) all of the above factors existing at the time when the entity last entered into a \*scheme that gave rise to an actual \*debt interest attributable to the Australian business that remains \*on issue throughout that year;
- (k) any other factors which are specified in the regulations made for the purposes of this section, including factors that are specific to an \*inward investment vehicle (general), an \*inward investment vehicle (financial), an \*inward investor (general) or an \*inward investor (financial).

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

### 820-220 Amount of debt deduction disallowed

The amount of \*debt deduction disallowed under subsection 820-185(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Excess debt}}{\text{Average debt}}$$

where:

**average debt** means the sum of:

- (a) the average value, for the income year, of the entity's \*debt capital that is covered by step 1 of the method statement in subsection 820-185(3); and
- (b) the average value, for that year, of the entity's \*cost-free debt capital that is covered by step 4 of that method statement.

**debt deduction** means each \*debt deduction of the entity for that year.

**excess debt** means the amount by which the \*adjusted average debt (see subsection 820-185(3)) exceeds the entity's \*maximum allowable debt for that year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-225 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year, if:
  - (a) the entity is an \*inward investing entity (non-ADI) for that period, but is not also an \*outward investing entity (non-ADI) for all or any part of that period; and
  - (b) the entity's \*adjusted average debt for that period exceeds the entity's \*maximum allowable debt for that period.

Note: To determine whether an entity is an inward investing entity (non-ADI) for a period, see subsection 820-185(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The entity's ***adjusted average debt*** for that period is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the average value, for that period, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.
- Step 2. Reduce the result of step 1 by the average value, for that period, of:
- (a) if the entity is an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for that period—all the \*associate entity debt of the entity; or
  - (b) if the entity is an \*inward investor (general) or an \*inward investor (financial) for that period—all the associate entity debt of the entity, to the extent that it is attributable to the entity's \*Australian permanent establishments.
- Step 3. If the entity is a \*financial entity throughout that period, add to the result of step 2 the average value, for that period, of the entity's \*borrowed securities amount.
- Step 4. Add to the result of step 3 the average value, for that period, of the \*cost-free debt capital of the entity. The result of this step is the ***adjusted average debt***.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (2A) The entity's \*adjusted average debt does not exceed its \*maximum allowable debt if the adjusted average debt is nil or a negative amount.
- (3) For the purposes of determining:
- (a) the \*maximum allowable debt for the period mentioned in subsection (1); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) the amount of each \*debt deduction to be disallowed; sections 820-190 to 820-220 apply in relation to that entity and that period with the modifications set out in the following table:

Modifications of sections 820-190 to 820-220		
Item	Provisions	Modifications
1	Sections 820-190 to 820-220	A reference to an income year is taken to be a reference to that period
2	Section 820-220	A reference to subsection 820-185(1) is taken to be a reference to subsection (1) of this section
3	Section 820-220	<i>adjusted average debt</i> is taken to have the meaning given by subsection (2) of this section <i>average debt</i> is taken to be the sum of: (a) the average value, for that period, of the entity's *debt capital that is covered by step 1 of the method statement in subsection (2) of this section; and (b) the average value, for that period, of the entity's *cost-free debt capital that is covered by step 4 of that method statement.

### Subdivision 820-D—Thin capitalisation rules for outward investing entities (ADI)

#### Guide to Subdivision 820-D

##### 820-295 What this Subdivision is about

This Subdivision sets out the thin capitalisation rules that apply to an entity that is both an authorised deposit-taking institution (an *ADI*) and an Australian entity that has certain types of overseas investments. These rules deal with the following matters:

- how to work out the entity's minimum capital amount for an income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- how all or a part of the debt deductions claimed by the entity may be disallowed if the minimum capital amount is not reached;
- how to apply these rules to a period that is less than an income year.

## Table of sections

### Operative provisions

820-300	Thin capitalisation rule for outward investing entities (ADI)
820-305	Minimum capital amount
820-310	Safe harbour capital amount
820-315	Arm's length capital amount
820-320	Worldwide capital amount
820-325	Amount of debt deduction disallowed
820-330	Application to part year periods

## Operative provisions

### 820-300 Thin capitalisation rule for outward investing entities (ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that year:
- (a) the entity is an \*outward investing entity (ADI) (see subsection (2)); and
  - (b) the entity's \*adjusted average equity capital (see subsection (3)) is less than the entity's \*minimum capital amount (see section 820-305).

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-325.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 820-300

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Note 3: For the rules that apply to an entity that is an outward investing entity (ADI) for only part of an income year, see section 820-330 in conjunction with subsection (2) of this section.

Note 4: A consolidated group or MEC group may be an outward investing entity (ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Outward investing entity (ADI)*

- (2) The entity is an **outward investing entity (ADI)** for a period that is all or a part of an income year if, and only if, throughout that period, the entity is an \*ADI to which at least one of the following paragraphs applies:
- (a) the entity is an \*Australian controller of at least one \*Australian controlled foreign entity (not necessarily the same Australian controlled foreign entity throughout that period);
  - (b) the entity is an \*Australian entity that carries on a \*business at or through at least one \*overseas permanent establishment (not necessarily the same permanent establishment throughout that period);
  - (c) the entity is:
    - (i) an Australian entity; and
    - (ii) an \*associate entity of another entity that is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for that period.

Note: To determine whether an entity is an Australian controller of an Australian controlled foreign entity, see Subdivision 820-H.

*Adjusted average equity capital*

- (3) The entity's **adjusted average equity capital** for an income year is:
- (a) the average value, for that year, of all the \*ADI equity capital of the entity (other than ADI equity capital attributable to its \*overseas permanent establishments); minus
  - (b) the average value, for that year, of all the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to its overseas permanent establishments).

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) For the purposes of paragraph (3)(a), treat treasury shares (within the meaning of \*accounting standard AASB 132) in the entity as included in the \*ADI equity capital of the entity, to the extent that those shares are part of the entity's eligible tier 1 capital (within the meaning of the \*prudential standards).

### **820-305 Minimum capital amount**

The entity's *minimum capital amount* for an income year is the least of the following amounts:

- (a) the \*safe harbour capital amount;
- (b) the \*arm's length capital amount;
- (c) the \*worldwide capital amount.

Note: The entity cannot use the worldwide capital amount if the entity is also a foreign controlled Australian entity throughout that year, see section 820-320.

### **820-310 Safe harbour capital amount**

- (1) The *safe harbour capital amount* is the result of applying the method statement in this section.

*Method statement*

Step 1. Work out the average value, for the income year, of all the entity's:

- (aa) \*risk-weighted assets; and
- (ab) intangible assets comprising capitalised software expenses;

that are attributable to none of the following:

- (a) the entity's \*overseas permanent establishments;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) assets comprised by the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to the entity's overseas permanent establishments);
- (c) assets for which \*prudential capital deductions must be made by the entity (other than prudential capital deductions attributable to the entity's overseas permanent establishments).

Step 2. Multiply the result of step 1 by 4%.

Step 3. Add to the result of step 2 the average value, for that year, of all the \*tier 1 prudential capital deductions for the entity, to the extent that they are not attributable to:

- (a) any of the entity's \*overseas permanent establishments; or
- (b) any \*Australian controlled foreign entities of which the entity is an \*Australian controller; or
- (c) any of the entity's goodwill or intangible assets which relate to the excess mentioned in paragraph 5.3 of \*accounting standard AASB 1038, as issued on 17 November 1998, to the extent that the excess is referable to \*VBIF; or

Note: Paragraph 5.3 of that accounting standard applies to any excess of the net market values of an interest in a subsidiary over the net amount of that subsidiary's assets and liabilities.

- (d) any of the entity's intangible assets comprising capitalised software expenses.

The result of this step is the *safe harbour capital amount*.

Example: The Southern Cross Bank is an Australian bank that carries on its banking business through its overseas permanent establishments and through foreign entities that it controls. For the income year, its

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

average value of risk-weighted assets and intangible assets comprising capitalised software expenses is \$150 million (having discounted those assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is \$2 million. Multiplying \$150 million by 4% equals \$6 million, which is the result of step 2. Adding \$2 million to \$6 million equals \$8 million, which is the safe harbour capital amount.

- (2) **VBIF** is the value of business in force at the time of acquisition of the relevant subsidiary (within the meaning of paragraph 5.3 of \*accounting standard AASB 1038, as issued on 17 November 1998) of the entity.
- (3) \*VBIF is taken to be nil at all times unless the value of VBIF at the time of acquisition of the relevant subsidiary was worked out by an \*actuary according to Australian actuarial practice.

### **820-315 Arm's length capital amount**

- (1) The *arm's length capital amount* is a notional amount that, having regard to:
- (a) the factual assumptions set out in subsection (2); and
  - (b) the relevant factors mentioned in subsection (3);
- would represent the minimum amount of \*equity capital that the entity would reasonably be expected to have in carrying on the Australian business mentioned in subsection (2) throughout the income year if, throughout that year:
- (c) the part of the entity carrying on that business had operated as if it were a separate entity; and
  - (d) that separate entity had been dealing at arm's length with:
    - (i) the other part of the entity; and
    - (ii) all the \*Australian controlled foreign entities of which the entity is an \*Australian controller.

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

#### *Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that minimum amount:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the entity's commercial activities in connection with Australia (the *Australian business*) during that year do not include:
  - (i) any \*business carried on by the entity at or through its \*overseas permanent establishments; or
  - (ii) the holding of any \*controlled foreign entity equity;
- (b) the entity had carried on the Australian business that it actually carried on during that year;
- (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
- (d) except as mentioned in subsection (1), the entity had carried on the Australian business in the same circumstances as what actually existed during that year.

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining that minimum amount:
  - (a) the functions performed, the assets used, and the risks assumed, throughout that year, by:
    - (i) the entity; and
    - (ii) the entity in relation to the Australian business;
  - (b) the credit rating of the entity throughout that year, including the effect of that credit rating on all of the following:
    - (i) the entity's ability to borrow in relation to the Australian business;
    - (ii) the interest rate at which the entity borrowed in relation to that business;
    - (iii) the entity's gross profit margin in relation to that business;
  - (c) the capital ratios of the following throughout that year:
    - (i) the entity;
    - (ii) the entity in relation to the Australian business;
    - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the purposes for which \*schemes for \*debt capital and for \*equity capital had been actually entered into, throughout that year, by:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (e) the profit (within the meaning of the \*accounting standards), and the return on capital, whether during that year or at any other time, of:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (f) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (g) the way in which the entity financed its business (other than the Australian business) throughout that year;
- (h) the general state of the Australian economy throughout that year;
- (i) any other factors which are specified in the regulations made for the purposes of this section.

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

### **820-320 Worldwide capital amount**

- (1) This section only applies if the entity is not also a \*foreign controlled Australian entity throughout the income year.
- (2) The ***worldwide capital amount*** is the result of applying the method statement in this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Work out the average value, for the income year, of all the \*risk-weighted assets of the entity, other than risk-weighted assets attributable to any of the following:
- (a) the entity's \*overseas permanent establishments;
  - (b) assets comprised by the \*controlled foreign entity equity of the entity;
  - (c) assets for which \*prudential capital deductions must be made by the entity.
- Step 2. Multiply the entity's worldwide group capital ratio for that year (see subsection (3)) by  $\frac{8}{10}$ .
- Step 3. Multiply the result of step 1 by the result of step 2.
- Step 4. Add to the result of step 3 the average value, for that year, of all the \*tier 1 prudential capital deductions for the entity (to the extent that they are not attributable to any of the entity's \*overseas permanent establishments or to any \*Australian controlled foreign entities of which the entity is an \*Australian controller). The result of this step is the **worldwide capital amount**.

Example: Southern Cross Bank has an average value of risk-weighted assets of \$150 million (having discounted those risk-weighted assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is \$2 million. The entity's worldwide group capital ratio is 0.0875. Multiplying that ratio by  $\frac{8}{10}$  equals 0.07, which is the result of step 2. Multiplying \$150 million by 0.07 equals \$10.5 million, which is the result of step 3. Adding that amount to the average value of the relevant tier 1 prudential capital deductions equals \$12.5 million, which is the worldwide capital amount.

*Worldwide group capital ratio*

- (3) The entity's **worldwide group capital ratio** for the income year is the result of applying the method statement in this subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Work out the average value, for the income year, of the tier 1 capital (within the meaning of the \*prudential standards) of the consolidated group of which the entity is a member (within the meaning of those standards) in accordance with those standards.
- Step 2. Divide the result of step 1 by the average value, for that year, of the \*risk-weighted assets of that group in accordance with the \*prudential standards. The result is the **worldwide group capital ratio**.

Example: For the Southern Cross Bank, the average value of the tier 1 capital for the relevant consolidated group is \$14 million. Dividing \$14 million by the group's risk weighted assets of \$160 million equals 0.0875, which is the worldwide group capital ratio.

**820-325 Amount of debt deduction disallowed**

The amount of \*debt deduction disallowed under subsection 820-300(1) is worked out using the following formula:

$$\text{Debt deduction} \times \frac{\text{Capital shortfall}}{\text{Average debt}}$$

where:

**average debt** means the average value, for the income year, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year (other than any debt capital that is attributable to any of the entity's \*overseas permanent establishments).

**capital shortfall** means the amount by which the \*adjusted average equity capital of the entity for that year (see subsection 820-300(3)) is less than the entity's \*minimum capital amount for that year.

**debt deduction** means each \*debt deduction covered by subsection 820-300(1).

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**820-330 Application to part year periods**

(1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year (to the extent that it is not attributable to an \*overseas permanent establishment of the entity) if, for that period:

- (a) the entity is an \*outward investing entity (ADI); and
- (b) the \*adjusted average equity capital of the entity is less than the entity's \*minimum capital amount.

Note: To determine whether an entity is an outward investing entity (non-ADI) for that period, see subsection 820-300(2).

(2) The entity's *adjusted average equity capital* for that period is:

- (a) the average value, for that period, of all the \*ADI equity capital of the entity (other than ADI equity capital attributable to any of its \*overseas permanent establishments); minus
- (b) the average value, for that period, of all the \*controlled foreign entity equity of the entity (other than controlled foreign entity equity attributable to any of its overseas permanent establishments).

(3) For the purposes of determining:

- (a) the entity's \*minimum capital amount for that period; and
- (b) the amount of each \*debt deduction to be disallowed;

sections 820-305 to 820-325 apply in relation to that entity and that period with the modifications set out in the following table:

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<b>Modifications of sections 820-305 to 820-325</b>		
<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Sections 820-305 to 820-325	A reference to an income year is taken to be a reference to that period
2	Section 820-325	A reference to subsection 820-300(1) is taken to be a reference to subsection (1) of this section

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of sections 820-305 to 820-325**

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
3	Section 820-325	<p><i>adjusted average equity capital</i> has the meaning given by subsection (2) of this section</p> <p><i>average debt</i> is taken to be the average value, for that period, of all the *debt capital of the entity that gives rise to *debt deductions of the entity for that or any other income year, to the extent that the debt capital is not attributable to any of the entity's *overseas permanent establishments</p>

### **Subdivision 820-E—Thin capitalisation rules for inward investing entities (ADI)**

#### **Guide to Subdivision 820-E**

##### **820-390 What this Subdivision is about**

This Subdivision applies to a foreign entity that is an authorised deposit-taking institution (an *ADI*). These rules deal with the following matters:

- how to work out the entity's minimum capital amount for an income year;
- how all or a part of the debt deductions claimed by the entity may be disallowed if the minimum capital amount is not reached;
- how to apply these rules to a period that is less than an income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

820-395	Thin capitalisation rule for inward investing entities (ADI)
820-400	Minimum capital amount
820-405	Safe harbour capital amount
820-410	Arm's length capital amount
820-415	Amount of debt deduction disallowed
820-420	Application to part year periods

## Operative provisions

### 820-395 Thin capitalisation rule for inward investing entities (ADI)

#### *Thin capitalisation rule*

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year if, for that year:
- (a) the entity is an \*inward investing entity (ADI) (see subsection (2)); and
  - (b) the entity's \*average equity capital (see subsection (3)) is less than its \*minimum capital amount (see section 820-400);
- to the extent that the debt deduction:
- (c) is attributable to an \*Australian permanent establishment of the entity at or through which it carries on its banking business; and
  - (d) is not an \*allowable OB deduction.

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$250,000 or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-415.

Note 3: For the rules that apply to an entity that is an inward investing entity (ADI) for part of an income year, see section 820-420 in conjunction with subsection (2) of this section.

Note 4: A consolidated group or MEC group may be an inward investing entity (ADI) to which this Subdivision applies: see Subdivision 820-FB.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Inward investing entity (ADI)*

- (2) The entity is an ***inward investing entity (ADI)*** for a period that is all or a part of an income year if, and only if, throughout that period, the entity is a \*foreign bank that carries on its banking business in Australia at or through one or more of its \*Australian permanent establishments.

Note: The entity is required to keep certain records, see Subdivision 820-L.

*Average equity capital*

- (3) The entity's ***average equity capital*** for an income year is the sum of the following:
- (a) the average value, for that year, of the \*ADI equity capital of the entity that:
    - (i) is attributable to the \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
    - (ii) has not been allocated to the \*OB activities of the Australian permanent establishments;
  - (b) the average value, for that year, of the total amounts that:
    - (i) are made available by the entity to the Australian permanent establishments of the entity as loans to the Australian permanent establishments; and
    - (ii) do not give rise to any \*debt deductions of the entity for that or any other income year.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

**820-400 Minimum capital amount**

The entity's ***minimum capital amount*** for an income year is the lesser of the following amounts:

- (a) the \*safe harbour capital amount;
- (b) the \*arm's length capital amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 820-405 Safe harbour capital amount

The entity's *safe harbour capital amount* for the income year is the result of applying the method statement in this section.

*Method statement*

Step 1. Work out the average value, for the income year, of that part of the \*risk-weighted assets of the entity that:

- (a) is attributable to the \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
- (b) is not attributable to the \*OB activities of the Australian permanent establishments.

Step 2. Multiply the result of step 1 by 4%. The result of this step is the *safe harbour capital amount*.

Example: The Global Bank is a foreign bank that carries on its banking business in Australia through a permanent establishment. The average value of its relevant risk-weighted assets is \$140 million. Multiplying that amount by 4% results in \$5.6 million, which is the safe harbour capital amount.

### 820-410 Arm's length capital amount

- (1) The *arm's length capital amount* is a notional amount that, having regard to:
- (a) the factual assumptions set out in subsection (2); and
  - (b) the relevant factors mentioned in subsection (3);
- would represent the minimum amount of \*equity capital that the entity would reasonably be expected to have in carrying on the Australian business mentioned in subsection (2) throughout the income year if, throughout that year:
- (c) the part of the entity carrying on that business had operated as if it were a separate entity; and
  - (d) that separate entity had been dealing at arm's length with the other part of the entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The entity must keep records in accordance with section 820-980 if the entity works out an amount under this section.

*Factual assumptions*

- (2) Irrespective of what actually happened during that year, the following assumptions must be made in working out that minimum amount:
- (a) the entity's commercial activities in connection with Australia (the **Australian business**) during that year consist only of banking business attributable to its \*Australian permanent establishments (other than its \*OB activities);
  - (b) the entity had carried on the Australian business that it actually carried on during that year;
  - (c) the nature of the entity's assets and liabilities (to the extent that they are attributable to the Australian business) had been as they were during that year;
  - (d) except as mentioned in subsection (1), the entity had carried on the Australian business in the same circumstances as what actually happened during that year.

*Relevant factors*

- (3) On the basis of the factual assumptions set out in subsection (2), the following factors must be taken into account in determining that minimum amount:
- (a) the functions performed, the assets used, and the risks assumed, throughout that year, by:
    - (i) the entity; and
    - (ii) the entity in relation to the Australian business;
  - (b) the credit rating of the entity throughout that year, including the effect of that credit rating on all of the following:
    - (i) the entity's ability to borrow in relation to the Australian business;
    - (ii) the interest rate at which the entity borrowed in relation to that business;
    - (iii) the entity's gross profit margin in relation to that business;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the capital ratios of the following throughout that year:
  - (i) the entity;
  - (ii) the entity in relation to the Australian business;
  - (iii) each of the entity's \*associate entities that engage in commercial activities similar to the Australian business;
- (d) the purposes for which \*schemes for \*debt capital and for \*equity capital had been actually entered into, throughout that year, by:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (e) the profit (within the meaning of the \*accounting standards or any other accounting standards that would otherwise apply to the entity), and the return on capital, whether during that year or at any other time, of:
  - (i) the entity; and
  - (ii) the entity in relation to the Australian business;
- (f) the commercial practices adopted by independent parties dealing with each other at arm's length in the industry in which the entity carries on the Australian business throughout that year (whether in Australia or in comparable markets elsewhere);
- (g) the general state of the Australian economy throughout that year;
- (h) any other factors which are specified in the regulations made for the purposes of this section.

*Commissioner's power*

- (4) If the Commissioner considers an amount worked out by the entity under this section does not appropriately take into account the factual assumptions and the relevant factors, the Commissioner may substitute another amount that the Commissioner considers better reflects those assumptions and factors.

**820-415 Amount of debt deduction disallowed**

The amount of \*debt deduction disallowed under subsection 820-395(1) is worked out using the following formula:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



$$\text{Debt deduction} \times \frac{\text{Capital shortfall}}{\text{Average debt}}$$

where:

**average debt** means the average value, for the income year, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity (other than \*allowable OB deductions) for that or any other income year.

**capital shortfall** means the amount by which the entity's \*average equity capital for that year (see subsection 820-395(3)) is less than the entity's \*minimum capital amount for that year.

**debt deduction** means each \*debt deduction of the entity (other than \*allowable OB deduction) for the income year.

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

### 820-420 Application to part year periods

- (1) This subsection disallows all or a part of each \*debt deduction of an entity for an income year that is an amount incurred by the entity during a period that is a part of that year if, for that period:
- (a) the entity is an \*inward investing entity (ADI); and
  - (b) the entity's \*average equity capital is less than its \*minimum capital amount;
- to the extent that the debt deduction:
- (c) is attributable to an \*Australian permanent establishment of the entity at or through which it carries on its banking business; and
  - (d) is not an \*allowable OB deduction.

Note: To determine whether an entity is an inward investing entity (ADI) for that period, see subsection 820-395(2).

- (2) The entity's **average equity capital** for that period is the sum of the following:
- (a) the average value, for that period, of the \*equity capital of the entity that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 820-420

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- (i) is attributable to its \*Australian permanent establishments at or through which it carries on its banking business in Australia; but
- (ii) has not been allocated to the \*OB activities of the Australian permanent establishments;
- (b) the average value, for that period, of the total amounts that:
  - (i) are made available by the entity to the Australian permanent establishments of the entity as loans to the Australian permanent establishments; and
  - (ii) do not give rise to any \*debt deductions of the entity for that or any other income year.
- (3) For the purposes of determining:
  - (a) the entity's \*minimum capital amount for that period; and
  - (b) the amount of each \*debt deduction to be disallowed;sections 820-400 to 820-415 apply in relation to that entity and that period with the modifications set out in the following table:

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**Modifications of sections 820-400 to 820-415**

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Item	Provisions	Modifications
1	Sections 820-400 to 820-415	A reference to an income year is taken to be a reference to that period
2	Section 820-415	The reference to subsection 820-395(1) is taken to be a reference to subsection (1) of this section
3	Section 820-415	<i>average debt</i> is taken to be the average value, for that period, of all the *debt capital of the entity that gives rise to its *debt deductions (other than *allowable OB deductions) for that year that are amounts incurred by the entity during that period <i>average equity capital</i> has the meaning given by subsection (2) of this section

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 820-EA—Some financial entities may choose to be treated as ADIs

### Table of sections

820-430	When choice can be made, and what effect it has
820-435	Conditions
820-440	Revocation of choice
820-445	How this Subdivision interacts with Subdivision 820-FA

### 820-430 When choice can be made, and what effect it has

- (1) An entity may choose to be treated, for the purposes of this Division (except this Subdivision), as set out in the table. However, the entity can make the choice only if subsection (5) is satisfied.

#### Choice by financial entity to be treated as an ADI

	Column 1	Column 2
Item	For a period that the choice covers, and for which the entity would, apart from this Subdivision, have been:	The entity is treated as if it had instead been:
1	an *outward investor (financial)	an *outward investing entity (ADI)
2	an *inward investor (financial)	an *inward investing entity (ADI)
3	an *inward investment vehicle (financial)	an *outward investing entity (ADI)

- (2) The choice:
- (a) has effect accordingly, except as provided in subsection (4); and
  - (b) ceases to have effect only as provided in this Subdivision; and
  - (c) covers each period:
    - (i) that started on or after a day specified in the choice (or on the day the choice is made if no day is specified); and
    - (ii) that is all or part of an income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) Subdivision 820-E applies to the entity, in relation to a period for which this section treats it as an \*inward investing entity (ADI), as if all the entity's \*business were banking business of the entity.
- (4) The choice does not have effect for the purposes of determining whether the entity is covered by paragraph 820-910(2)(a) (about working out the associate entity debt of another entity).

*Conditions for making the choice*

- (5) For the income year that is or includes the first period for which the entity would be treated in accordance with the choice, the entity must satisfy:
  - (a) subsection 820-435(1); or
  - (b) subsections 820-435(2) and (3).

Also, the entity must *not* have made a previous choice under this section that has ceased to have effect.

*Conditions are retested every 3 years*

- (6) The choice ceases to have effect, or is taken to have ceased to have effect, as appropriate, at the *end* of an income year covered by subsection (7) of this section, unless the entity:
  - (a) satisfies subsection 820-435(1) for that income year; or
  - (b) satisfies subsections 820-435(2) and (3) for that income year.
- (7) This subsection covers every third income year after the one referred to in subsection (5).

**820-435 Conditions**

- (1) An entity satisfies this subsection for an income year if the average value, for that income year, of the entity's \*on-lent amount is at least 80% of the average value, for that income year, of all the entity's assets.
- (2) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a period throughout which the entity is a \*financial entity because of paragraph (d) of the definition of *financial entity* in subsection 995-1(1) (which covers licensed (or exempt) dealers in derivatives);
- (b) a period throughout which:
- (i) the entity is the \*head company of a \*consolidated group or \*MEC group; and
  - (ii) at least one \*member of the group is a financial entity because of that paragraph.
- (3) An entity satisfies this subsection for an income year if it satisfies subsection (2) and the amount worked out using this formula is greater than or equal to 0.8:

$$\frac{\text{On-lent amount} + \left( \text{UG on derivatives} - \text{UL on derivatives} \right)}{\text{Total assets} - \text{UL on derivatives}}$$

where:

**on-lent amount** means the average value, for that income year, of the entity's \*on-lent amount.

**total assets** means the average value, for that income year, of all the entity's assets.

**UG on derivatives** means the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of the *Corporations Act 2001*.

**UL on derivatives** means the lesser of:

- (a) the average value, for that income year, of the entity's liabilities consisting of unrealised losses on trading derivatives within the meaning of the *Corporations Act 2001*; and
- (b) the average value, for that income year, of the entity's assets consisting of unrealised gains on trading derivatives within the meaning of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*On-lent amount increased for financial entity whose assets include precious metals*

- (4) In working out whether an entity satisfies subsection (1) or (3) for an income year, the average value, for that income year, of the entity's \*on-lent amount is increased by the average value, for that income year, of the entity's assets that consist of \*precious metals, but only if the entity satisfies subsection (5) for that income year.
- (5) An entity satisfies this subsection for an income year if the first period that is all or part of that income year, and for which the entity would be treated in accordance with a choice under section 820-430, consists of one or more periods, each of which is either or both of these:
  - (a) a period throughout which the entity is a \*financial entity;
  - (b) a period throughout which:
    - (i) the entity is the \*head company of a \*consolidated group or \*MEC group; and
    - (ii) at least one \*member of the group is a financial entity.

#### **820-440 Revocation of choice**

- (1) A choice under section 820-430 can be revoked only with the written approval of the Commissioner. The Commissioner may approve a revocation only if satisfied that the entity's circumstances have changed significantly since the choice was made.
- (2) If revoked, the choice does not have effect for a period that starts on or after the day on which the Commissioner's approval is given, unless the revocation is expressed to take effect on an earlier day. In that case, it does not have effect for a period that starts on or after the earlier day.

#### **820-445 How this Subdivision interacts with Subdivision 820-FA**

A choice under section 820-430 does not have effect for so much of a period as happens while the entity is a \*subsidiary member of a \*consolidated group or \*MEC group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: If the head company of the group makes a choice under that section, that choice will have effect instead.

## **Subdivision 820-FA—How the thin capitalisation rules apply to consolidated groups and MEC groups**

### **Guide to Subdivision 820-FA**

#### **820-579 What this Subdivision is about**

This Subdivision tells you:

- how to classify the head company of a consolidated group or MEC group (in terms of which Subdivision of this Division to apply to the head company); and
- how to apply this Division to the head company (including how the application is modified).

#### **Table of sections**

##### **Operative provisions**

820-581	How this Division applies to head company for income year in which group comes into existence or ceases to exist
820-583	Classification of head company
820-584	Exempt special purpose entities treated as not being member of group
820-585	Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company
820-587	Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI
820-588	Choice to treat specialist credit card institutions as being financial entities and not ADIs
820-589	How Subdivision 820-D applies to a MEC group

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### **820-581 How this Division applies to head company for income year in which group comes into existence or ceases to exist**

If a \*consolidated group or \*MEC group:

- (a) comes into existence at a time during an income year that is not the start of the income year; or
- (b) ceases to exist at a time during an income year that is not the end of the income year;

then, for each of the following periods during that income year:

- (c) a period throughout which a company is the \*head company of that group; or
- (d) a period throughout which that company is the head company of a different consolidated group or MEC group; or
- (e) a period throughout which that company is a \*member of no consolidated group or MEC group;

this Division (except this section) is to have either:

- (f) a single application in relation to the whole of the period; or
- (g) 2 or more applications, each in relation to a part of that period.

**Example:** Austco Ltd is not a member of a consolidated group for the first 6 months of an income year, but then becomes the head company of a consolidated group which continues in existence for the rest of the income year.

For those first 6 months Austco is an outward investor (general) under section 820-85. For the rest of the income year Austco is an outward investor (general) under subsection 820-583(2).

This section ensures that section 820-120 (about part year periods) applies to Austco instead of section 820-85, so that Subdivision 820-B has 2 separate applications to Austco: one for the first 6 months and the other for the rest of the income year. Under the second application, account is taken of the position of the subsidiary members that are taken to be part of Austco as head company of the consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**820-583 Classification of head company***Outward investing entity (non-ADI)*

- (1) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:
  - (a) an \*outward investor (general) for that period (because of subsection (2)); or
  - (b) an \*outward investor (financial) for that period (because of subsection (3)).

*Outward investor (general)*

- (2) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investor (general)*** for a period that is all or part of an income year if:
  - (a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and
  - (b) no \*member of the group is a \*financial entity or \*ADI at any time during that period.

*Outward investor (financial)*

- (3) The \*head company of a \*consolidated group or of a \*MEC group is an ***outward investor (financial)*** for a period that is all or part of an income year if:
  - (a) for that period, the head company satisfies the condition in the second column of item 1 or 3 of the table in subsection 820-85(2); and
  - (b) throughout that period, there is at least one \*member of the group that is a \*financial entity; and
  - (c) no \*member of the group is an \*ADI at any time during that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Inward investing entity (non-ADI)*

- (4) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investing entity (non-ADI)*** for a period that is all or part of an income year if, and only if, it is:
- (a) an \*inward investment vehicle (general) for that period (because of subsection (5)); or
  - (b) an \*inward investment vehicle (financial) for that period (because of subsection (6)).

*Inward investment vehicle (general)*

- (5) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investment vehicle (general)*** for a period that is all or part of an income year if:
- (a) throughout that period, the head company is a \*foreign controlled Australian entity; and
  - (b) no member of the group is a \*financial entity or \*ADI at any time during that period;
- unless the head company is an \*outward investing entity (non-ADI) for all or part of that period.

*Inward investment vehicle (financial)*

- (6) The \*head company of a \*consolidated group or of a \*MEC group is an ***inward investment vehicle (financial)*** for a period that is all or part of an income year if:
- (a) throughout that period, the head company is a \*foreign controlled Australian entity; and
  - (b) throughout that period, there is at least one \*member of the group that is a \*financial entity; and
  - (c) no member of the group is an \*ADI at any time during that period;
- unless the head company is an \*outward investing entity (non-ADI) for all or part of that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Outward investing entity (ADI)*

- (7) The \*head company of a \*consolidated group or of a \*MEC group is an **outward investing entity (ADI)** for a period that is all or part of an income year if, and only if:
- (a) apart from Part 3-90 (about consolidation of groups) and this Subdivision, at least one \*member of the group would be an \*outward investing entity (ADI) for that period; or
  - (b) these conditions are met:
    - (i) at least one member of the group would, apart from that Part and this Subdivision, be an \*outward investing entity (non-ADI) for that period; and
    - (ii) at least one member of the group is an \*ADI throughout that period.

**820-584 Exempt special purpose entities treated as not being member of group**

While an entity meets the conditions in subsection 820-39(3) (about insolvency-remote special purpose entities established to manage economic risk), the entity is treated for the purposes of this Division (except this section) as *not* being a \*member of a \*consolidated group or \*MEC group of which it is a member.

Note: This section has the effect that the circumstances of the entity are not taken into account in applying this Division to the head company of the group. The entity itself is exempt from this Division because of section 820-39.

**820-585 Exemption for consolidated group headed by foreign-controlled Australian ADI or its holding company**

- (1) This Division does not disallow any of a \*debt deduction for an income year if:
- (a) the debt deduction is of the \*head company of a \*consolidated group and the head company satisfies subsection (2) for that income year; or
  - (b) the debt deduction is an amount incurred by the head company of a consolidated group during a period that is part

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

of that income year, and the head company satisfies subsection (2) for that period.

- (2) The \*head company satisfies this subsection for a period that is all or part of an income year if, throughout that period:
- (a) the head company is both a \*foreign controlled Australian company and an \*ADI (and would also be an ADI apart from Part 3-90 (about consolidation of groups)); or
  - (b) the head company:
    - (i) is a \*foreign controlled Australian company; and
    - (ii) beneficially owns all the \*membership interests in a \*member of the group that is both a \*foreign controlled Australian entity and an \*ADI throughout that period; and
    - (iii) would, apart from Part 3-90 (about consolidation of groups), have no other assets and no \*debt capital; unless at least one member of the group would, apart from that Part and this Subdivision, be an \*outward investing entity (non-ADI) or \*outward investing entity (ADI) for all or part of that period.
- (3) Subsection (1) does not apply if, at each time in the period mentioned in subsection (2), all the \*ADIs that are \*members of the group then are \*specialist credit card institutions.

**820-587 Additional application of Subdivision 820-D to MEC group that includes foreign-controlled Australian ADI**

Subdivision 820-D applies to the \*head company of a \*MEC group as if it were an \*outward investing entity (ADI) for a period that is all or part of an income year if:

- (a) the head company is *not* an outward investing entity (ADI) for that period; and
- (b) throughout that period, at least one \*member of the group is both a \*foreign controlled Australian entity and an \*ADI; and
- (c) throughout that period, there is at least one \*eligible tier-1 company of the \*top company for the group that:
  - (i) is a member of the group; and
  - (ii) is *not* an ADI; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(iii) has no \*wholly-owned subsidiary that is an ADI.

### **820-588 Choice to treat specialist credit card institutions as being financial entities and not ADIs**

- (1) If the conditions in subsection (2) are met in relation to a \*consolidated group or \*MEC group and a period that is all or part of an income year, this Division (except this section) has effect as if:
- (a) none of the \*members of the group were an \*ADI at any time in the period; and
  - (b) each member of the group that is an ADI (ignoring paragraph (a)) at any time in the period were a financial entity at that time.

Note 1: One result of this Division having effect in that way is that Subdivision 820-D (and related provisions, such as section 820-589) will not apply in relation to the head company, because:

- (a) the head company of the group will not be classified under section 820-583 as an outward investing entity (ADI); and
- (b) section 820-587 will not apply that Subdivision.

Note 2: Another result of this Division having effect in that way is that Subdivision 820-B or 820-C may apply in relation to the head company, because it may be classified under section 820-583 as either:

- (a) an outward investing entity (non-ADI) and an outward investor (financial); or
- (b) an inward investing entity (non-ADI) and an inward investment vehicle (financial).

- (2) The conditions are that:
- (a) at all times in the period at least one \*member of the \*consolidated group or \*MEC group is an \*ADI; and
  - (b) each ADI that is a member of the group at any time in the period is a \*specialist credit card institution at that time; and
  - (c) the \*head company of the group for the period chooses, before lodging its \*income tax return for the income year, that this Division should have effect in that way in relation to the group and every period for which the conditions in paragraphs (a) and (b) are met in the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) An \*ADI is a *specialist credit card institution* at a time if, at that time, the ADI's authority under section 9 of the *Banking Act 1959* to carry on banking business (as defined in that Act) authorises the ADI to carry on only banking business that:
- (a) is participation in a payment system (as defined in the *Payment Systems (Regulation) Act 1998*) that is a credit card scheme and is designated under section 11 of that Act; and
  - (b) is either or both of the following:
    - (i) credit card acquiring (as defined in regulations made for the purposes of the *Banking Act 1959*);
    - (ii) credit card issuing (as defined in those regulations).
- (4) To avoid doubt, a choice for the purposes of paragraph (2)(c) cannot be revoked.

### 820-589 How Subdivision 820-D applies to a MEC group

- (1) This section has effect for the purposes of working out the \*adjusted average equity capital of the \*head company of a \*MEC group for a period (the *test period*) that is all or part of an income year if Subdivision 820-D applies to the head company in relation to that period.

Note: Section 820-587 extends the application of Subdivision 820-D.

- (2) The \*head company's \*ADI equity capital at a particular time during the test period is to be worked out:
- (a) taking into account an \*equity interest or \*debt interest in the head company only if it is held at that time by an entity that is *not* a member of the group; and
  - (b) on the basis that an equity interest or debt interest in an \*eligible tier-1 company (other than the head company) that is a member of the group at that time is treated as an equity interest or debt interest (as appropriate) in the head company, but only if it is held at that time by an entity that is *not* a member of the group; and
  - (c) on the basis of the information that would be contained in a set of consolidated accounts:
    - (i) prepared, in accordance with the \*accounting standard on consolidated accounts, as at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(ii) covering the members of the group as at that time.

**Subdivision 820-FB—Grouping branches of foreign banks and foreign financial entities with a consolidated group, MEC group or single Australian resident company**

**Guide to Subdivision 820-FB**

**820-595 What this Subdivision is about**

If:

- (a) the head company of a consolidated group or MEC group; or
- (b) an Australian company that cannot consolidate;

is a member of the same wholly-owned group as a foreign bank or foreign financial entity, the company can choose to treat as part of itself the Australian branches of the foreign bank or foreign financial entity, affecting how the rest of this Division applies.

**Table of sections**

**Choice to group with branches of foreign banks and foreign financial entities**

- 820-597 Choice by head company of consolidated group or MEC group
- 820-599 Choice by Australian resident company outside consolidatable group and MEC group

**Effect of choice**

- 820-601 Application
- 820-603 General
- 820-605 Effect on establishment entity if certain debt deductions disallowed
- 820-607 Effect on test periods under this Division
- 820-609 Effect on classification of head company or single company
- 820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

820-611 Values to be based on what would be in consolidated accounts for group

820-613 How Subdivision 820-D applies

820-615 How Subdivision 820-E applies

## **Choice to group with branches of foreign banks and foreign financial entities**

### **820-597 Choice by head company of consolidated group or MEC group**

- (1) This section applies if there is a period (the *grouping period*) for which all these conditions are met:
  - (a) the period was all or part of an income year of the \*head company of a \*consolidated group or \*MEC group;
  - (b) the consolidated group or MEC group existed throughout the period;
  - (c) the head company and an entity (the *establishment entity*) covered by one of the following subparagraphs are both members of the same \*wholly-owned group throughout the period:
    - (i) a \*foreign bank that carried on its banking \*business in Australia through at least one \*Australian permanent establishment at each time in the period;
    - (ii) a \*foreign entity that was a \*financial entity and had at least one Australian permanent establishment at each time in the period;
  - (d) there is not a longer period in the income year for which the conditions in paragraphs (a), (b) and (c) are met in relation to the head company and the establishment entity.
- Note: It does not matter whether the income year ended on the same day for the head company and the establishment entity.
- (2) The \*head company may choose to have all of the \*Australian permanent establishments of the establishment entity treated as part of the head company for the grouping period for the purposes of this Division.
- (3) If the conditions in subsection (1) are met in relation to the \*head company and more than one other establishment entity, the head

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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company may make a different choice in relation to each of the other establishment entities.

**820-599 Choice by Australian resident company outside consolidatable group and MEC group**

- (1) This section applies if there is a period (also the *grouping period*) for which all these conditions are met:
- (a) the period was all or part of an income year of a company (the *single company*);
  - (b) throughout the period the single company:
    - (i) was an \*Australian entity; and
    - (ii) was not a \*prescribed dual resident; and
    - (iii) was not a \*member of a \*consolidatable group; and
    - (iv) was not a member of a \*consolidated group; and
    - (v) was not a member of a \*MEC group;
  - (c) the single company and an entity (the *establishment entity*) covered by one of the following subparagraphs are both members of the same \*wholly-owned group throughout the period:
    - (i) a \*foreign bank that carried on its banking \*business in Australia through at least one \*Australian permanent establishment at each time in the period;
    - (ii) a \*foreign entity that was a \*financial entity and had at least one Australian permanent establishment at each time in the period;
  - (d) there is not a longer period in the income year for which the conditions in paragraphs (a), (b) and (c) are met in relation to the single company and the establishment entity.
- Note: It does not matter whether the income year ended on the same day for the single company and the establishment entity.
- (2) The single company may choose to have all of the \*Australian permanent establishments of the establishment entity treated as part of the single company for the grouping period for the purposes of this Division.
- (3) If the conditions in subsection (1) are met in relation to the single company and more than one other establishment entity, the single

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company may make a different choice in relation to each of the other establishment entities.

## Effect of choice

### 820-601 Application

Sections 820-603 to 820-615 apply if a choice is made under section 820-597 or 820-599.

### 820-603 General

- (1) The choice cannot be revoked in relation to the grouping period. It binds the \*head company or the single company, as appropriate, and the establishment entity.
- (2) The rest of this section applies:
  - (a) to each \*Australian permanent establishment that:
    - (i) was an Australian permanent establishment of the establishment entity; and
    - (ii) if the establishment entity was a \*foreign bank—was an Australian permanent establishment through which the entity carried on banking \*business in Australia at any time in the grouping period; and
  - (b) in relation to each time (the *test time*) that was in the grouping period and was when the Australian permanent establishment:
    - (i) was an Australian permanent establishment of the establishment entity; and
    - (ii) if the establishment entity was a foreign bank—was an Australian permanent establishment through which the entity carried on banking business in Australia.
- (3) In the case of a choice under section 820-597, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time, the \*Australian permanent establishment:
  - (a) had been part of the \*head company; and
  - (b) had *not* been part of the establishment entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) were a \*subsidiary member of the \*consolidated group or \*MEC group.
- (4) In the case of a choice under section 820-599, this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if, at the test time:
- (a) the \*Australian permanent establishment had been part of the single company and had *not* been part of the establishment entity; and
  - (b) the single company were a \*consolidated group of which the single company was the \*head company and the Australian permanent establishment was a \*subsidiary member.
- (5) In either case, without limiting subsection (3) or (4), this Division (except Subdivision 820-FA, this Subdivision and Subdivision 820-L) applies as if:
- (a) the \*Australian permanent establishment were an entity at that time; and
  - (b) each asset and liability of the establishment entity at the test time that is attributable to the Australian permanent establishment were an asset or liability of the Australian permanent establishment at that time; and
  - (c) without limiting paragraph (b) of this subsection, each cost that:
    - (i) is a \*debt deduction of the establishment entity incurred at the test time; and
    - (ii) is attributable to the Australian permanent establishment;
 were a cost incurred by the Australian permanent establishment at that time;
- For the effects of disallowing debt deductions, see section 820-605.
- (6) However, the application of this Division because of this section is subject to the modifications set out in sections 820-607 to 820-615.
- (7) For the purposes of this Division (as applying because of this Subdivision), this Act (except this Division) applies as if the matters referred to in subsections (3), (4) and (5) of this section were the case.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: For example, this means that a head company is treated for the purposes of this Division as if it had debt deductions based on the actual costs incurred by an Australian permanent establishment while it is treated as part of the head company because of this section.

### **820-605 Effect on establishment entity if certain debt deductions disallowed**

If:

- (a) apart from this Division, a \*debt deduction would be a deduction of the establishment entity for an income year; and
- (b) this Division (as applying because of this Subdivision) disallows all or part of the deduction (treated as a deduction of the \*head company or single company);

this section disallows the deduction of the establishment entity, or that part of it, as appropriate.

Note 1A: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

Note 1: This Division does not disallow a debt deduction that the establishment entity incurs during the grouping period and that consists of a cost that is:

- attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599; and
- paid or owed to the head company or single company.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

Because subsection 820-603(3) or (4) also treats the Australian permanent establishment as not being part of the establishment entity, the cost is not a debt deduction of the establishment entity, so it is not disallowed by this Division as applying to the establishment entity.

Note 2: This Division also does not disallow a debt deduction that the head company or single company incurs during the grouping period and that consists of a cost that is:

- paid or owed to the establishment entity; and
- is attributable to an Australian permanent establishment covered by the choice under section 820-597 or 820-599.

The cost is not a debt deduction of the head company or single company for the purposes of this Division as applying because of this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision. This is because subsection 820-603(3) or (4) treats the Australian permanent establishment as being part of the head company or single company, so the cost is treated as being paid or owed by the head company or single company to itself.

### **820-607 Effect on test periods under this Division**

If, apart from this section, this Division (except this Subdivision) would have a single application to the \*head company or single company, or to the establishment entity, in relation to a period (the *test period*) that:

- (a) is all or part of an income year of that entity; and
- (b) overlaps the grouping period;

this Division (except this section) is to have separate applications to that entity as follows:

- (c) a single application in relation to the period of overlap; and
- (d) a single application in relation to the part (if any) of the test period that is before the period of overlap; and
- (e) a single application in relation to the part (if any) of the test period that is after the period of overlap.

### **820-609 Effect on classification of head company or single company**

- (1) The \*head company or single company is an *outward investing entity (ADI)* for a period (the *trial period*) that is all or part of the grouping period if:

- (a) apart from this Subdivision, the head company or single company would be an \*outward investing entity (ADI) for the trial period; or
- (b) apart from this Subdivision, the head company or single company would be:
  - (i) an \*outward investing entity (non-ADI) and an \*outward investor (financial) for the trial period; or
  - (ii) an \*outward investing entity (non-ADI) and an \*outward investor (general) for the trial period;

and at least one of the \*Australian permanent establishments is a \*permanent establishment through which a \*foreign bank carries on banking \*business in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The \*head company is also an ***outward investing entity (ADI)*** for the trial period if, apart from this Subdivision:
  - (a) section 820-585 would prevent the disallowance of a \*debt deduction for the income year including the trial period; or
  - (b) section 820-587 would apply Subdivision 820-D to the head company as if it were an \*outward investing entity (ADI) for the trial period.
- (3) The single company is also an ***outward investing entity (ADI)*** for the trial period if it is both a \*foreign controlled Australian company and an \*ADI for that period.
- (4) The \*head company or single company is an ***inward investing entity (ADI)*** for the trial period if:
  - (a) apart from this Subdivision, it would be an \*inward investment vehicle (general) or an \*inward investment vehicle (financial), and not an \*outward investor (general) or an \*outward investor (financial), for the trial period; and
  - (b) at least one of the \*Australian permanent establishments is a \*permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (5) The \*head company or single company is an ***outward investing entity (non-ADI)*** and an ***outward investor (financial)*** for the trial period if, apart from this Subdivision, it would be an \*outward investing entity (non-ADI) and:
  - (a) an \*outward investor (financial); or
  - (b) an \*outward investor (general);for that period, and:
  - (c) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
  - (d) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (6) The \*head company or single company is an ***inward investing entity (non-ADI)*** and an ***inward investment vehicle (financial)*** for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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the trial period if, apart from this Subdivision, it would be an \*inward investing entity (non-ADI) and:

- (a) an \*inward investment vehicle (financial); or
- (b) an \*inward investment vehicle (general);

for that period and not an \*outward investor (general) or an \*outward investor (financial) for that period and:

- (c) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
  - (d) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (7) This section has effect despite any other provision of this Division, except Subdivision 820-EA and section 820-610.

Note: If the head company or single company is an outward investor (financial) or inward investment vehicle (financial) under this section and satisfies subsection 820-430(5), it may choose under Subdivision 820-EA to be treated as an outward investing entity (ADI). Section 820-603 affects whether the company satisfies that subsection, by treating as part of the company each relevant foreign financial entity's Australian permanent establishment.

### **820-610 Choice not to be outward investing entity (ADI) or inward investing entity (ADI)**

- (1) This section applies if:
- (a) apart from this section, the \*head company or single company would, under section 820-609, be an \*outward investing entity (ADI) or an \*inward investing entity (ADI) for the trial period; and
  - (b) at all times in the trial period, each of the following entities that is an \*ADI is a \*specialist credit card institution:
    - (i) the head company or single company;
    - (ii) an establishment entity whose \*Australian permanent establishments the head company or single company has chosen under section 820-597 or 820-599 to have treated as part of the company for the period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The \*head company or single company is an *outward investing entity (non-ADI)* and an *outward investor (financial)* for the trial period if:
  - (a) apart from this section, the company would, under section 820-609, be an \*outward investing entity (ADI) for the trial period; and
  - (b) the company chooses, before lodging its \*income tax return for the income year including the trial period, to be an outward investing entity (non-ADI) and an outward investor (financial) for that period.
- (3) The \*head company or single company is an *inward investing entity (non-ADI)* and an *inward investment vehicle (financial)* for the trial period if:
  - (a) apart from this section, the company would, under section 820-609, be an \*inward investing entity (ADI) for the trial period; and
  - (b) the company chooses, before lodging its \*income tax return for the income year including the trial period, to be an inward investing entity (non-ADI) and an inward investment vehicle (financial) for that period.
- (4) This section has effect despite sections 820-85, 820-185 and 820-609.

**820-611 Values to be based on what would be in consolidated accounts for group**

- (1) For the purposes of this Division as applying because of this Subdivision, the value or amount of a particular matter as at a particular time during the grouping period is to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts:
  - (a) prepared, in accordance with the \*accounting standard on consolidated accounts, as at that time; and
  - (b) covering the \*consolidated group, \*MEC group or single company, as appropriate, and each \*Australian permanent establishment that section 820-603 treats as part of the \*head company or single company at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: This subsection does not depend on whether such a set of consolidated accounts was prepared, or had to be prepared, for other purposes.

- (2) To avoid doubt, subsection (1) also applies to working out the value or amount, as at a particular time, of a matter mentioned in any of sections 820-613 to 820-615.

### **820-613 How Subdivision 820-D applies**

- (1) This section has effect for the purposes of applying Subdivision 820-D to the \*head company or single company in relation to a period (the *test period*) that is all or part of the grouping period.

Note: Subdivision 820-D applies to the head company or single company if it is classified as an outward investing entity (ADI) because of section 820-609, either alone or in conjunction with a choice made by the company under section 820-430.

#### *Adjusted average equity capital*

- (2) The \*adjusted average equity capital of the \*head company or single company for the test period is increased by the average value, for the period, of the amount worked out under subsection (3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (3) The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the following paragraphs for each of the establishment entity's \*Australian permanent establishments that section 820-603 treats as part of the \*head company or single company on that day:

- (a) so much of the establishment entity's \*ADI equity capital, at the end of the day, as:
- (i) is attributable to that Australian permanent establishment; and
  - (ii) has not been allocated to the \*OB activities of the entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the amounts that, as at the end of that day:
  - (i) are made available by the establishment entity to the Australian permanent establishment as loans to it; and
  - (ii) do not give rise to any \*debt deductions of the entity for the income year or any other income year.

Note: The amounts are to be worked out, so far as practicable, on the basis of the information that would be contained in a set of consolidated accounts. See section 820-611.

*Risk-weighted assets*

- (4) For each of the establishment entity's \*Australian permanent establishments that is covered by the choice, the \*risk-weighted assets of the \*head company or single company include that part of the entity's risk-weighted assets that:
  - (a) is attributable to that Australian permanent establishment; and
  - (b) is not attributable to the entity's \*OB activities.

**820-615 How Subdivision 820-E applies**

- (1) This section has effect for the purposes of applying Subdivision 820-E to the \*head company or single company in relation to a period (the *test period*) that is all or part of the grouping period.

Note: Subdivision 820-E applies to the head company or single company if it is classified as an inward investing entity (ADI) because of section 820-609.

*Average equity capital*

- (2) The *average equity capital* of the \*head company or single company for the test period is:
  - (a) the average value, for that period, of all the \*ADI equity capital of the company; plus
  - (b) the average value, for that period, of the amount worked out under subsection 820-613(3).

Note 1: In the case of a choice under section 820-599, paragraph 820-603(4)(b) treats the single company and the relevant Australian permanent establishments as a consolidated group.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

*Safe harbour capital amount*

- (3) The *safe harbour capital amount* of the \*head company or single company for the test period is worked out using the following method statement.

*Method statement*

Step 1. Work out the average value, for the test period, of the \*head company's or single company's \*risk-weighted assets.

Step 2. Multiply the result of step 1 by 4%. The result of this step is the *safe harbour capital amount*.

*Risk-weighted assets*

- (4) For each of the establishment entity's \*Australian permanent establishments covered by the choice, the \*risk-weighted assets of the \*head company or single company include that part of the entity's risk-weighted assets that:
- (a) is attributable to that Australian permanent establishment; and
  - (b) is not attributable to the entity's \*OB activities.

## **Subdivision 820-G—Calculating the average values**

### **Guide to Subdivision 820-G**

#### **820-625 What this Subdivision is about**

This Subdivision sets out the methods of calculating the average values for the purposes of this Division. It also includes special rules about values and valuation that are relevant to that calculation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Section 820-25 of the *Income Tax (Transitional Provisions) Act 1997* provides for a transitional rule that affects the operation of this Subdivision in relation to an income year that begins before 1 July 2002 and ends before 30 June 2003.

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## How to calculate the average values

### 820-630 Methods of calculating average values

#### *Methods of calculation for entities that are not ADIs*

- (1) An entity to which Subdivision 820-B or 820-C applies for a period that is all or a part of an income year must use one of the following methods to calculate the average value of a matter mentioned in that Subdivision for the purposes of that application:
  - (a) the method set out in section 820-635 (the *opening and closing balances method*);
  - (b) the method set out in section 820-640 (the *3 measurement days method*);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) the method set out in section 820-645 (the *frequent measurement method*).

Note 1: This subsection therefore applies only to an outward investing entity (non-ADI) or an inward investing entity (non-ADI).

Note 2: An entity cannot apply the 3 measurement days method if it is unable to meet the requirements in subsection 820-640(1). An entity's ability to apply that method may therefore be limited.

(2) The entity must use the same method to calculate all such average values for that period for the purposes of that application.

*Commissioner's power*

(3) If the entity fails to comply with subsection (2), the Commissioner may, irrespective of the methods used by the entity, recalculate all the average values for the entity and that period by using the opening and closing balances method.

*Method of calculation for ADIs*

(4) An entity to which Subdivision 820-D or 820-E applies for a period that is all or a part of an income year must use the frequent measurement method to calculate the average value of a matter mentioned in that Subdivision for the purposes of that application.

Note: This subsection therefore applies only to an outward investing entity (ADI) or an inward investing entity (ADI).

## **820-635 The opening and closing balances method**

An entity that uses the opening and closing balances method for a period must apply the following method statement to calculate the average value of a matter for that period.

*Method statement*

Step 1. Work out the value of the particular matter as at the first day of that period.

Step 2. Work out the value of the particular matter as at the last day of that period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 3. Add the results of steps 1 and 2.

Step 4. Divide the result of step 3 by 2. The result of this step is the average value.

Example: ALWZ Corporation, a company that is an Australian entity, held assets valued at \$95 million on the first day of an income year. It held assets valued at \$105 million at the end of that year. Adding those amounts and dividing the result by 2 gives the average value of its assets for that year, which is \$100 million.

### **820-640 The 3 measurement days method**

#### *Application*

- (1) An entity must not use the 3 measurement days method for a period that is a part of an income year unless the following days occur during that period:
  - (a) the last day of the first half of the income year;
  - (b) one or both of the following days:
    - (i) the first day of that year;
    - (ii) the last day of that year.

#### *Method statement*

- (2) An entity that uses the 3 measurement days method for a period must apply the following method statement to calculate the average value of a matter for that period.

#### *Method statement*

Step 1. Work out the value of the particular matter as at the first measurement day (see subsection (3)).

Step 2. Work out the value of the particular matter as at the second measurement day (see subsection (3)).

Step 3. Work out the value of the particular matter as at the third measurement day (see subsection (3)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 4. Add the results of steps 1, 2 and 3.

Step 5. Divide the result of step 4 by 3. The result of this step is the average value.

Example: RJ Corporation held assets valued at \$115 million on the first day of an income year. It held assets valued at \$105 million on the last day of the first half of that year, and \$80 million on the last day of that year. Adding these amounts and dividing the result by 3 gives the average value of its assets for that year, which is \$100 million.

#### *Measurement days*

- (3) The following are the *first*, *second* and *third measurement days*:
- (a) the *first measurement day* is the first day of the income year if it occurs during that period, otherwise it is the first day of that period;
  - (b) the *second measurement day* is the last day of the first half of that year;
  - (c) the *third measurement day* is the last day of that year if it occurs during that period, otherwise it is the last day of that period.

### **820-645 The frequent measurement method**

- (1) An entity that uses the frequent measurement method for a period (the *measurement period*) must calculate the average value of a matter for that period by applying:
- (a) the method statement in subsection (2) (generally based on quarterly periods); or
  - (b) the method statement in subsection (4) (generally based on regular intervals).

This section does not prevent the entity from applying the method statement in subsection (2) for one matter and the method statement in subsection (4) for another matter in relation to that period.

- (2) This is the method statement for the purposes of paragraph (1)(a).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Method statement*

- Step 1. Work out the value of the particular matter as at each of the following measurement days:
- (a) the first day of the measurement period;
  - (b) the last day of each quarterly period of that income year (see subsection (3)) that occurs during the measurement period (if any);
  - (c) the last day of the measurement period if it is not a day covered by paragraph (b).
- Step 2. Add up those values.
- Step 3. Divide the result of step 2 by the number of measurement days. The result of this step is the average value.

Example: KJW Finance Corporation, a company that is an Australian entity, held assets valued at \$130 million on the first day of an income year. On the last day of each quarterly period for that year it held assets valued at \$140 million, \$120 million, \$110 million and \$100 million respectively. Adding these amounts and dividing the result by 5 gives the average value of its assets for that year, which is \$120 million.

*Quarterly period*

- (3) The *quarterly periods of the income year* are:
- (a) the period consisting of the first, second and third months of that year; and
  - (b) each successive period of 3 months that occurs after that period during that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) This is the method statement for the purposes of paragraph (1)(b):

*Method statement*

- Step 1. Work out the value of the particular matter as at each of the following measurement days:
- (a) the first day of the measurement period;
  - (b) the last day of each regular interval for the measurement period (see subsection (5));
  - (c) the last day of the measurement period if it is not a day mentioned in paragraph (b).
- Step 2. Add up those values.
- Step 3. Divide the result of step 2 by the number of measurement days. The result of this step is the average value.

Example: TW Corporation, a company that is an Australian entity, adopts a weekly interval for the purposes of this subsection. The measurement period is a period of 12 weeks. On the first day of that period it had \$70 million of debt capital. Its debt capital was \$80 million on the last day of each of the first 7 weeks, and \$95 million on the last day of the remaining 5 weeks. Adding these amounts and dividing the result by 13 (the number of measurement days) gives the average value of its debt capital for that period, which is \$85 million.

*Regular intervals*

- (5) The **regular intervals** for the measurement period are:
- (a) a period which consists of a fixed number of days or months (not less than one day and not more than 3 months) adopted by the entity and begins at the start of the first day of the measurement period; and
  - (b) each successive period of the same duration that occurs during the measurement period.

Note: Examples of a regular interval therefore include a daily, weekly, fortnightly, monthly or quarterly interval.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) The entity must use the same regular intervals when calculating the average values of different matters under subsection (4) for that period.

### **Special rules about values and valuation**

#### **820-675 Amount to be expressed in Australian currency**

- (1) For the purposes of this Division, an amount (including a value used in a calculation under this Division) is to be expressed in Australian currency.
- (2) An entity must comply with the \*accounting standards in converting an amount into Australian currency.
- (3) Subsection (2) has effect whether the \*accounting standard would otherwise apply to the entity or not.

#### **820-680 Valuation of assets, liabilities and equity capital**

- (1) For the purposes of this Division, an entity must comply with the \*accounting standards in determining what are its assets and liabilities and in calculating:
- (a) the value of its assets (including revaluing its assets for the purposes of that calculation); and
  - (b) the value of its liabilities (including its \*debt capital); and
  - (c) the value of its \*equity capital.

Note: This requirement to comply with the accounting standards is modified in certain cases (see sections 820-310, 820-682, 820-683 and 820-684).

- (1A) In particular, for the purposes of this Division, the entity has an asset or liability at a particular time if, and only if, according to the \*accounting standards, the asset or liability can or must be recognised at that time.

Note: This application of the accounting standards is modified in certain cases (see sections 820-682 and 820-683).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Requirements for revaluation of assets*

- (2) A revaluation of assets mentioned in paragraph (1)(a) must be made by a person:
- (a) who is an expert in valuing such assets; and
  - (b) whose pecuniary or other interests could not reasonably be regarded as being capable of affecting the person's ability to give an unbiased opinion in relation to that revaluation.

Note 1: The entity must also keep records in accordance with section 820-985 about the revaluation, unless the exception in subsection (2A) of this section applies.

Note 2: This subsection also applies to some revaluations that are not allowed by the accounting standards (see subsection 820-684(5)).

*Revaluation reflected in statutory financial statements for the same period*

- (2A) A revaluation of an asset need not comply with subsection (2) if:
- (a) the revaluation is for the purpose of the entity calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period; and
  - (b) the entity is required by an Australian law to prepare financial statements for a period that is or includes all or part of that period; and
  - (c) those financial statements reflect the revaluation.

*External validation of a revaluation made internally*

- (2B) A revaluation of assets mentioned in paragraph (1)(a) may be made by a person (the *internal expert*) if:
- (a) apart from this subsection, paragraph (2)(b) would prevent the internal expert from making the revaluation, but only because, in making it, he or she would be:
    - (i) performing duties as an employee of the entity; or
    - (ii) providing services under an \*arrangement with the entity that is substantially similar to a contract of employment; and
  - (b) another person (the *external expert*):

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) is not prevented by subsection (2) from making the revaluation; and
  - (ii) has reviewed the methodology for making it (including the validity of any assumptions to be made, and the accuracy and reliability of the data and other information to be used); and
  - (iii) has agreed that that methodology is suitable for making it; and
- (c) the internal expert makes the revaluation in accordance with that methodology.

Note: This subsection also applies to some revaluations that are not allowed by the accounting standards (see subsection 820-684(5)).

*Revaluation of individual assets*

- (2C) Subsection (1) does not prevent the entity from revaluing one or more assets in a class of assets (as distinct from revaluing all the assets in the class) if the value of no asset in that class has fallen since the entity last calculated the total value of all the assets in that class in accordance with the \*accounting standards.

*When further revaluation of assets required*

- (2D) If:
- (a) the entity revalues one or more assets (whether constituting a class of assets or not) for the purpose of calculating the value of its assets for the purposes of this Division as applying to the entity for a particular period (the *first period*); and
  - (b) the revaluation is *not* required by the \*accounting standards; and
  - (c) if the revaluation *had* been required by the accounting standards, the entity could have relied on it in preparing financial statements that the entity is required by an Australian law to prepare for a period (the *later period*) that ends *after* the first period;
- the entity may also rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is or includes all or part of the later period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2E) If subsection (2D) does *not* permit the entity to rely on the revaluation in calculating the value of its assets for the purposes of this Division as applying to the entity for a period that is later than the first period, the revaluation is disregarded in determining whether subsection (1) requires the entity to revalue the one or more assets in calculating the value of its assets for those purposes.

Note: As a result, the entity may not be required to make a further revaluation of the one or more assets. However, if the entity does not, it must use the value of the one or more assets that is reflected in financial statements for the relevant period that comply with the accounting standards.

*Accounting standards need not otherwise apply to the entity*

- (3) Subsection (1) has effect whether the \*accounting standard would otherwise apply to the entity or not.

### **820-682 Recognition of assets and liabilities—modifying application of accounting standards**

*Deferred tax assets and deferred tax liabilities*

- (1) Despite subsections 820-680(1) and (1A), an entity must not recognise:
- (a) a deferred tax liability (within the meaning of the \*accounting standards) as a liability for the purposes of this Division; or
  - (b) a deferred tax asset (within the meaning of the accounting standards) as an asset for the purposes of this Division.

Note: Subsections 820-680(1) and (1A) require compliance with accounting standards.

*Surpluses and deficits in defined benefit superannuation plans*

- (2) Despite subsections 820-680(1) and (1A), an entity must not recognise an amount relating to a defined benefit plan (within the meaning of the \*accounting standards) as:
- (a) a liability for the purposes of this Division; or
  - (b) an asset for the purposes of this Division.

Note: Subsections 820-680(1) and (1A) require compliance with accounting standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Not applicable to ADIs*

- (3) This section does not apply in relation to an entity for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

*Not applicable to records about Australian permanent establishments*

- (4) This section does not apply for the purposes of section 820-960.

### **820-683 Recognition of internally generated intangible items— modifying application of accounting standards**

*Accounting standards prevent recognition of some items*

- (1) Subsection (2) applies in relation to an item, other than internally generated goodwill (within the meaning of \*accounting standard AASB 138), if:
- (a) the item cannot be recognised under that standard as an internally generated intangible asset (within the meaning of that standard) because that standard determines that the cost of the item cannot be distinguished from the cost of developing the entity's business as a whole; and
  - (b) the item would otherwise meet criteria under that standard for recognition as such an asset.

Note 1: As a general rule, an entity must comply with the accounting standards when recognising its assets for the purposes of this Division (see subsections 820-680(1) and (1A)).

Note 2: This section does not apply to ADIs (see subsection (6)).

*Entity may choose to recognise the item as an intangible asset*

- (2) Despite subsections 820-680(1) and (1A), the entity may choose to recognise the item as such an asset for a period for the purposes of this Division (other than section 820-960).

Note: Section 820-960 is about records for Australian permanent establishments.

- (3) A choice under subsection (2):
- (a) must be in writing and may cover more than one item; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) must be made before the due day for lodging the entity's \*income tax return for the income year that is, or that includes, the period; and
  - (c) subject to subsection (4), has effect, for the entity and the item, for the period and each later period.
- (4) The entity may, in writing, revoke a choice under subsection (2). The revocation has effect:
- (a) for each period in the income year for which the entity is next required to lodge an \*income tax return; and
  - (b) for each later period.
- (5) When:
- (a) recognising an item as an asset under this section; and
  - (b) calculating the value of the asset (including revaluing the asset);

the entity must, to the maximum extent possible, comply with the \*accounting standards as if the recognition were allowed by those standards. This subsection has effect subject to section 820-684.

Note: Section 820-684 will allow the entity to revalue the asset even if accounting standard AASB 138 would prevent this because of the absence of an active market.

*Choice not available to ADIs*

- (6) An entity cannot make a choice under subsection (2) for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

**820-684 Valuation of intangible assets if no active market—  
modifying application of accounting standards**

*Accounting standards prevent revaluation of some assets*

- (1) Subsection (2) applies if complying with \*accounting standard AASB 138 would prevent an entity from revaluing an intangible asset (within the meaning of that standard) because of the absence of an active market (within the meaning of that standard).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 820-684

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Note 1: As a general rule, an entity must comply with the accounting standards when revaluing its assets for the purposes of this Division (see subsection 820-680(1)).

Note 2: This section does not apply to ADIs (see subsection (7)).

*Entity may choose to revalue the asset*

- (2) Despite subsection 820-680(1), the entity may choose to revalue the asset for a period for the purposes of this Division (other than section 820-960).

Note: Section 820-960 is about records for Australian permanent establishments.

- (3) A choice under subsection (2):

- (a) must be in writing and may cover more than one asset; and
- (b) must be made before the due day for lodging the entity's \*income tax return for the income year that is, or that includes, the period; and
- (c) subject to subsection (4), has effect, for the entity and the item, for the period and each later period.

- (4) The entity may, in writing, revoke a choice under subsection (2). The revocation has effect:

- (a) for each period in the income year for which the entity is next required to lodge an \*income tax return; and
- (b) for each later period.

*Requirements for such revaluations*

- (5) Subsections 820-680(2) and (2B) apply in relation to a revaluation under subsection (2) in a corresponding way to the way they apply in relation to a revaluation mentioned in paragraph 820-680(1)(a).

Note 1: Subsections 820-680(2) and (2B) set out requirements and other matters in relation to revaluations under subsection 820-680(1).

Note 2: The entity must also keep records in accordance with section 820-985 about the revaluation.

- (6) When revaluing an asset under subsection (2), the entity must, to the maximum extent possible, comply with the \*accounting standards as if the revaluation were allowed by those standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Choice not available to ADIs*

- (7) An entity cannot make a choice under subsection (2) for a period if, for the period, the entity is an \*outward investing entity (ADI) or an \*inward investing entity (ADI).

**820-685 Valuation of debt capital**

For the purposes of this Division, the regulations may make additional provisions for the valuation of the \*debt capital of an entity.

**820-690 Commissioner's power**

If the Commissioner considers that, in relation to a calculation under this Division, an entity has:

- (a) overvalued its assets; or
- (b) undervalued its liabilities (including its \*debt capital);

the Commissioner may, having regard to the \*accounting standards and this Subdivision, substitute a value that the Commissioner considers is appropriate.

**Subdivision 820-H—Control of entities****Guide to Subdivision 820-H****820-740 What this Subdivision is about**

This Subdivision sets out rules about the following:

- the meaning of an Australian controller of a foreign entity (for the purpose of determining whether or not an entity is an outward investing entity (non-ADI) or outward investing entity (ADI));
- the meaning of a foreign controlled Australian entity (for the purpose of determining whether or not an entity is an inward investing entity (non-ADI));

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- the method of working out the extent to which one entity is controlled by another entity for those purposes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Australian controller of a foreign entity**

### **820-745 What is an Australian controlled foreign entity?**

An *Australian controlled foreign entity*, in relation to a particular time, is an entity that is any of the following at that time:

- (a) a \*controlled foreign company (except a \*corporate limited partnership);
- (b) a \*controlled foreign trust;
- (c) a \*controlled foreign corporate limited partnership.

### **820-750 What is an Australian controller of a controlled foreign company?**

An entity is an *Australian controller* of a \*controlled foreign company mentioned in paragraph 820-745(a) at a particular time if, and only if, at that time:

- (a) that entity is an \*Australian entity holding a \*TC control interest in the controlled foreign company that is 10% or more; or
- (b) all of the following subparagraphs apply:
  - (i) the controlled foreign company is such a company because of paragraph 340(c) of the *Income Tax Assessment Act 1936*;
  - (ii) not more than 5 Australian entities, including that entity, control that controlled foreign company (either alone or together with \*associate entities and whether or not any associate entity is also an Australian entity);
  - (iii) that entity holds a \*TC control interest in the controlled foreign company that is at least 1%.

Note: A corporate limited partnership that is a foreign entity may be a controlled foreign corporate limited partnership, see section 820-760.

### **820-755 What is an Australian controller of a controlled foreign trust?**

An entity is an *Australian controller* of a \*controlled foreign trust at a particular time if, and only if, at that time, the entity is an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\*Australian entity holding a \*TC control interest in the trust that is 10% or more.

### **820-760 What is an Australian controller of a controlled foreign corporate limited partnership?**

*Australian controller of a controlled foreign corporate limited partnership*

- (1) An entity is an **Australian controller** of a \*controlled foreign corporate limited partnership at a particular time if, and only if, at least one of the following paragraphs applies to the entity at that time:
  - (a) the entity is an \*Australian entity that is a \*general partner of the partnership;
  - (b) the entity is an Australian entity holding a \*TC control interest in the partnership that is 10% or more.

*Controlled foreign corporate limited partnership*

- (2) A \*corporate limited partnership is a **controlled foreign corporate limited partnership** at a particular time if, and only if, at that time:
  - (a) it is not an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) at least one \*general partner of the partnership is an \*Australian entity or an \*Australian controlled foreign entity;
    - (ii) not more than 5 Australian entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that is 50% or more.

### **Foreign controlled Australian entity**

#### **820-780 What is a foreign controlled Australian entity?**

A **foreign controlled Australian entity**, in relation to a particular time, is an entity that is any of the following at that time:

- (a) a \*foreign controlled Australian company;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a \*foreign controlled Australian trust;
- (c) a \*foreign controlled Australian partnership.

### **820-785 What is a foreign controlled Australian company?**

- (1) A company (except a \*corporate limited partnership) is a ***foreign controlled Australian company*** (or an ***FCAC***) at a particular time if, and only if, at that time, it is an \*Australian entity to which at least one of the following paragraphs applies:
- (a) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the company that is at least 1%) hold a total of TC control interests in the company that is 50% or more;
  - (b) a foreign entity holds a TC control interest in the company that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity or entities including the foreign entity or its associate entities) control the company;
  - (c) not more than 5 foreign entities control the company (whether or not with associate entities and whether or not any associate entity is a foreign entity).

Note: A corporate limited partnership that is an Australian entity may be a foreign controlled Australian partnership, see section 820-795.

#### *Exception*

- (2) Despite subsection (1), a company is not an FCAC at a particular time if, at that time:
- (a) the company would, apart from this subsection, be an FCAC only because of paragraph (1)(a) or (b); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the company held by the \*foreign entity or entities mentioned in paragraph (1)(a) or (b);
    - (ii) the \*TC indirect control interest in the company held by the foreign entity or entities;
    - (iii) the TC direct control interests in the company held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

been taken into account in calculating the interest mentioned in subparagraph (ii));

- (iv) the TC indirect control interests in the company held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

### 820-790 What is a foreign controlled Australian trust?

- (1) A trust is a *foreign controlled Australian trust* (or an *FCAT*) at a particular time if, and only if, at that time, it is an \*Australian trust to which at least one of the following paragraphs applies:
  - (a) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the trust that is at least 1%) hold a total of TC control interests in the trust that is 50% or more;
  - (b) a foreign entity holds a TC control interest in the trust that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity or entities including the foreign entity or its associate entities) control the trust;
  - (c) all of the following subparagraphs apply to the trust:
    - (i) at least one of the objects or beneficiaries of the trust is a foreign entity;
    - (ii) there has been at least one distribution of income or capital of the trust made to such an object or beneficiary (whether directly or indirectly) during the income year in which that particular time occurs, or during the preceding 2 income years;
    - (iii) the total TC control interests in the trust that are held by all its beneficiaries that are \*Australian entities do not exceed 50%;
  - (d) a foreign entity is in a position to control the trust (see subsection (2)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A \*foreign entity is in a position to control a trust if, and only if:
- (a) the entity, or an \*associate entity of the entity, whether alone or with other associate entities (the *relevant entity*), has the power to obtain the beneficial enjoyment of the trust's capital or income (whether or not by exercising its power of appointment or revocation, and whether with or without another entity's consent); or
  - (b) the relevant entity is able to control the application of the trust's capital or income in any manner (whether directly or indirectly); or
  - (c) the relevant entity is able to do a thing mentioned in paragraph (a) or (b) under a \*scheme; or
  - (d) a trustee of the trust is accustomed or is under an obligation (whether formally or informally), or might reasonably be expected, to act in accordance with the relevant entity's directions, instructions or wishes; or
  - (e) the relevant entity is able to remove or appoint a trustee of the trust.

*Exception*

- (3) Despite subsection (1), a trust is not an FCAT at a particular time if, at that time:
- (a) the trust would, apart from this subsection, be an FCAT only because of paragraph (1)(a) or (b); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the trust held by the \*foreign entity or entities mentioned in paragraph (1)(a), (b) or (c);
    - (ii) the \*TC indirect control interest in the trust held by the foreign entity or entities;
    - (iii) the TC direct control interests in the trust held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii));

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iv) the TC indirect control interests in the trust held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

### 820-795 What is a foreign controlled Australian partnership?

#### *Corporate limited partnership*

- (1) A \*corporate limited partnership is a **foreign controlled Australian partnership** (or an **FCAP**) at a particular time if, and only if, at that time:
  - (a) it is an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that are 50% or more;
    - (ii) at least one \*general partner of the partnership is a foreign entity or a \*foreign controlled Australian entity.

#### *Partnership that is not a corporate limited partnership*

- (2) A partnership other than a \*corporate limited partnership is a **foreign controlled Australian partnership** (or an **FCAP**) at a particular time if, and only if, at that time:
  - (a) at least one of the partners is an \*Australian entity; and
  - (b) at least one of the following subparagraphs applies to it:
    - (i) not more than 5 \*foreign entities (each of which holds a \*TC control interest in the partnership that is at least 1%) hold a total of TC control interests in the partnership that is 50% or more;
    - (ii) a foreign entity holds a TC control interest in the partnership that is 40% or more, and no other entity or entities (except an \*associate entity of the foreign entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



or entities including the foreign entity or its associate entities) control the partnership.

*Exception*

- (3) Despite subsections (1) and (2), a partnership is not an FCAP at a particular time if, at that time:
- (a) the partnership would, apart from this subsection, be an FCAP only because of subparagraph (1)(b)(i), (2)(b)(i) or (ii); but
  - (b) the total of the following interests would be less than 20% if paragraphs 820-875(2)(a) and (b) were disregarded:
    - (i) the \*TC direct control interest in the partnership held by the \*foreign entity or entities mentioned in subparagraph (1)(b)(i), (2)(b)(i) or (ii);
    - (ii) the \*TC indirect control interest in the partnership held by the foreign entity or entities;
    - (iii) the TC direct control interests in the partnership held by any \*associate entities of the foreign entity or entities (other than any TC direct control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii));
    - (iv) the TC indirect control interests in the partnership held by the entity's associate entities (other than any TC indirect control interests that have been taken into account in calculating the interest mentioned in subparagraph (ii)).

Note: Paragraphs 820-875(2)(a) and (b) set out special rules under which an entity is taken to hold a TC control tracing interest in another entity that is equal to 100%, which could then be taken into account in calculating a TC indirect control interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Thin capitalisation control interest

### 820-815 General rule about thin capitalisation control interest in a company, trust or partnership

#### *Meaning of TC control interest*

- (1) The ***thin capitalisation control interest*** (or ***TC control interest***) that an entity holds in a company, trust or partnership at a particular time is the total of the following interests:
- (a) the \*TC direct control interest (if any) held by the entity in the company, trust or partnership at that time;
  - (b) the \*TC indirect control interest (if any) held by the entity in the company, trust or partnership at that time;
  - (c) the TC direct control interests (if any) held by the entity's \*associate entities in the company, trust or partnership at that time;
  - (d) the TC indirect control interests (if any) held by the entity's associate entities in the company, trust or partnership at that time.

This section has effect subject to sections 820-820 to 820-835 (which set out special rules to avoid double counting).

Note: For the rules about a TC direct control interest, see sections 820-855 to 820-865. For the rules about a TC indirect control interest, see sections 820-870 to 820-875.

- (2) This section does not apply to an \*associate entity of the entity if:
- (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).

### 820-820 Special rules about calculating TC control interest held by an entity

- (1) This section applies for the purposes of calculating the \*TC control interest that an entity holds in a company, trust or partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Disregard a \*TC indirect control interest held by the entity to the extent to which it is calculated by reference to:
  - (a) a \*TC direct control interest taken into account under paragraph 820-815(c); or
  - (b) a TC indirect control interest taken into account under paragraph 820-815(d).
- (3) Disregard a \*TC indirect control interest held by an \*associate entity of the entity to the extent to which it is calculated by reference to:
  - (a) a \*TC direct control interest taken into account under paragraph 820-815(a) or (c); or
  - (b) a TC indirect control interest taken into account under paragraph 820-815(b) or (d).
- (3A) Subsection (3) does not apply to an \*associate entity of the entity if:
  - (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).
- (4) Take into account only one of the following things if both would otherwise be counted in calculating the \*TC control interest:
  - (a) the holding of a \*TC direct control interest by the entity or any other entity;
  - (b) an entitlement to acquire that TC direct control interest.
- (5) The operation of this section in relation to an entity does not prevent the operation of section 820-825 in relation to a group of entities that includes that entity.

### **820-825 Special rules about calculating TC control interests held by a group of entities**

- (1) This section applies for the purposes of calculating the total \*TC control interests that a group of entities holds in a company, trust or partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Take into account a particular \*TC direct control interest or \*TC indirect control interest only once if it would otherwise be counted more than once because the entity holding it is an \*associate entity of one or more entities in the group.
- (2A) Subsection (2) does not apply to an \*associate entity of one or more entities in the group if:
  - (a) the associate entity is a \*foreign entity and the associate entity is such an associate entity only because of subsection 820-905(3A); or
  - (b) the associate entity is such an associate entity only because of subsection 820-905(3B).
- (3) Take into account only one of the following things if both of them would otherwise be counted in calculating the total \*TC control interests:
  - (a) the holding of a \*TC direct control interest by an entity;
  - (b) an entitlement to acquire that TC direct control interest.
- (4) The operation of this section in relation to a group of entities does not prevent the operation of section 820-820 in relation to an entity that is a member of that group.

### **820-830 Special rules about determining percentage of TC control interest**

- (1) This section applies for the purposes of determining whether an entity, or a group of entities, holds at least a particular percentage of \*TC control interests for the purposes of a provision in this Subdivision.
- (2) If, apart from this subsection, an entity, or each of 2 or more entities, would hold a \*TC direct control interest equal to 100%, or a \*TC control tracing interest equal to 100%, in another entity (the *controlled entity*):
  - (a) only the entity, or one of the 2 or more entities, is to be taken to hold that particular interest in the controlled entity equal to 100%; and
  - (b) another entity is not to be taken to hold that particular interest in the controlled entity (whether or not it would, apart from

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

this subsection, hold that interest in the controlled entity equal to 100%).

### **820-835 Commissioner's power**

For the purposes of this Subdivision, the Commissioner may decide:

- (a) which one of 2 things is to be taken into account for the purposes of subsection 820-820(4) or subsection 820-825(3); or
- (b) which one of 2 or more entities is to be chosen for the purposes of paragraph 820-830(2)(a).

### **TC direct control interest, TC indirect control interest and TC control tracing interest**

#### **820-855 TC direct control interest in a company**

- (1) A *thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a company (except a \*corporate limited partnership) at a particular time is the percentage of the direct control interest (if any) that the entity holds in the company at that time under the provisions applied by subsection (2).

Note: For the TC direct control interest that an entity holds in a corporate limited partnership, see section 820-865.

- (2) For the purposes of subsection (1), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table.

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#### **Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

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<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 350 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this Subdivision rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

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Item	Provisions	Modifications
2	Subsections 350(6) and (7)	If section 350 is used for the purposes of determining whether or not a company is a *foreign controlled Australian company, the subsections apply as if subsection (6) referred to *foreign entities and foreign entity rather than *Australian entities and Australian entity  If section 350 is used for the purposes of determining whether or not an entity is an *Australian controller of a *controlled foreign company, the subsections do not apply
3	Section 350	A reference to an *associate is taken to be a reference to an *associate entity

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**820-860 TC direct control interest in a trust**

- (1) A *thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a trust at a particular time is the percentage of the direct control interest (if any) that the entity holds in the trust at that time under the provisions applied by subsection (2).
- (2) For the purposes of subsection (1), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

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Item	Provisions	Modifications
1	Section 351 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this Subdivision rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 351(3) and (4)	The subsections do not apply

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) In addition, for the purposes of determining whether or not an entity (other than a trust mentioned in paragraph (a) or (b)) is a \*foreign controlled Australian entity:
- (a) if a trust is covered by paragraph 820-790(1)(c)—a foreign entity that is an object of the trust at a particular time is taken to hold, at that time, a TC direct control interest in the trust that is equal to 100%; and
  - (b) if a trust is covered by paragraph 820-790(1)(d)—a foreign entity that is in a position to control the trust at a particular time is taken to hold, at that time, a \*TC direct control interest in the trust that is equal to 100%.

Note: The foreign entity therefore holds a TC control tracing interest in the trust (see section 820-875). That interest may then be taken into account in calculating any TC indirect control interest that the foreign entity holds in another entity in relation to which the trust is an interposed entity (see section 820-870). As a result, that other entity may become a foreign controlled Australian entity.

### **820-865 TC direct control interest in a partnership**

*A thin capitalisation direct control interest* (or a *TC direct control interest*) that an entity holds in a partnership at a particular time is whichever of the following percentages is applicable, and if there are 2 or more such percentages, the greatest of them:

- (a) in the case of a \*corporate limited partnership—100% if the entity is a \*general partner of the partnership;
- (b) in the case of a partnership that is not a corporate limited partnership—the percentage of the control of voting power in the partnership that the entity has at that time;
- (c) in any case—the percentage that the entity holds, or is entitled to acquire, at that time, of any of the following:
  - (i) the total amount of assets or capital contributed to the partnership;
  - (ii) the total rights of partners to distributions of capital, assets or profits on the dissolution of the partnership;
  - (iii) the total rights of partners to distributions of capital, assets or profits otherwise than on the dissolution of the partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 820-870 TC indirect control interest in a company, trust or partnership

*What is a TC indirect control interest?*

- (1) An entity holds a ***thin capitalisation indirect control interest*** (or a ***TC indirect control interest***) in a company, trust or partnership at a particular time if, and only if:
- (a) there is an interposed entity, or a continuous series of at least 2 interposed entities, between that entity and the company, trust or partnership; and
  - (b) the interposed entity, or each of the interposed entities, is:
    - (i) a \*foreign controlled Australian entity if this section is used for the purposes of determining whether or not an entity is a foreign controlled Australian entity; or
    - (ii) an \*Australian controlled foreign entity if this section is used for the purposes of determining whether or not an entity is an Australian controlled foreign entity or an \*Australian controller of such an entity.

Note: In the case of a continuous series of interposed entities between an entity and a company, trust or partnership, the entity must hold a TC control tracing interest in the first interposed entity (see subsection (2)). In addition, under subsection (2), each interposed entity in the series must hold a TC control tracing interest in the next interposed entity (except in the case of the last one, which holds a TC control tracing interest in the company, trust or partnership).

*What is an interposed entity?*

- (2) For the purposes of this section, an entity (the ***middle entity***) is interposed between 2 other entities at a particular time if, and only if, at that time:
- (a) the first of those 2 entities holds a \*TC control tracing interest in the middle entity; and
  - (b) the middle entity holds a TC control tracing interest in the second of those 2 entities.

Note: For the rules about a TC control tracing interest, see section 820-875.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*How to calculate a TC indirect control interest*

- (3) The \*TC indirect control interest that an entity (the *top entity*) holds in a company, trust or partnership at a particular time is calculated in accordance with subsection (4), (5) or (6) (as appropriate).

*One interposed entity only*

- (4) The \*TC indirect control interest is the result of applying the following method statement if there is only one interposed entity between the top entity and the company, trust or partnership at that time.

*Method statement*

- Step 1. Calculate the \*TC control tracing interest that the top entity holds in the interposed entity at that time.
- Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the interposed entity holds in the company, trust or partnership at that time.

*2 interposed entities*

- (5) The \*TC indirect control interest is the result of applying the following method statement if there are 2 interposed entities between the top entity and the company, trust or partnership at that time.

*Method statement*

- Step 1. Calculate the \*TC control tracing interest that the top entity holds in the first of those interposed entities at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the first interposed entity holds in the next interposed entity (the *second interposed entity*) at that time.

Step 3. Multiply the result of step 2 by the \*TC control tracing interest that the second interposed entity holds in the company, trust or partnership at that time.

*More than 2 interposed entities*

- (6) The \*TC indirect control interest is the result of applying the following method statement if there are more than 2 interposed entities between the top entity and the company, trust or partnership at that time.

*Method statement*

Step 1. Calculate the \*TC control tracing interest that the top entity holds in the first of those interposed entities at that time.

Step 2. Multiply the result of step 1 by the \*TC control tracing interest that the first interposed entity holds in the next interposed entity (the *second interposed entity*) at that time.

Step 3. Multiply the result of step 2 by the \*TC control tracing interest that the second interposed entity holds in the next interposed entity at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 4. Continue this pattern of multiplying the result of the last multiplication by the \*TC control tracing interest in the next interposed entity held by the preceding entity, ending with a multiplication by the TC control tracing interest held by the last interposed entity in the company, trust or partnership.

### **820-875 TC control tracing interest in a company, trust or partnership**

- (1) A *thin capitalisation control tracing interest* (or a *TC control tracing interest*) that an entity holds in a company, trust or a partnership at a particular time is equal to the \*TC direct control interest in the company, trust or partnership that the entity holds at that time.
- (2) Despite subsection (1), an entity is taken to hold a \*TC control tracing interest in a company, trust or partnership that is equal to 100% at a particular time if, at that time:
  - (a) the entity and its \*associate entities hold a total of \*TC direct control interests in the company, trust or partnership that is 50% or more; or
  - (b) the following subparagraphs apply:
    - (i) the entity (the *controlling entity*) and its associate entities hold a total of TC direct control interests that is 40% or more in the company, trust or partnership;
    - (ii) no other entity or entities (except the controlling entity, its associate entities or entities including the controlling entity or its associate entities) control the company, trust or partnership; or
  - (c) the entity (whether or not together with associate entities) controls the company, trust or partnership.
- (3) Paragraph (2)(b) does not apply if the \*TC direct control interests mentioned in subparagraph (2)(b)(i) are held in a \*corporate limited partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 820-HA—Controlled foreign entity debt and controlled foreign entity equity

### Guide to Subdivision 820-HA

#### 820-880 What this Subdivision is about

Controlled foreign entity debt and controlled foreign entity equity are concepts used in this Division. This Subdivision sets out the meaning of each of these concepts.

#### Table of sections

820-881	Application
820-885	What is <i>controlled foreign entity debt</i> ?
820-890	What is <i>controlled foreign entity equity</i> ?

#### 820-881 Application

This Subdivision applies to:

- (a) an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI), or an \*outward investing entity (ADI), for a period (the *relevant period*) that is all or a part of an income year; and
- (b) each entity (*controlled entity of the relevant entity*) that is an \*Australian controlled foreign entity of which:
  - (i) the relevant entity is an \*Australian controller; or
  - (ii) an \*associate entity of the relevant entity is an Australian controller.

#### 820-885 What is *controlled foreign entity debt*?

- (1) The relevant entity's *controlled foreign entity debt* at a particular time during the relevant period is the total value of all the \*debt interests held by the relevant entity at that time that satisfy all of the following:
  - (a) the interests are \*on issue at that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) each of the interests was \*issued by an entity that is a controlled entity of the relevant entity at that time;
  - (c) each of the interests gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a).
- (2) For the purposes of subsection (1), take into account the value of a \*debt interest issued by a controlled entity of the relevant entity only to the extent that the interest is *not* attributable to any of the following assets that are held by the controlled entity throughout the relevant period:
- (a) assets attributable to the controlled entity's \*Australian permanent establishments;
  - (b) other assets that are held by the controlled entity for the purposes of producing assessable income of the controlled entity.

**820-890 What is *controlled foreign entity equity*?**

- (1) The relevant entity's ***controlled foreign entity equity*** at a particular time during the relevant period is the total value of:
- (a) all the \*equity interests that the entity holds, at that time, in entities that are controlled entities of the relevant entity at that time; and
  - (b) all the \*debt interests \*on issue and held by the entity at that time that satisfy both of the following:
    - (i) the interests were \*issued by entities that are controlled entities of the relevant entity at that time;
    - (ii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).
- (2) For the purposes of subsection (1), take into account the value of an \*equity interest in, or a \*debt interest issued by, a controlled entity of the relevant entity only to the extent that the interest is *not* attributable to any of the following assets that are held by the controlled entity throughout the relevant period:
- (a) assets attributable to the controlled entity's \*Australian permanent establishments;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) other assets that are held by the controlled entity for the purposes of producing assessable income of the controlled entity.

## Subdivision 820-I—Associate entities

### Guide to Subdivision 820-I

#### 820-900 What this Subdivision is about

This Subdivision sets out the meaning of various concepts about associate entities for the purposes of this Division.

#### Table of sections

820-905	Associate entity
820-910	Associate entity debt
820-915	Associate entity equity
820-920	Associate entity excess amount

#### 820-905 Associate entity

##### *Meaning of associate entity*

- (1) An entity (the **first entity**) that is not an individual is an **associate entity** of another entity at a particular time if, at that time, the first entity is an \*associate of that other entity and at least one of the following paragraphs applies:
  - (a) that other entity holds an \*associate interest of 50% or more in the first entity (see subsections (4) to (8));
  - (b) the first entity is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other entity in relation to:
    - (i) the distribution or retention of the first entity's profits; or
    - (ii) the financial policies relating to the first entity's assets, \*debt capital or \*equity capital;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.

However, this subsection does not apply to the first entity in its capacity as the \*responsible entity of a \*registered scheme (see subsection (2A)).

- (2) An entity (the **first entity**) that is an individual is an **associate entity** of another entity at a particular time if, at that time:
- (a) the first entity is an \*associate of that other entity; and
  - (b) the first entity:
    - (i) is accustomed or under an obligation (whether formal or informal); or
    - (ii) might reasonably be expected; to act in accordance with the directions, instructions or wishes of that other entity in relation to the first entity's financial affairs, whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.
- (2A) An entity (the **first entity**), in its capacity as the \*responsible entity of a \*registered scheme at a particular time, is an **associate entity** of another entity at that time if the first entity, in that capacity, is an \*associate of that other entity at that time and at least one of the following paragraphs applies at that time:
- (a) that other entity holds an \*associate interest of 50% or more in the registered scheme (see subsections (4) to (8));
  - (b) that other entity holds an associate interest of 20% or more in the registered scheme and the first entity, in that capacity, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other entity in relation to:
    - (i) the distribution or retention of the profits of the registered scheme; or
    - (ii) the financial policies relating to the assets, \*debt capital or \*equity capital of the registered scheme;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.

Note: The first entity, in another capacity, may also be an associate entity of an entity under another provision of this section (see also section 960-100).

(3) Subsection (1) or (2A) also has effect as if the first entity satisfies paragraph (b) of that subsection at a particular time if any of the following is expected to act in the manner mentioned in that paragraph at that time:

- (a) a director of the first entity if it is a company;
- (b) a partner of the first entity if it is a partnership;
- (c) the \*general partner of the first entity if it is a \*corporate limited partnership;
- (d) the trustee of the first entity if it is a trust;
- (e) a member of the first entity's committee of management if it is an unincorporated association or body.

(3A) If:

- (a) an entity (the *first entity*) is an \*associate entity of another entity (the *head entity*) under subsection (1), (2), (2A) or (3) at a particular time; and
- (b) a third entity is also an associate entity of the head entity under subsection (1), (2), (2A) or (3) at that time;

the first entity is an *associate entity* of the third entity at that time.

(3B) If an entity (the *first entity*) is an \*associate entity of another entity under subsection (1), (2), (2A), (3) or (3A) at a particular time, that other entity is also an *associate entity* of the first entity at that time.

(3C) However, an entity in its capacity as the \*responsible entity of a \*registered scheme (the *responsible entity*) is not an \*associate entity of another entity under subsection (3B) at a particular time if, at that time, the responsible entity:

- (a) would be an associate entity of that other entity under subsection (3B) (apart from the effect of this subsection); but
- (b) is not an associate entity of that other entity under subsection (2A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Associate interest in a company (except a corporate limited partnership)*

- (4) An **associate interest** that an entity holds in a company (except a \*corporate limited partnership) at a particular time is the percentage of the direct control interest (if any) that the entity holds in the company at that time under the provisions applied by subsection (5).
- (5) For the purposes of subsection (4), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table:

<b>Modifications of provisions in Part X of the <i>Income Tax Assessment Act 1936</i></b>		
<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 350 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this subsection rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 350(6) and (7)	The subsections do not apply

*Associate interest in a trust*

- (6) An **associate interest** that an entity holds in a trust at a particular time is the percentage of the direct control interest (if any) that the entity holds in the trust at that time under the provisions applied by subsection (7).
- (7) For the purposes of subsection (6), provisions of Part X of the *Income Tax Assessment Act 1936* are applied with the modifications set out in the following table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

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<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 351 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this subsection rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsections 351(3) and (4)	The subsections do not apply

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*Associate interest in a partnership*

- (8) An **associate interest** that an entity holds in a partnership at a particular time is whichever of the following percentages is applicable, and if there are 2 or more such percentages, the greatest of them:
- (a) in the case of a \*corporate limited partnership—100% if the entity is a \*general partner of the partnership;
  - (b) in the case of a partnership that is not a corporate limited partnership—the percentage of the control of voting power in the partnership that the entity has at that time;
  - (c) in any other case—the percentage that the entity holds, or is entitled to acquire, at that time, of any of the following:
    - (i) the total amount of assets or capital contributed to the partnership;
    - (ii) the total rights of partners to distributions of capital, assets or profits on the dissolution of the partnership;
    - (iii) the total rights of partners to distributions of capital, assets or profits otherwise than on the dissolution of the partnership.

**820-910 Associate entity debt**

- (1) This section applies to an entity (the **relevant entity**) that is an \*outward investing entity (non-ADI), or an \*inward investing entity (non-ADI), for a period (the **relevant period**) that is all or a part of an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This section also applies, for the relevant entity, to an \*associate entity (a *relevant associate entity*) of the relevant entity, if:
- (a) either:
    - (i) the associate entity is an \*outward investing entity (non-ADI), an \*inward investment vehicle (general), or an \*inward investment vehicle (financial), for the relevant period; or
    - (ii) the associate entity is an \*inward investor (general) or an \*inward investor (financial) for the relevant period, and the condition in subsection (2A) of this section is satisfied; and
  - (b) neither section 820-35 (\$250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any \*debt deduction of the relevant associate entity for the income year; and
  - (c) for some or all of the relevant period, the relevant associate entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities); and
  - (d) the relevant associate entity is not an \*exempt entity for the income year.
- (2A) The condition referred to in subparagraph (2)(a)(ii) is that the relevant period consists of one or more periods each of which is either or both of these:
- (a) a period throughout which the \*associate entity carries on its \*business in Australia at or through one or more of its \*Australian permanent establishments;
  - (b) a period throughout which the associate entity holds any of the following assets:
    - (i) assets that are attributable to the associate entity's Australian permanent establishments;
    - (ii) other assets that are held for the purposes of producing the associate entity's assessable income.
- (3) The relevant entity's *associate entity debt* at a particular time during the relevant period is the total value of all the \*debt interests held by the relevant entity at that time that satisfy all of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 820-915

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- (a) the interests are \*on issue at that time;
  - (b) each of the interests was \*issued by a relevant associate entity;
  - (c) each of the interests gives rise to costs:
    - (i) that are \*debt deductions, for an income year, of the relevant associate entity that issued the interest; and
    - (ii) to the extent that the costs are not amounts mentioned in paragraph 820-40(2)(c) and are costs ordinarily payable to an entity other than the relevant entity—that are assessable income of the relevant entity for an income year;
  - (d) the terms and conditions for each of the interests are those that would apply if the relevant entity and the relevant associate entity that issued the interest were dealing at arm's length with each other.
- (4) For the purposes of subsection (3), take into account the value of a \*debt interest issued by a \*foreign entity only to the extent that the interest is attributable to any of the following assets that are held by the foreign entity throughout the relevant period:
- (a) assets that are attributable to the foreign entity's \*Australian permanent establishments;
  - (b) other assets held by the foreign entity for the purposes of producing the foreign entity's assessable income.

**820-915 Associate entity equity**

- (1) This section applies to an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI) or an \*inward investing entity (non-ADI) for a period (the *relevant period*) that is all or a part of an income year.
- (2) This section also applies, for the relevant entity, to each entity (*relevant associate entity*) that is an \*associate entity of the relevant entity and that is:
  - (a) an \*Australian entity; or
  - (b) a \*foreign entity that, throughout the relevant period, holds any of the following assets:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) assets that are attributable to the foreign entity's \*Australian permanent establishments;
  - (ii) other assets that are held for the purposes of producing the foreign entity's assessable income.
- (3) The relevant entity's *associate entity equity* at a particular time during the relevant period is the total value of:
- (a) all the \*equity interests that the entity holds, at that time, in relevant associate entities; and
  - (b) all the \*debt interests \*on issue and held by the relevant entity at that time that satisfy all of the following:
    - (i) the interests were \*issued by relevant associate entities;
    - (ii) neither the value of each of the interests, nor any part of that value, is all or a part of any \*cost-free debt capital of the issuer of the interest at that time;
    - (iii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a); and
  - (c) all the debt interests on issue and held by the relevant entity at that time that satisfy both of the following:
    - (i) the interests were issued by relevant associate entities;
    - (ii) each of the interests gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a), but the cost is not deductible from the assessable income of the issuer of the interest for any income year.
- (4) For the purposes of subsection (3), take into account the value of an \*equity interest in, or a \*debt interest issued by, a \*foreign entity only to the extent that the interest is attributable to assets covered by subparagraph (2)(b)(i) or (ii) that are held by the foreign entity throughout the relevant period.

### **820-920 Associate entity excess amount**

- (1) This section applies to an entity (the *relevant entity*) that is an \*outward investing entity (non-ADI) or an \*inward investing entity (non-ADI) for a period that is all or a part of an income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The relevant entity's **associate entity excess amount** at a particular time during that period is the result of applying the method statement in this subsection.

*Method statement*

- Step 1. Work out the premium excess amount (see subsection (3)), as at that particular time, for an \*associate entity of the relevant entity that is the issuer of an \*equity interest or a \*debt interest any value of which is all or a part of the relevant entity's \*associate entity equity at that time.
- Step 2. Add to the result of step 1 the attributable safe harbour excess amount (see subsection (4)) for that \*associate entity as at that time.
- Step 3. Apply steps 1 and 2 to all such \*associate entities of the relevant entity and add all the results that are positive amounts. The result of this step is the **associate entity excess amount**.

- (3) An \*associate entity's **premium excess amount** at a particular time during that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to an entity's \*overseas permanent establishments if it is an \*outward investing entity (non-ADI) at that time.

*Method statement*

- Step 1. Work out the value, as at that particular time, of all the \*associate entity equity of the relevant entity that is attributable to the \*associate entity (disregarding the value of any \*debt interest \*issued by the associate entity that is held by the relevant entity at that time).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 2. Work out the value, as at that time, of all the \*equity capital of the \*associate entity that is attributable to \*equity interests that the relevant entity holds in the associate entity at that time (except equity interests whose value is all or a part of the relevant entity's \*controlled foreign entity equity at that time).
- Step 3. Reduce the result of step 1 by the result of step 2. However, if the result of step 2 is a negative amount, the result of step 2 is taken to be nil for the purpose of this step.
- Step 4. Multiply the result of step 3 by:
- (a)  $\frac{20}{21}$  if the \*associate entity excess amount is applied for the purpose of working out the \*total debt amount of the relevant entity for that period under subsection 820-100(2), 820-200(2) or 820-210(2); or
  - (b)  $\frac{3}{4}$  if the associate entity excess amount is applied for the purpose of working out the \*adjusted on-lent amount of the relevant entity for that period under subsection 820-100(3), 820-200(3) or 820-210(3); or
  - (c)  $\frac{3}{4}$  if the associate entity excess amount is applied for the purpose of working out the \*safe harbour debt amount of the relevant entity for that period under section 820-95, 820-195 or 820-205; or
  - (d) the result of step 4 of the method statement in subsection (1) or (2) of section 820-110 (as appropriate) if the associate entity excess amount is applied for the purpose of working out the \*worldwide gearing debt amount of the relevant entity for that period.

The result of this step is the *premium excess amount*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) The \*associate entity's *attributable safe harbour excess amount* at a particular time during that period is the result of applying the method statement in this subsection. In applying the method statement, disregard any amount that is attributable to an entity's \*overseas permanent establishments if it is an \*outward investing entity (non-ADI) at that time.

*Method statement*

Step 1. Work out the \*safe harbour debt amount of the \*associate entity for the day during which that particular time occurs, as if:

- (a) the associate entity were an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI), as appropriate, for the period consisting only of that day; and
- (b) if the associate entity would otherwise be treated as an \*outward investor (financial) for that day and the relevant entity is not a \*financial entity throughout that day—the associate entity were an \*outward investor (general) for that day; and
- (c) if the associate entity would otherwise be treated as an \*inward investment vehicle (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an \*inward investment vehicle (general) for that day; and
- (d) if the associate entity would otherwise be treated as an \*inward investor (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an \*inward investor (general) for that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Step 2. Reduce the result of step 1 by the value of the \*adjusted average debt of the \*associate entity for that day as if it had been the kind of entity that it is taken to be under step 1 for that day. If the result of this step is a negative amount, it is taken to be nil.

Step 3. Multiply the result of step 2 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity that is attributable to the relevant entity at that time; and
- (b) the value, as at that time, of all the \*debt interests \*issued by the associate entity that are covered by subsection (5), and held by the relevant entity, at that time; and
- (c) the value, as at that time, of all the debt interests issued by the associate entity that are covered by subsection (6), and held by the relevant entity, at that time.

Step 4. Divide the result of step 3 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity; and
- (b) the value, as at that time, of all the \*debt interests \*issued by the associate entity that are covered by subsection (5) at that time; and
- (c) the value, as at that time, of all the debt interests issued by the associate entity that are covered by subsection (6) at that time.

(5) For the purposes of the method statement in subsection (4), this subsection covers a \*debt interest at a particular time if the interest satisfies all of the following:

- (a) the interest is \*on issue at that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) neither the value of the interest, nor any part of that value, is all or a part of any \*cost-free debt capital of the issuer of the interest at that time;
  - (c) the interest does not give rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).
- (6) For the purposes of the method statement in subsection (4), this subsection covers a \*debt interest at a particular time if the interest satisfies both of the following:
- (a) the interest is \*on issue at that time;
  - (b) the interest gives rise to a cost, at any time, that is covered by paragraph 820-40(1)(a), but the cost is not deductible from the assessable income of the issuer of the interest for any income year.

### **Subdivision 820-J—Equity interest in a trust or partnership**

#### **Guide to Subdivision 820-J**

##### **820-925 What this Subdivision is about**

This Subdivision provides for the meanings of an equity interest in a trust or partnership for the purposes of this Division.

#### **Table of sections**

920-930 *Equity interest* in a trust or partnership

##### **820-930 *Equity interest* in a trust or partnership**

###### *Application of provisions*

- (1) For the purposes of this Division and Division 230, an ***equity interest*** in an entity that is a trust or partnership has the meaning given by the provisions in Division 974 that are applied with the following modifications:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Modifications of Division 974**

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Subdivisions 974-C and 974-D	A reference in those provisions to a company is taken to be a reference to an entity that is a trust or a partnership
2	Subdivisions 974-C and 974-D	A reference in those provisions to the equity test in subsection 974-75(1) is taken to be a reference to the equity test in subsection (2) of this section
3	Section 974-75	The section does not apply and subsections (2) to (4) of this section apply instead
4	Section 974-80	The example does not apply
5	Section 974-95	A reference in those provisions to the table in subsection 974-75(1) is taken to be a reference to the table in subsection (2) of this section
6	Subsection 974-95(4)	The subsection does not apply
7	Subdivision 974-F	The Subdivision applies for the purposes of this section
8	Subdivisions 974-C, 974-D and 974-F	A reference in those provisions to the regulations is taken to be a reference to the regulations made under the provisions applied by this subsection

Note: An interest that satisfies both the equity test and the debt test set out in Subdivision 974-B is treated as a debt interest and not an equity interest (see that Subdivision in conjunction with the provisions applied by subsection (1)).

*Equity tests*

- (2) A \*scheme satisfies the equity test in this subsection in relation to an entity that is a trust or partnership if the scheme gives rise to an interest set out in the following table:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Equity interests</b>	
<b>Item</b>	<b>Interest</b>
1	In the case of a trust, an interest as a beneficiary of the trust In the case of a partnership, an interest as a partner in the partnership
2	An interest that carries a right to a variable or fixed return from the entity if either the right itself, or the amount of the return, is in substance or effect *contingent on the economic performance (whether past, current or future) of: (a) the entity; or (b) a part of the entity's activities; or (c) an *associate of the entity or a part of the activities of an associate of the entity  The return may be a return of an amount invested in the interest
3	An interest that carries a right to a variable or fixed return from the entity if either the right itself, or the amount of the return, is at the discretion of: (a) the entity; or (b) an *associate of the entity  The return may be a return of an amount invested in the interest
4	An *interest issued by the entity that: (a) gives its holder (or an *associate of the holder) a right to be issued with an *equity interest in the entity or an associate of the entity; or (b) is an interest that will, or may, convert into an equity interest in the entity or an associate of the entity

This subsection has effect subject to subsection (3) (requirement for financing arrangement).

Note: Section 974-90 as applied by subsection (1) allows regulations to be made clarifying when a right or return is taken to be at the discretion of an entity or an associate.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Financing arrangement*

- (3) A \*scheme that would otherwise give rise to an \*equity interest in an entity that is a trust or partnership because of an item in the table in subsection (2) (other than item 1) does not give rise to an equity interest in the entity unless the scheme is a \*financing arrangement (see section 974-130 as applied by this section) for the trust or partnership.

*Form interest may take*

- (4) The interest referred to in item 2, 3 or 4 in the table in subsection (2) may take the form of a proprietary right, a chose in action or any other form.

*Regulations*

- (5) Subject to regulations made under subsection (6), the regulations made under Subdivisions 974-C, 974-D and 974-F are applied for the purposes of this section as if they were regulations made under the provisions applied by subsection (1).
- (6) Regulations may be made under the provisions applied by subsection (1) specifically in relation to:
- (a) an \*equity interest in a trust; or
  - (b) an equity interest in a partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 820-K—Zero-capital amount

### Guide to Subdivision 820-K

#### 820-940 What this Subdivision is about

The zero-capital amount represents the value of certain assets that receive special treatment in working out the maximum allowable debt of a financial entity. This Subdivision sets out the rules about the calculation of this amount.

#### Table of sections

820-942 How to work out the zero-capital amount

#### 820-942 How to work out the zero-capital amount

- (1) An entity's *zero-capital amount* at a particular time is the result of the method statement in this subsection.

##### *Method statement*

- Step 1. Work out the total value, as at that particular time, of all the assets of the entity that represent \*debt interests that:
- (a) are of a kind commonly dealt in by entities that carry on a \*business of dealing in securities; and
  - (b) the entity has sold under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and
  - (c) the entity has not yet repurchased under the agreement or arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Step 2. Add to the result of step 1 the total value, as at that time, of all the \*debt interests issued to the entity to which the following paragraphs apply at that time:
- (a) the debt interests remain \*on issue;
  - (b) each of the debt interests is a loan of money for which no fees, charges or other consideration for the purpose of enhancing the credit rating of the issuer of the interest has been paid or is payable to the entity, any of the entity's \*associates or another entity that is a \*foreign entity;
  - (c) each of the entities issuing the interests has the required credit rating for the interests concerned in accordance with subsections (4) and (5).
- Step 3. Add to the result of step 2 the total value, as at that time, of all the \*debt interests that are assets of the entity (whether they are debt interests issued to the entity or not) and to which the following paragraphs apply at that time:
- (a) the risk weight of each of the debt interests is either 0% or 20% under the \*prudential standards;
  - (b) the debt interests do not satisfy all of the paragraphs in step 2.
- Step 3A. Add to the result of step 3 the total value, as at that time, of all the assets of the entity, to the extent that they:
- (a) consist of rights to the return of assets covered by subsection (2A); and
  - (b) are covered by none of steps 1, 2 and 3.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 4. Add to the result of step 3A the total value, as at that time, of all the \*securitised assets that the entity has at that time if the entity is a \*securitisation vehicle at that time (see subsections (2) and (3)). The result is the ***zero-capital amount***.

(2A) This subsection covers an asset that:

- (a) the entity provided as security for the performance of its obligations in relation to securities it acquired under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; and
- (b) does not consist of \*shares.

*Securitisation vehicle*

(2) An entity is a ***securitisation vehicle*** if:

- (a) it is an entity established for the purposes of acquiring, funding and holding \*securitised assets (see subsection (3)); and
- (b) it has acquired the securitised assets from another entity (the ***originator***); and
- (c) the acquisition of the securitised assets is wholly funded by the issuing of \*debt interests by the entity; and
- (d) in issuing the debt interests, the entity does not receive any guarantee, security or other form of credit support from any of its \*associate entities, the originator or any associate entity of the originator; and
- (e) the entity has not issued debt interests for any purpose other than for the purpose of funding the acquisition of the securitised assets; and
- (f) there are no debt interests issued to the entity by any of the entity's associate entities, the originator or any associate entity of the originator; and
- (g) any \*arrangements the entity has with any of its associate entities, the originator or any associate entity of the originator are those that would reasonably be expected to have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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entered into by parties dealing at arm's length with each other.

Note: An entity that does not qualify as a securitisation vehicle may be exempt from the thin capitalisation rules under section 820-39.

*Securitised assets*

- (3) An asset of an entity is a *securitised asset* if:
- (a) the entity is a \*securitisation vehicle; and
  - (b) the asset consists of:
    - (i) \*debt interests issued by an entity other than the originator in relation to the securitisation vehicle that is mentioned in paragraph (2)(b); or
    - (ii) a lease for the hire of goods that would be a lease covered by paragraph (b) of the definition of *on-lent amount* if a reference to an entity in that definition were a reference to that originator; or
    - (iii) a \*scheme that, apart from the operation of paragraph 974-25(1)(b), would have given rise to a debt interest covered by subparagraph (i); and
  - (c) the asset provides security for the issuing of debt interests that funded the acquisition of the asset by the securitisation vehicle (see paragraph (2)(c)).

*What is the required credit rating?*

- (4) For the purposes of step 2 of the method statement in subsection (1), the required credit rating for an entity issuing a \*debt interest is:
- (a) if the interest is a \*subordinated debt interest—a long-term foreign currency corporate credit rating of at least A (or equivalent) given to the entity by an internationally recognised rating agency; or
  - (b) if the interest is a not a subordinated debt interest—a long-term foreign currency corporate credit rating of at least BBB (or equivalent) given to the entity by an internationally recognised rating agency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*When must an entity have the required credit rating*

- (5) The entity must have the required credit rating as specified in any of the following paragraphs:
- (a) the entity had the required credit rating for the \* debt interest when the interest was issued;
  - (b) the following subparagraphs apply:
    - (i) the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency when the debt interest was issued; but
    - (ii) the entity had the required credit rating for that interest at any time during the period of 6 months immediately before the interest was issued;
  - (c) the following subparagraphs apply:
    - (i) when the debt interest was issued, and throughout the period of 6 months immediately before the interest was issued, the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency; but
    - (ii) the entity has the required credit rating for that interest at any time during the period of 6 months immediately after the interest was issued.

**Subdivision 820-KA—Cost-free debt capital and excluded equity interests**

**Guide to Subdivision 820-KA**

**820-945 What this Subdivision is about**

<p>This Subdivision sets out the meaning of cost-free debt capital, and excluded equity interest, for the purposes of this Division.</p>
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**Table of sections**

820-946 *Cost-free debt capital and excluded equity interest*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**820-946 Cost-free debt capital and excluded equity interest**

- (1) This subsection applies to an entity for a period (the *relevant period*) that is all or a part of an income year if the entity satisfies all of the following:
- (a) the entity is an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI) for that period;
  - (b) if the entity is a \*foreign entity—the entity holds any of the following assets throughout that period:
    - (i) assets that are attributable to the entity's \*Australian permanent establishments;
    - (ii) other assets that are held for the purposes of producing the entity's assessable income;
  - (c) neither section 820-35 (\$250,000 debt deductions threshold) nor section 820-37 (exemption for entity with 90% Australian assets) prevents Subdivision 820-B, 820-C, 820-D or 820-E from disallowing any \*debt deduction of the entity for the income year;
  - (da) for some or all of that period, the entity does *not* meet the conditions in subsection 820-39(3) (about exemption of certain special purpose entities);
  - (d) the entity is not an \*exempt entity for the income year.
- Note: Paragraph (c) corresponds to the threshold tests for this Division set out in sections 820-35 and 820-37.
- (2) The *cost-free debt capital* of the entity at a particular time during the relevant period is the total value of all the \*debt interests \*issued by the entity that satisfy all of the following:
- (a) the interests are \*on issue at that time;
  - (b) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a);
  - (c) each of the interests is covered by subsection (3) or (4) of this section at that time.
- (2A) An \*equity interest in the entity is an *excluded equity interest* at a particular time during the relevant period if, and only if:
- (a) if subsection (1) does not apply to the holder of the interest for all or part of the relevant period:
    - (i) the entity is an \*associate of the holder; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) at that time, the interest has been \*on issue for a period of less than 180 days; or
  - (b) if subsection (1) applies to the holder for all or part of the relevant period:
    - (i) the entity is an associate of the holder; and
    - (ii) at that time, the interest has been on issue for a period of less than 180 days; and
    - (iii) the interest is covered by subsection (3) at that time.
- However, the interest is taken *not* to have been an ***excluded equity interest*** at the time if the total period for which the interest remains on issue is 180 days or more.
- (3) This subsection covers a \*debt interest or \*equity interest held by an entity (the ***holder***) at the particular time mentioned in subsection (2) or (2A) if:
    - (a) subsection (1) also applies to the holder for a period (the ***overlapped period***) that is, or includes, all or a part of the relevant period; and
    - (b) for the purposes of applying this Division to both the holder and the issuer of the interest (the ***issuer***), and in relation to only that part of the overlapped period that falls within the relevant period, either or both of the following apply:
      - (i) the \*valuation days used to calculate the average value of the holder's assets are different from the valuation days used to calculate the issuer's \*adjusted average debt;
      - (ii) the number of valuation days used to calculate the average value of the holder's assets are different from the number of valuation days used to calculate the issuer's adjusted average debt.
  - (4) This subsection covers a \*debt interest held by an entity (the ***holder***) at the particular time mentioned in subsection (2) if:
    - (a) subsection (1) does not apply to the holder for a period that is, or includes, all or a part of the relevant period; and
    - (b) at that time, the debt interest has been \*on issue for a period of less than 180 days.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

However, if the total period for which the interest remains on issue is 180 days or more, this subsection is taken *not* to have covered the interest at that time.

- (5) For the purposes of subsection (2), take into account the value of a \*debt interest issued by a \*foreign entity only to the extent that the interest is attributable to assets covered by subparagraph (1)(b)(i) or (ii) that are held by the foreign entity throughout the relevant period.

## **Subdivision 820-L—Record keeping requirements**

### **Guide to Subdivision 820-L**

#### **820-950 What this Subdivision is about**

This Subdivision sets out special record keeping requirements and related provisions about the following:

- (a) an entity that carries on its business at or through its Australian permanent establishments;
- (b) an arm's length debt amount or arm's length capital amount worked out under this Division.

#### **Table of sections**

##### **Records about Australian permanent establishments**

820-960 Records about Australian permanent establishments

820-965 Review of Commissioner's decision

##### **Records about arm's length amounts**

820-980 Records about arm's length debt amount and arm's length capital amount

##### **Records about asset revaluations**

820-985 Methodology of revaluation and independence of valuer

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Offences committed by certain entities**

820-990 Offences—treatment of partnerships

820-995 Offences—treatment of unincorporated companies

**Records about Australian permanent establishments**

**820-960 Records about Australian permanent establishments**

- (1) If an entity:
- (a) is an \*inward investor (general), \*inward investor (financial) or \*inward investing entity (ADI), for all or a part of an income year; and
  - (b) carries on its \*business at or through one or more of its \*Australian permanent establishments throughout that year; and
  - (c) has total revenues attributable to those Australian permanent establishments for that year that are at least \$2,000,000;
- the entity must keep for that year the records for which subsection (1A) or (1B) provides.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

*Australian accounting standards*

- (1A) If the entity chooses this subsection, it must keep the following records for the \*Australian permanent establishments:
- (a) a statement of financial position (within the meaning of the \*accounting standards);
  - (b) a statement of financial performance (within the meaning of those standards).
- The statements must:
- (c) be prepared in accordance with the \*accounting standards (in particular, but not limited to, accounting standards AASB 1001, AASB 1018 and AASB 1040); and
  - (d) include all the notes required to accompany them under the standards.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Overseas and international accounting standards*

- (1B) If the entity chooses this subsection, it must keep for the \*Australian permanent establishments the statements (however described) that, under standards covered by subsection (1C) or (1D) (the *overseas or international accounting standards*), correspond to the statements referred to in subsection (1A). The statements must:
- (a) be prepared in accordance with those standards; and
  - (b) include all the notes required to accompany them under those standards.
- (1C) This subsection covers the standards (however described) that correspond to the \*accounting standards and are made by the responsible body in:
- (a) the United Kingdom of Great Britain and Northern Ireland; or
  - (b) the United States of America; or
  - (c) Canada; or
  - (d) New Zealand; or
  - (e) Japan; or
  - (f) the French Republic; or
  - (g) the Federal Republic of Germany.
- (1D) This subsection covers the international accounting standards made or adopted by the International Accounting Standards Board.

*Requirements for the records under subsection (1A) or (1B)*

- (2) The entity must prepare the records for which subsection (1A) or (1B) provides:
- (a) before the time by which the entity must lodge its \*income tax return for the income year; and
  - (b) as if:
    - (i) the \*Australian permanent establishments were an entity (the *notional entity*) for which those records would be required to be prepared under the \*accounting standards or the overseas or international accounting standards, as appropriate; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) for the purposes of the statement of financial position or the corresponding statement, as appropriate—the assets, liabilities (including \*debt capital) and \*equity capital that are attributable to the Australian permanent establishments for that income year were assets, liabilities and equity of the notional entity for that year; and
- (iii) for the purposes of the statement of financial performance or the corresponding statement, as appropriate—the revenues and expenses that are attributable to the Australian permanent establishments for that year were the revenues and expenses of the notional entity for that year; and
- (iv) the \*accounting standards, or the overseas or international accounting standards, as appropriate, referred to income years instead of financial years or the corresponding term in the overseas or international accounting standards.

*Commissioner's power to exempt from complying with Australian accounting standards*

- (4) The Commissioner may decide that an entity, or entities in a class of entities, need not comply with all or any part of the \*accounting standards for one or more income years for the purposes of subsection (1A) if the Commissioner is satisfied that it would be unreasonable that the entity, or the entities in that class, be required to do so.

Note: The Commissioner's power under this subsection does not extend to the overseas or international accounting standards.

- (5) The Commissioner:
  - (a) may make a decision under subsection (4) in such cases and to such extent as the Commissioner thinks fit; and
  - (b) must make the decision in writing; and
  - (c) cause a copy of the decision to be published in the *Gazette*.The decision has effect despite subsection (1A).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Excluding Australian permanent establishments not covered by applicable double tax treaty*

- (6) An entity need not comply with this section for an income year in relation to an \*Australian permanent establishment if:
- (a) throughout that year, the entity was, for the purposes of a double tax agreement (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in relation to a foreign country, a resident of that foreign country (even if the entity was also an Australian resident or a resident of another foreign country); and
  - (b) throughout the period during that year when the entity was carrying on its \*business at or through that Australian permanent establishment, the Australian permanent establishment was *not* a permanent establishment within the meaning of that double tax agreement.

### **820-965 Review of Commissioner's decision**

A person who is dissatisfied with a decision of the Commissioner under subsection 820-960(4) may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

### **Records about arm's length amounts**

#### **820-980 Records about arm's length debt amount and arm's length capital amount**

- (1) An entity must keep records under this section for an \*arm's length debt amount or \*arm's length capital amount that the entity worked out for the purposes of this Division.
- (2) The records must contain particulars about the factual assumptions and relevant factors mentioned in section 820-105, 820-215, 820-315 or 820-410 (as appropriate) that have been taken into account in working out that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The entity must prepare the records before the time by which the entity must lodge its \*income tax return for the income year in relation to all or a part of which the amount is worked out.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

## Records about asset revaluations

### 820-985 Methodology of revaluation and independence of valuer

- (1) An entity must keep records under this section for a revaluation of assets mentioned in subsection 820-680(2) (except a revaluation that need not comply with that subsection because of subsection 820-680(2A)) or 820-684(2).
- (2) The records must contain particulars about:
- (a) the methodology used in making the revaluation (including any assumptions made); and
  - (b) how that methodology was applied (including the data and other information used); and
  - (c) who made the revaluation; and
  - (d) that person's qualifications and experience as an expert in valuing assets of the relevant kind; and
  - (e) the remuneration and expenses paid to that person.
- (3) If the revaluation was made in accordance with subsection 820-680(2B) (about external validation of a revaluation made internally), the records must also contain particulars of:
- (a) who was the external expert referred to in that subsection; and
  - (b) his or her qualifications and experience as an expert in valuing assets of the relevant kind; and
  - (c) the remuneration and expenses paid to him or her; and
  - (d) his or her review of the methodology for making the revaluation (as required by subparagraph 820-680(2B)(b)(ii)); and
  - (e) his or her agreement that the methodology is suitable for making it (as required by subparagraph 820-680(2B)(b)(iii)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

This subsection extends to subsection 820-680(2B) as it applies because of subsection 820-684(5).

Note: Section 820-684 allows some revaluations that are not allowed by the accounting standards.

- (4) The entity must prepare the records before the time by which the entity must lodge its \*income tax return for the income year in relation to all or a part of which the revaluation is made.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

## Offences committed by certain entities

### 820-990 Offences—treatment of partnerships

- (1) The provisions set out in the following paragraphs (the *relevant provisions*) apply, in relation to records required to be kept under this Subdivision, to a partnership as if it were a person, but with the modifications set out in this section:
- (a) sections 820-960 and 820-980;
  - (b) section 262A of the *Income Tax Assessment Act 1936*;
  - (c) Part III of the *Taxation Administration Act 1953*.
- (2) If the relevant provisions would otherwise require or permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (3) An obligation that would otherwise be imposed on the partnership by the relevant provisions:
- (a) is imposed on each partner instead; but
  - (b) may be discharged by any of the partners.
- (4) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under the relevant provisions.
- (5) An offence against any of the relevant provisions that would otherwise be committed by the partnership is taken to have been committed by each partner who:
- (a) did the relevant act or made the relevant omission; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the partner).
- (6) For the purposes of subsection (5):
- (a) to establish that a partnership engaged in a particular conduct, it is sufficient to show that the conduct was engaged in by a partner:
    - (i) in the ordinary course of the business of the partnership; or
    - (ii) within the scope of the actual or apparent authority of the partner; and
  - (b) to establish that a partnership had a particular state of mind when it engaged in that conduct, it is sufficient to show that the partner had the relevant state of mind.
- (7) For the purposes of the relevant provisions, a change in the composition of a partnership does not affect the continuity of the partnership.

### **820-995 Offences—treatment of unincorporated companies**

- (1) The provisions set out in the following paragraphs (the *relevant provisions*) apply, in relation to records required to be kept under this Subdivision, to an unincorporated company as if it were a person, but with the modifications set out in this section:
- (a) sections 820-960 and 820-980;
  - (b) section 262A of the *Income Tax Assessment Act 1936*;
  - (c) Part III of the *Taxation Administration Act 1953*.
- (2) If the relevant provisions would otherwise require or permit something to be done by the company, the thing may be done by one or more members of the company's committee of management (the *members*) on behalf of the company.
- (3) An obligation that would otherwise be imposed on the company by the relevant provisions:
- (a) is imposed on each member instead; but

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) may be discharged by any of the members.
- (4) The members are jointly and severally liable to pay an amount that would otherwise be payable by the company under the relevant provisions.
- (5) An offence against any of the relevant provisions that would otherwise be committed by the company is taken to have been committed by each member who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the member).
- (6) For the purposes of subsection (5), to establish that the company had a particular state of mind when it engaged in a particular conduct, it is sufficient to show that a member had the relevant state of mind.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 830—Foreign hybrids

### Table of Subdivisions

	Guide to Division 830
830-A	Meaning of “foreign hybrid”
830-B	Extension of normal partnership provisions to foreign hybrid companies
830-C	Special rules applicable while an entity is a foreign hybrid
830-D	Special rules applicable when an entity becomes or ceases to be a foreign hybrid

### Guide to Division 830

#### 830-1 What this Division is about

This Division:

- (a) provides for certain entities (called foreign hybrids) that are treated as partnerships for the purposes of foreign income tax, but as companies for the purposes of tax within the meaning of this Act, to be treated as partnerships for the purposes of this Act; and
- (b) applies special rules to the entities in addition to those that normally apply to partnerships.

### Subdivision 830-A—Meaning of “foreign hybrid”

#### Table of sections

830-5	Foreign hybrid
830-10	Foreign hybrid limited partnership
830-15	Foreign hybrid company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**830-5 Foreign hybrid**

The expression *foreign hybrid* means:

- (a) a \*foreign hybrid limited partnership; or
- (b) a \*foreign hybrid company.

**830-10 Foreign hybrid limited partnership**

- (1) Subject to subsection (2), a \*limited partnership is a *foreign hybrid limited partnership* in relation to an income year if:
  - (a) it was formed in a foreign country; and
  - (b) \*foreign income tax (except \*credit absorption tax or \*unitary tax) is imposed under the law of the foreign country on the partners, not the limited partnership, in respect of the income or profits of the partnership for the income year; and
  - (c) at no time during the income year is the limited partnership, for the purposes of a law of any foreign country that imposes foreign income tax (except credit absorption tax or unitary tax) on entities because they are residents of the foreign country, a resident of that country; and
  - (d) disregarding subsection 94D(5) of the *Income Tax Assessment Act 1936*, at no time during the income year is it an Australian resident; and
  - (e) disregarding that subsection, in relation to the same income year of another taxpayer:
    - (i) the limited partnership is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
    - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.
- (2) If a partner is not an \*attributable taxpayer in relation to a \*limited partnership, then, for the purposes of applying the *Income Tax Assessment Act 1936* and this Act in relation to the partner's interest in the limited partnership, the limited partnership is a *foreign hybrid limited partnership* in relation to an income year for the partner if, and only if, the partner:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 830-15

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- (a) has made an election under former subsection 485AA(1) of the *Income Tax Assessment Act 1936*; or
  - (b) makes an election under this paragraph;  
in relation to the partner's interest in the partnership.
- (3) For the purposes of subsection (2), the limited partnership is a ***foreign hybrid limited partnership*** in relation to any income year during which an election referred to in paragraph (2)(a) or (2)(b) is in force.
- (4) An election can only be made under paragraph (2)(b) if:
- (a) disregarding subsection 94D(6) of the *Income Tax Assessment Act 1936*:
    - (i) at the end of the income year in which the election is made, the partner has an interest in a FIF (within the meaning of former Part XI of that Act) that is a \*corporate limited partnership; and
    - (ii) the interest consists of a \*share in the FIF; and
  - (b) the limited partnership satisfies paragraphs (1)(a) to (d) in relation to the income year in which the election is made.
- (5) An election under paragraph (2)(b) must be made:
- (a) on or before the day on which the partner lodges the partner's income tax return for the income year; or
  - (b) within a further time allowed by the Commissioner.
- (6) The election:
- (a) is in force during the income year and all later income years;  
and
  - (b) is irrevocable.

**830-15 Foreign hybrid company**

- (1) Subject to subsection (5), a company is a ***foreign hybrid company*** in relation to an income year if:
- (a) at all times during the income year when the company is in existence, the partnership treatment requirements for the income year in subsection (2) or (3) are satisfied; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) at no time during the income year is the company, for the purposes of a law of any foreign country that imposes \*foreign income tax (except \*credit absorption tax or \*unitary tax) on entities because they are residents of the foreign country, a resident of that country; and
- (c) at no time during the income year is the company an Australian resident; and
- (d) disregarding this Division, in relation to the same income year of another taxpayer:
  - (i) the company is a \*CFC at the end of a \*statutory accounting period that ends in the income year; and
  - (ii) at the end of the statutory accounting period, the taxpayer is an \*attributable taxpayer in relation to the CFC with an \*attribution percentage greater than nil.

*Partnership treatment requirements specific to USA*

- (2) For the purposes of paragraph (1)(a), the partnership treatment requirements are satisfied if:
  - (a) the company was formed in the United States of America; and
  - (b) for the purposes of the law of that country relating to \*foreign income tax (except \*credit absorption tax or \*unitary tax) imposed by that country, the company is a limited liability company that:
    - (i) is treated as a partnership; or
    - (ii) is an eligible entity that is disregarded as an entity separate from its owner.

*Partnership treatment requirements relating to any foreign country*

- (3) For the purposes of paragraph (1)(a), the partnership treatment requirements are also satisfied if:
  - (a) the company was formed in a foreign country (which may be the United States of America); and
  - (b) for the purposes of the law of that country relating to \*foreign income tax (except \*credit absorption tax or \*unitary tax) imposed by that country, the company is treated as a partnership; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) regulations are in force setting out requirements to be satisfied by a company in relation to the income year for the purposes of this paragraph, and the company satisfies those requirements.
- (4) Regulations for the purposes of paragraph (3)(c) cannot set out requirements in relation to any income year before the one in which the regulations are made.
- (5) If a shareholder is not an \*attributable taxpayer in relation to a company, then, for the purposes of applying the *Income Tax Assessment Act 1936* and this Act in relation to the shareholder's \*share or shares in the company, the company is a **foreign hybrid company** in relation to an income year for the shareholder if, and only if, the shareholder:
  - (a) has made an election under former subsection 485AA(1) of the *Income Tax Assessment Act 1936*; or
  - (b) makes an election under this paragraph;in relation to the shareholder's share or shares in the company.
- (6) For the purposes of subsection (5), the company is a **foreign hybrid company** in relation to any income year during which the election referred to in paragraph (5)(a) or (5)(b) is in force.
- (7) An election can only be made under paragraph (5)(b) if:
  - (a) in relation to the income year in which the election is made, the company:
    - (i) is a FIF (within the meaning of former Part XI of the *Income Tax Assessment Act 1936*); and
    - (ii) satisfies paragraphs (1)(a) to (c); and
  - (b) at the end of the income year in which the election is made, the shareholder's interest in the FIF consists of one or more \*shares in the FIF.
- (8) An election under paragraph (5)(b) must be made:
  - (a) on or before the day on which the shareholder lodges the shareholder's income tax return for the income year; or
  - (b) within a further time allowed by the Commissioner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(9) The election:

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

(b) is irrevocable.

### **Subdivision 830-B—Extension of normal partnership provisions to foreign hybrid companies**

Note: The normal partnership provisions will apply of their own force to foreign hybrids that are foreign hybrid limited partnerships.

#### **Table of sections**

830-20	Treatment of company as a partnership
830-25	Partners are the shareholders in the company
830-30	Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits
830-35	Partner's interest in assets
830-40	Control and disposal of share in partnership income

#### **830-20 Treatment of company as a partnership**

If a company is a \*foreign hybrid company in relation to an income year, the \*foreign hybrid tax provisions apply as if the company were a partnership, and for that purpose the following provisions of this Subdivision have effect.

#### **830-25 Partners are the shareholders in the company**

The partners in the partnership are the \*shareholders in the company.

#### **830-30 Individual interest of a partner in net income etc. equals percentage of notional distribution of company's profits**

The individual interest of a partner in the \*net income or \*partnership loss of the partnership of the income year is equal to the percentage that, if the profits of the company for the income year were distributed at the end of the income year to its \*shareholders:

(a) if paragraph (b) does not apply—as dividends; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) if the company's \*constitution or other rules provide for the distribution of profits other than as dividends—in accordance with the constitution or those rules;  
the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

### 830-35 Partner's interest in assets

- (1) The interest that each partner has in the assets of the partnership, under the partnership agreement, is equal to the percentage in subsection (2).
- (2) The percentage is the percentage that, if the capital of the company were distributed to its \*shareholders on a winding-up of the company at the end of the income year, the partner, as a shareholder, could reasonably be expected to receive of the total distribution.

### 830-40 Control and disposal of share in partnership income

- (1) This section applies for the purposes of determining under section 94 of the *Income Tax Assessment Act 1936* whether the partnership is so constituted or controlled, or its operations are so conducted, that a partner does not have the real and effective control and disposal of the partner's share, or a part of the partner's share, in the \*net income of the partnership of an income year.
- (2) The reference to the partner's share, or a part of the partner's share, in the \*net income is a reference to any rights that the \*shareholder has under the \*constitution or other rules of the company that were taken into account under section 830-30 in working out the individual interest of the partner in the partnership's net income or \*partnership loss of the income year.

### Subdivision 830-C—Special rules applicable while an entity is a foreign hybrid

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Table of sections**

830-45	Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount
830-50	Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount
830-55	Meaning of <i>foreign hybrid net capital loss amount</i>
830-60	Meaning of <i>loss exposure amount</i>
830-65	Meaning of <i>outstanding foreign hybrid revenue loss amount</i>
830-70	Meaning of <i>outstanding foreign hybrid net capital loss amount</i>
830-75	Extended meaning of <i>subject to foreign tax</i>

**830-45 Partner's revenue and net capital losses from foreign hybrid not to exceed partner's loss exposure amount**

- (1) This section applies to a \*limited partner in a \*foreign hybrid in relation to an income year if the sum of the following amounts:
- any amount (a *foreign hybrid revenue loss amount*) allowable to the partner as a deduction under subsection 92(2) of the *Income Tax Assessment Act 1936* in respect of a \*partnership loss of the foreign hybrid for the income year;
  - any \*foreign hybrid net capital loss amount of the partner in respect of the foreign hybrid for the income year;
- exceeds the partner's \*loss exposure amount for the income year.

*Reduction in foreign hybrid revenue loss amount or foreign hybrid net capital loss amount*

- (2) If this section applies, the amount mentioned in paragraph (1)(a) or (b), or each of the amounts mentioned in those paragraphs, is reduced so that in total they equal the partner's \*loss exposure amount. The partner must choose how much of the reduction is applied to each of the amounts.

*Effect of reducing foreign hybrid net capital loss amount*

- (3) If the partner's \*foreign hybrid net capital loss amount in respect of the \*foreign hybrid for the income year is reduced under subsection (2), the partner's \*net capital gain or \*net capital loss for the income year is worked out by assuming that the \*capital gains

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

and \*capital losses taken into account in working out the partner's foreign hybrid net capital loss amount were instead a capital loss equal to the foreign hybrid net capital loss amount after the reduction.

**830-50 Deduction etc. where partner's foreign hybrid revenue loss amount and foreign hybrid net capital loss amount are less than partner's loss exposure amount**

- (1) This section applies if:
- (a) the sum of a partner's \*foreign hybrid revenue loss amount and \*foreign hybrid net capital loss amount for a \*foreign hybrid for an income year does not exceed the partner's \*loss exposure amount for the foreign hybrid for the income year (the difference being the partner's *available loss exposure amount*); and
  - (b) the partner has one or more \*outstanding foreign hybrid revenue loss amounts or one or more \*outstanding foreign hybrid net capital loss amounts, or both, in respect of the foreign hybrid for the income year.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts does not exceed available loss exposure amount*

- (2) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts does not exceed the \*available loss exposure amount:
- (a) a deduction is allowable to the partner for the income year equal to the sum of the outstanding foreign hybrid revenue loss amounts; and
  - (b) the partner makes a \*capital loss for the income year under section 104-270 equal to the sum of the outstanding foreign hybrid net capital loss amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Where sum of outstanding foreign hybrid revenue loss amounts and outstanding foreign hybrid net capital loss amounts exceeds available loss exposure amount*

- (3) If the sum of the \*outstanding foreign hybrid revenue loss amounts and the \*outstanding foreign hybrid net capital loss amounts exceeds the \*available loss exposure amount, then either or both of the following apply:
- (a) a deduction is allowable to the partner for the income year equal to some or all of the outstanding foreign hybrid revenue loss amounts;
  - (b) the partner makes a \*capital loss under section 104-270 equal to some or all of the outstanding foreign hybrid net capital loss amounts;
- such that the sum of the deduction and the capital loss equals the available loss exposure amount.

*Partner to choose how to apply subsection (3)*

- (4) The partner must choose:
- (a) which of paragraphs (3)(a) and (b) is to apply or whether both are to apply; and
  - (b) the amount of the deduction or \*capital loss, or the amounts of both; and
  - (c) the particular outstanding foreign hybrid revenue loss amounts or outstanding foreign hybrid net capital loss amounts, or both, to which they relate.

### **830-55 Meaning of *foreign hybrid net capital loss amount***

If:

- (a) the sum of a partner's \*capital losses from \*CGT events happening during an income year in relation to a \*foreign hybrid or \*CGT assets of a foreign hybrid;

exceeds:

- (b) the sum of the partner's \*capital gains from CGT events happening during the income year in relation to the foreign hybrid or CGT assets of the foreign hybrid;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the partner has a *foreign hybrid net capital loss amount* in respect of the foreign hybrid for the income year equal to the excess.

### 830-60 Meaning of *loss exposure amount*

- (1) The *loss exposure amount* of a partner in a \*foreign hybrid for an income year is worked out as follows:

*Method statement*

Step 1. Work out the sum of the amounts or \*market values of the contributions made by the partner to the \*foreign hybrid that, as at the end of the income year:

- (a) have not been repaid or returned to the partner; and
- (b) have been contributed for at least 180 days, or are intended by the partner to remain contributed for at least 180 days.

Step 2. Subtract the sum of the amounts of:

- (a) all \*limited recourse debts owed by the partner at the end of the income year, to the extent that the \*borrowings concerned were for the purpose of enabling the partner to make contributions to the \*foreign hybrid and the debts were secured by the partner's interest in the foreign hybrid; and
- (b) all the partner's \*foreign hybrid revenue loss amounts in respect of the foreign hybrid for previous income years, after any reduction under subsection 830-45(2); and
- (c) all the partner's \*foreign hybrid net capital loss amounts in relation to the partnership for previous income years, after any reduction under subsection 830-45(2); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (d) all deductions allowed to the partner under subsection 830-50(2) or (3) in respect of the foreign hybrid for previous income years; and
- (e) all \*capital losses that, as a result of subsection 830-50(2) or (3), the partner made in respect of \*CGT event K12 in respect of the foreign hybrid for previous income years.

*Contribution in case of foreign hybrid company*

- (2) For the purposes of step 1 in the method statement in subsection (1), if:
- (a) the \*foreign hybrid is a \*foreign hybrid company; and
  - (b) the partner \*acquired its \*shares in the company from another shareholder; and
  - (c) the payment or other consideration for the acquisition of the shares did not constitute the making of a contribution by the partner to the foreign hybrid;
- the payment or other consideration is taken:
- (d) to be a contribution by the partner to the foreign hybrid; and
  - (e) to be so contributed for as long as the partner holds the shares; and
  - (f) to have been repaid to the partner to the extent of any payment that:
    - (i) the foreign hybrid makes to the partner in respect of the share; and
    - (ii) the foreign hybrid describes as a return of capital; and
    - (iii) is attributable to the period during which the partner has held the shares.

**830-65 Meaning of *outstanding foreign hybrid revenue loss amount***

- (1) This section applies if a \*foreign hybrid revenue loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The partner has, for each later income year, an ***outstanding foreign hybrid revenue loss amount*** equal to the amount of the reduction, less the sum of any deductions allowable to the partner under subsection 830-50(2) or (3) in respect of the outstanding foreign hybrid revenue loss amount for income years between the reduction year and the later income year.

*Outstanding foreign hybrid revenue loss amount not to form part of tax loss*

- (3) To avoid doubt, a partner's \*outstanding foreign hybrid revenue loss amount for an income year cannot form part of a \*tax loss for the purposes of Division 36.

### **830-70 Meaning of *outstanding foreign hybrid net capital loss amount***

- (1) This section applies if a \*foreign hybrid net capital loss amount of a partner in a \*foreign hybrid in relation to an income year (the ***reduction year***) is reduced under subsection 830-45(2).
- (2) The partner has, for each later income year, an ***outstanding foreign hybrid net capital loss amount*** equal to the amount of the reduction, less the sum of any \*capital losses that, as a result of subsection 830-50(2) or (3), the partner makes in respect of \*CGT event K12 in respect of the outstanding foreign hybrid net capital loss amount for income years between the reduction year and the later income year.

### **830-75 Extended meaning of *subject to foreign tax***

*Where entity becomes a partner*

- (1) If:
- (a) an entity becomes a partner (the ***first partner***) in a \*foreign hybrid in relation to an income year; and
  - (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other partner's interest in an asset of the foreign hybrid that happens when the first partner becomes a partner; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to foreign tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to foreign tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where partner increases its interest*

(2) If:

- (a) an entity is a partner (the **first partner**) that increases its interest in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to another partner as a result of the disposal of the whole or part of that other partner's interest in an asset of the foreign hybrid that happens when the first partner increases its interest in the foreign hybrid; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) if the foreign hybrid had disposed of the whole or an equivalent part of the asset at the time of the disposal of the whole or the part of the interest, any gain or profit of a capital nature that accrued to the foreign hybrid in respect of the disposal would have been subject to foreign tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to foreign tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Where entity ceases to be a partner*

(3) If:

- (a) an entity ceases to be a partner in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of its interest in an asset of the foreign hybrid that happens when the entity ceases to be a partner; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of its interest in the foreign hybrid that happens when the entity ceases to be a partner is subject to foreign tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to foreign tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

*Where partner disposes of part of its interest*

(4) If:

- (a) an entity is a partner that disposes of part of its interest in a \*foreign hybrid in relation to an income year; and
- (b) a gain or profit of a capital nature accrues to the entity as a result of the disposal of part of its interest in an asset of the foreign hybrid that happens when the entity disposes of the part of its interest in the foreign hybrid; and
- (c) apart from this subsection, the gain or profit is not \*subject to tax in a \*listed country in any \*tax accounting period; and
- (d) any gain or profit of a capital nature that accrues to the entity as a result of the disposal of the part of its interest in the foreign hybrid is subject to foreign tax in a listed country in a tax accounting period;

then, for the purposes of Part X of the *Income Tax Assessment Act 1936*, the gain or profit mentioned in paragraph (b) is taken to be subject to foreign tax in the listed country, and in the tax accounting period, mentioned in paragraph (d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **Subdivision 830-D—Special rules applicable when an entity becomes or ceases to be a foreign hybrid**

Note: In the case of a foreign hybrid company, references in this Subdivision that relate to partnerships are to be read subject to Subdivision 830-B. For example, a reference to a partner will be a reference to a shareholder in the company who is treated by Subdivision 830-B as a partner.

#### **Table of sections**

830-80	Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid
830-85	Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid
830-90	What the expression <i>tax cost is set</i> means
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830-105	What the expression <i>asset-based income tax regime</i> means
830-110	No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid
830-115	Tax losses cannot be transferred to a foreign hybrid
830-120	End of CFC's last statutory accounting period
830-125	How long interest in asset, or asset, held

#### **830-80 Setting the tax cost of partners' interests in the assets of an entity that becomes a foreign hybrid**

- (1) This section applies if:
  - (a) an entity is a \*foreign hybrid in relation to an income year (the *hybrid year*); and
  - (b) the entity was in existence at the end of the preceding income year (which may be the income year before this Division first applies to the entity); and
  - (c) the entity was not a foreign hybrid in relation to that preceding income year.
- (2) For the purposes of applying an \*asset-based income tax regime for the hybrid year and each later income year in relation to which the entity continues to be a foreign hybrid, the \*tax cost is set at the start of the hybrid year, for each asset of the \*foreign hybrid in which each partner has an interest at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**830-85 Setting the tax cost of assets of an entity when it ceases to be a foreign hybrid**

- (1) This section applies if:
- (a) an entity is a \*foreign hybrid in relation to an income year; and
  - (b) the entity is in existence at the start of the next income year; and
  - (c) the entity is not a foreign hybrid in relation to that income year (the *post-hybrid year*).
- (2) For the purposes of applying an \*asset-based income tax regime for the post-hybrid year and each later income year in relation to which the entity continues not to be a foreign hybrid, the \*tax cost is set at the start of the post-hybrid year, for each asset of the entity at that time.

**830-90 What the expression *tax cost is set* means**

The following table explains what the expression *tax cost is set* at the start of the hybrid year or the post-hybrid year means, in relation to an asset in which a partner has an interest or in relation to an asset of the entity, for the purposes of each \*asset-based income tax regime:

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
2	Division 70	the value of the interest or the asset at the start of the hybrid year or the post-hybrid year under Division 70 is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the Division applies as if the interest or the asset were *acquired by the partner or the entity at the start of the hybrid year or the post-hybrid year for a payment equal to the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax cost is set</b>		
<b>Item</b>	<b>If the following asset-based income tax regime is to apply:</b>	<b>The expression means that:</b>
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or asset at the start of the hybrid year or the post-hybrid year is varied so that it equals the partner's *tax cost setting amount for the interest, or the entity's tax cost setting amount for the asset, at that time in relation to the *asset-based income tax regime

**830-95 What the expression *tax cost setting amount* means**

- (1) A partner's *tax cost setting amount* for an interest of the partner in an asset at the start of the hybrid year, in relation to an \*asset-based income tax regime, is worked out as follows:

*Method statement*

Step 1. Work out what would have been the entity's \*tax cost of the asset for the purposes of applying the \*asset-based income tax regime as at the start of the hybrid year if it were not a \*foreign hybrid in relation to the hybrid year.

Step 2. Multiply the result of step 1 by:

(a) if the entity is a \*foreign hybrid company in relation to the hybrid year—the percentage applicable to the partner under subsection 830-35(2); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) if the entity is a \*foreign hybrid limited partnership in relation to the hybrid year—the individual interest of the partner in the asset, expressed as a percentage of the interests of all of the partners in the asset.

Step 3. If the partner paid a premium in respect of the \*acquisition of its interest in the asset (see subsection (2)), add the amount of the premium to the result of step 2. If the partner received a discount in respect of the acquisition (see subsection (2)), subtract the amount of the discount from the result of step 2, but not to the extent that this would result in a negative amount.

The result of step 3 is the partner's *tax cost setting amount* in respect of the asset.

- (2) Work out whether the partner paid a premium or received a discount for its interest in the asset using the following method statement:

*Method Statement*

Step 1. Add up all the amounts paid by the partner before the start of the hybrid year for its \*shares in the entity (if the entity was a company), or for its interests in the assets of the entity and in the entity (if the entity was a \*limited partnership), that it held at the start of the hybrid year, and subtract all amounts received by the partner in respect of those shares or interests by way of reduction in capital of the entity.

Step 2. Work out the amount that, if the capital of the entity had been distributed to its \*shareholders on a winding-up or to its partners on a dissolution, at the end of the income year before the hybrid year, the partner could reasonably be expected to have received of the total distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Step 3. If the result of step 1 exceeds the result of step 2, the partner paid a premium for its interest in the asset. If the result of step 2 exceeds the result of step 1, the partner received a discount for its interest in the asset.

Step 4. Work out the amount of the premium or discount using the formula:

$$\frac{\text{Result of step 1 in the method statement in subsection (1)}}{\text{Sum of results of step 1 in the method statement in subsection (1) for the partner for all of the *foreign hybrids assets in relation to the *asset-based income tax regime}} \times \text{Excess mentioned in step 3 in the method statement in this subsection}$$

- (3) The entity's *tax cost setting amount* for an asset at the start of the post-hybrid year in relation to an \*asset-based income tax regime is equal to the sum of what the partners' \*tax costs for their interests in the asset would be at that time for the purpose of applying the asset-based income tax regime if the entity had continued to be a \*foreign hybrid in relation to that income year.

**830-100 What the expression *tax cost* means**

The *tax cost* of a partner's interest in an asset or of an asset of the entity for the purposes of applying an \*asset-based income tax regime at the start of the post-hybrid year or the hybrid year is worked out using the following table:

<b>Tax cost of an asset</b>		
<b>Item</b>	<b>If the asset-based income tax regime is:</b>	<b>the tax cost of the interest or the asset is:</b>
1	Subdivisions 40-A to 40-D, sections 40-425 to 40-445 and Subdivision 328-D	the *adjustable value of the interest or the asset at the start of the post-hybrid year or the hybrid year

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>Tax cost of an asset</b>		
<b>Item</b>	<b>If the asset-based income tax regime is:</b>	<b>the tax cost of the interest or the asset is:</b>
2	Division 70	the value of the interest or the asset at the start of the post-hybrid year or the hybrid year under Division 70
3	Part 3-1 or 3-3	the *cost base or *reduced cost base of the interest or the asset at the start of the post-hybrid year or the hybrid year
4	Division 16E of Part III of the <i>Income Tax Assessment Act 1936</i>	the amount that the partner or entity would need to receive if it were to dispose of the interest or asset at the start of the post-hybrid year or the hybrid year without an amount being assessable income of, or deductible to, the partner or entity under section 159GS of the <i>Income Tax Assessment Act 1936</i>
5	Any other provision of this Act or the <i>Income Tax Assessment Act 1936</i>	the cost of the interest or the asset at the start of the post-hybrid year or the hybrid year

### **830-105 What the expression *asset-based income tax regime* means**

The provisions listed in the first column in relation to each item in the table in section 830-100 are an *asset-based income tax regime*.

### **830-110 No disposal of assets etc. on entity becoming or ceasing to be a foreign hybrid**

To avoid doubt, the fact that an entity becomes or ceases to be a \*foreign hybrid in relation to an income year does not cause:

- (a) a \*CGT event to happen to any \*CGT asset consisting of:
  - (i) any \*share or interest in the entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) any interest in an asset of the entity; or
- (b) a disposal or any other event to happen to any other asset consisting of such a share or interest.

### **830-115 Tax losses cannot be transferred to a foreign hybrid**

- (1) If an entity is a \*foreign hybrid in relation to an income year, it cannot deduct in that income year a \*tax loss for a \*loss year in relation to which it was not a foreign hybrid.

*Former foreign hybrid can deduct tax losses for income years before it became a foreign hybrid*

- (2) This section does not prevent an entity that:
  - (a) is not a \*foreign hybrid in relation to an income year (the *post-hybrid year*); and
  - (b) was a foreign hybrid in relation to a previous income year; and
  - (c) was not a foreign hybrid in relation to an income year (the *pre-hybrid year*) before the previous year;from deducting, in the post-hybrid year, a \*tax loss for the pre-hybrid year.

### **830-120 End of CFC's last statutory accounting period**

If:

- (a) a taxpayer is a partner in an entity that becomes a \*foreign hybrid in relation to an income year; and
- (b) the entity was a \*CFC at the end of the taxpayer's preceding income year; and
- (c) the last \*statutory accounting period of the CFC did not end at the end of the taxpayer's preceding income year; and
- (d) if it had so ended, the taxpayer would have been an \*attributable taxpayer in relation to the CFC;

for the purposes of working out the \*attributable income of the CFC for the taxpayer in respect of the last statutory accounting period of the CFC, that statutory accounting period ends at the end of the taxpayer's preceding income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**830-125 How long interest in asset, or asset, held***Partner's interest in asset when entity becomes a foreign hybrid*

- (1) If an entity becomes a \*foreign hybrid company in relation to an income year, the interest that a partner has in an asset as mentioned in section 830-35 is taken to have been held by the partner (except for the purposes of having the \*tax cost of the interest set) from the later of the following times:
- (a) when the entity \*acquired the asset;
  - (b) when the partner acquired its \*shares in the entity.

*Entity's asset when it ceases to be a foreign hybrid company*

- (2) If:
- (a) an entity is not a \*foreign hybrid company in relation to an income year (the *post-hybrid year*); and
  - (b) the entity was a \*foreign hybrid company in relation to the preceding income year; and
  - (c) during:
    - (i) that preceding income year; or
    - (ii) any earlier income year in relation to which the entity was also a foreign hybrid;but not at the start of the first income year in relation to which the entity was a foreign hybrid company, the partners in the foreign hybrid company \*acquired an interest in an asset that is an asset of the entity at the start of the post-hybrid year;
- the asset is taken to have been held by the entity (except for the purposes of having the \*tax cost of the asset set) from the time the partners acquired their interests in the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 840—Withholding taxes

### Table of Subdivisions

Guide to Division 840

840-M Managed investment trust withholding tax

### Guide to Division 840

#### 840-1 What this Division is about

This Division provides the rules to determine if you are liable to pay income tax in respect of certain Australian sourced income paid to you, or which you are entitled to receive.

The rules are relevant for foreign residents and certain other entities.

The income tax payable is a withholding tax. The associated withholding obligations are in the *Taxation Administration Act 1953*.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

#### Subdivision 840-M—Managed investment trust withholding tax

### Guide to Subdivision 840-M

#### 840-800 What this Subdivision is about

If you are a foreign resident you may be liable to pay income tax on certain amounts of Australian sourced net income (other than dividends, interest and royalties) of a managed investment trust that are either paid to you or to which you become entitled.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

A beneficiary of a trust in the capacity of a trustee of another trust will not be liable to income tax on these amounts.

Amounts on which there is a liability to pay withholding tax are non-assessable non-exempt income.

## Table of sections

### Operative provisions

840-805	Liability for managed investment trust withholding tax
840-810	When managed investment trust withholding tax is payable
840-815	Certain income is non-assessable non-exempt income
840-820	Agency rules

## Operative provisions

### 840-805 Liability for managed investment trust withholding tax

#### *Liability*

- (1) You are liable to pay income tax at the rate declared by the Parliament on the amount identified in subsection (2), (3) or (4) as the fund payment part if that subsection applies to you.

Note 1: The tax, which is called managed investment trust withholding tax, is imposed by the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* and the rate of the tax is set out in that Act.

Note 2: See Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* for provisions dealing with withholding from fund payments.

Note 3: This subsection does not apply to residents of information exchange countries for the first income year starting on or after the first 1 July after the day on which the *Tax Laws Amendment (Election Commitments No. 1) Act 2008* receives the Royal Assent. Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* applies instead.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Payments from managed investment trusts*

- (2) This subsection applies to you if:
- (a) you are paid an amount from a trust that is a \*managed investment trust in relation to an income year, or an amount is applied or dealt with as you direct by such a trust; and
  - (b) all or part of that amount (the *fund payment part*) is represented by a payment that is a \*fund payment in relation to that year; and
  - (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
  - (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct.

*Payments from custodians*

- (3) This subsection applies to you if:
- (a) you are paid an amount from a \*custodian, or an amount is applied or dealt with as you direct by a custodian; and
  - (b) all or part of that amount (the *fund payment part*) is reasonably attributable to a payment that is a \*fund payment in relation to an income year by a trust that is a \*managed investment trust in relation to that year; and
  - (c) you are, in respect of the fund payment part, a beneficiary (but not a beneficiary in the capacity of a trustee of another trust); and
  - (d) you are a foreign resident when you are paid the amount or when the amount is applied or dealt with as you direct; and
  - (e) either:
    - (i) the custodian is not a company; or
    - (ii) if it is a company, it would be acting in the capacity as your \*agent apart from section 840-820.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Entitlements to amounts from other entities*

- (4) This subsection applies to you if:
- (a) you are a beneficiary of a trust (that is not a \*managed investment trust or a \*custodian) and are presently entitled to a share of the income or capital of the trust; and
  - (b) all or part of that share (also the *fund payment part*) is reasonably attributable to a payment that is a \*fund payment in relation to an income year made by a trust that is a managed investment trust in relation to that year; and
  - (c) you are not, in respect of that share, a beneficiary in the capacity of a trustee of another trust; and
  - (d) you are a foreign resident at the time (the *entitlement time*) when you became presently entitled.

*Entitlement to capital of a trust*

- (5) For the purposes of this section, section 95A of the *Income Tax Assessment Act 1936* applies in relation to capital of a trust in the same way as it applies to income of the trust.

*Exception—Australian permanent establishments*

- (6) This section does not apply to you if:
- (a) you are paid the fund payment part, or it is applied or dealt with as you direct; or
  - (b) you become presently entitled to it;
- in the course of a \*business you carry on at or through an \*Australian permanent establishment.

*Exception—distributions on carried interests*

- (7) Subsections (2) and (3) do not apply to you to the extent that the fund payment part:
- (a) is included in your assessable income under subsection 275-200(2) (Gains etc. from carried interests) for the income year because you hold or held a \*CGT asset that carries an entitlement to a distribution mentioned in subsection 275-200(2); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) would be so included if subsection 275-200(3) were disregarded.
- (8) Subsection (4) does not apply to you to the extent that the fund payment part:
  - (a) is attributable to an amount included in the net income of the trust mentioned in that subsection because of subsection 275-200(2) (Gains etc. from carried interests) for the income year because the trust holds or held a \*CGT asset that carries an entitlement to a distribution mentioned in subsection 275-200(2); or
  - (b) would be so included if subsection 275-200(3) were disregarded.

**840-810 When managed investment trust withholding tax is payable**

- (1) \*Managed investment trust withholding tax is due and payable by you at the end of 21 days after:
  - (a) if subsection 840-805(2) or (3) applies to you—the end of the month in which the fund payment part is paid, applied or dealt with; or
  - (b) if subsection 840-805(4) applies to you—the end of the month in which the entitlement time occurs.
- (2) If any of the \*managed investment trust withholding tax that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the \*general interest charge on the unpaid amount for each day in the period that:
  - (a) starts at the beginning of the day by which the withholding tax was due to be paid; and
  - (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the withholding tax;
    - (ii) general interest charge on any of the withholding tax.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The Commissioner may give you a notice specifying:
  - (a) the amount of any \*managed investment trust withholding tax that the Commissioner has ascertained is payable by you; and
  - (b) the day on which that tax became due and payable.
- (4) The ascertainment of an amount of \*managed investment trust withholding tax is not an assessment for the purposes of this Act.
- (5) The production of a notice given under subsection (3), or of a copy of it certified by or on behalf of the Commissioner, is conclusive evidence that the notice was given and of the particulars in it.

### **840-815 Certain income is non-assessable non-exempt income**

An amount on which \*managed investment trust withholding tax is payable is not assessable income and is not \*exempt income of an entity.

### **840-820 Agency rules**

- (1) This section applies to:
  - (a) a payment (the *first payment*) made to a \*custodian in the capacity as \*agent for another entity; and
  - (b) another payment made by the custodian to the extent that it is reasonably attributable to the first payment.
- (2) This Subdivision has effect as if the \*custodian were not an \*agent in relation to the payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 842—Exempt Australian source income and gains of foreign residents**

### **Table of Subdivisions**

842-B Some items of Australian source income of foreign residents that are exempt from income tax

### **Subdivision 842-B—Some items of Australian source income of foreign residents that are exempt from income tax**

#### **Guide to Subdivision 842-B**

#### **842-100 What this Subdivision is about**

If you are a foreign resident, some of the income you derive while in Australia, or from Australian sources, may be exempt income.

#### **Table of sections**

842-105 Amounts of Australian source ordinary income and statutory income that are exempt

#### **842-105 Amounts of Australian source ordinary income and statutory income that are exempt**

The amounts of \*ordinary income and \*statutory income covered by the table are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Exempt amounts**

<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
1	a foreign resident	your remuneration paid by an *Australian government agency	the remuneration is paid to you: (a) for expert advice to that agency; or (b) as a member of a Royal Commission
2	a foreign resident who is: (a) the representative of the government of a foreign country, visiting Australia on behalf of that government; or (b) a member of the entourage of such a representative	your *ordinary income, and your *statutory income, in your official capacity as such a representative or member	none
3	a foreign resident visiting Australia: (a) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes; and (b) for the purpose of attending an international conference, or for the purpose of carrying on investigation or research for the society or association	your *ordinary income, and your *statutory income, in that capacity	none

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 4** International aspects of income tax

**Part 4-5** General

**Division 842** Exempt Australian source income and gains of foreign residents

Section 842-105

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<b>Exempt amounts</b>			
<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
4	a foreign resident visiting Australia: (a) in the capacity of representative of the media outside Australia; and (b) for the purpose of reporting the proceedings relating to any of the matters referred to in items 2 and 3	your *ordinary income, and your *statutory income, in that capacity	none
5	a member of the naval, military or air forces of the government of a foreign country	pay and allowances you earn in Australia as a member of those forces	the pay and allowances are not paid or provided by the Commonwealth
6	a foreign resident visiting Australia	your *ordinary income, and your *statutory income, that: (a) is from an occupation you carry on while in Australia; and (b) is not exempt from income tax in the country where you are ordinarily resident	in the opinion of the Treasurer, the visit and occupation are principally directed to assisting in the defence of Australia

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Exempt amounts**

<b>Item</b>	<b>If you are:</b>	<b>the following amounts are exempt from income tax:</b>	<b>subject to these exceptions and special conditions:</b>
7	(a) a foreign resident pursuing in Australia a course of study or training; and (b) in Australia for the sole purpose of pursuing that course	your * ordinary income, and your *statutory income, by way of a scholarship, bursary, or other educational allowance, provided by the Commonwealth	none

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 855—Capital gains and foreign residents**

### **Table of Subdivisions**

#### Guide to Division 855

- 855-A Disregarding a capital gain or loss by foreign residents
- 855-B Becoming an Australian resident

### **Guide to Division 855**

#### **855-1 What this Division is about**

A foreign resident can disregard a capital gain or loss unless the relevant CGT asset is a direct or indirect interest in Australian real property, or relates to a business carried on by the foreign resident through a permanent establishment in Australia.

Special rules apply for individuals who were Australian residents but have become foreign residents (see also Subdivision 104-I) and for foreign resident beneficiaries of fixed trusts.

There are also rules dealing with what happens when a foreign resident becomes an Australian resident.

### **Subdivision 855-A—Disregarding a capital gain or loss by foreign residents**

#### **Table of sections**

- 855-5 Objects of this Subdivision
- 855-10 Disregarding a capital gain or loss from CGT events
- 855-15 When an asset is taxable Australian property
- 855-20 Taxable Australian real property
- 855-25 Indirect Australian real property interests
- 855-30 Principal asset test
- 855-35 Reducing a capital gain or loss from a business asset—Australian permanent establishments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



855-40 Capital gains and losses of foreign residents through fixed trusts

### **855-5 Objects of this Subdivision**

- (1) The objects of this Subdivision are to improve:
  - (a) Australia's status as an attractive place for business and investment; and
  - (b) the integrity of Australia's capital gains tax base.
- (2) This is achieved by:
  - (a) aligning Australia's tax laws with international practice; and
  - (b) ensuring interests in an entity remain subject to Australia's capital gains tax laws if the entity's underlying value is principally derived from Australian real property.

### **855-10 Disregarding a capital gain or loss from CGT events**

- (1) Disregard a \*capital gain or \*capital loss from a \*CGT event if:
  - (a) you are a foreign resident, or the trustee of a \*foreign trust for CGT purposes, just before the CGT event happens; and
  - (b) the CGT event happens in relation to a \*CGT asset that is not \*taxable Australian property.

Note: A capital gain or capital loss from a CGT asset you have used at any time in carrying on a business through a permanent establishment in Australia may be reduced under section 855-35.

- (2) The \*CGT asset in relation to which a \*CGT event happens includes the following:
  - (a) for CGT event D1 (about creating contractual or other rights)—the CGT asset that is the subject of the creation of the contractual or other rights;

Example: You grant an easement over land in Australia. The land is the subject of the creation of the rights in the easement. Therefore, the CGT event happens in relation to the land.
  - (b) for CGT event D2 (about granting an option)—the CGT asset that is the subject of the option;
  - (c) for CGT event F1 (about granting a lease)—the CGT asset that is the subject of the lease;
  - (d) for CGT event J1 (about a company ceasing to be a member of wholly-owned group after roll-over)—the roll-over asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 855-15 When an asset is taxable Australian property

There are 5 categories of \*CGT assets that are *taxable Australian property*. They are set out in this table.

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CGT assets that are taxable Australian property	
Item	Description
1	*Taxable Australian real property (see section 855-20)
2	A *CGT asset that: (a) is an *indirect Australian real property interest (see section 855-25); and (b) is not covered by item 5 of this table
3	A *CGT asset that: (a) you have used at any time in carrying on a *business through a permanent establishment (within the meaning of section 23AH of the <i>Income Tax Assessment Act 1936</i> ) in Australia; and (b) is not covered by item 1, 2 or 5 of this table
4	An option or right to *acquire a *CGT asset covered by item 1, 2 or 3 of this table
5	A *CGT asset that is covered by subsection 104-165(3) (choosing to disregard a gain or loss on ceasing to be an Australian resident)

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Note: An asset is also taxable Australian property if it was acquired by a company after 28 January 1988 and before 26 May 1988 from a foreign resident as a result of a disposal for which there was a roll-over under section 160ZZN or 160ZZO of the *Income Tax Assessment Act 1936*: see section 136-25 of the *Income Tax (Transitional Provisions) Act 1997*.

### 855-20 Taxable Australian real property

A \*CGT asset is *taxable Australian real property* if it is:

- (a) real property situated in Australia (including a lease of land, if the land is situated in Australia); or
- (b) a \*mining, quarrying or prospecting right (to the extent that the right is not real property), if the minerals, \*petroleum or quarry materials are situated in Australia.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **855-25 Indirect Australian real property interests**

- (1) A \*membership interest held by an entity (the *holding entity*) in another entity (the *test entity*) at a time is an *indirect Australian real property interest* at that time if:
  - (a) the interest passes the \*non-portfolio interest test (see section 960-195):
    - (i) at that time; or
    - (ii) throughout a 12 month period that began no earlier than 24 months before that time and ended no later than that time; and
  - (b) the interest passes the principal asset test in section 855-30 at that time.
- (2) For the purposes of subsection (1), in working out whether the interest passes the \*non-portfolio interest test and the principal asset test in section 855-30:
  - (a) apply section 350 of the *Income Tax Assessment Act 1936* as if the words “, or is entitled to acquire,” (wherever occurring) were omitted; and
  - (b) apply section 351 of that Act as if:
    - (i) the words “, or that the beneficiary is entitled to acquire” (wherever occurring) were omitted; and
    - (ii) the words “, or that the entity is entitled to acquire” in paragraph 351(2)(d) were omitted.
- (3) The first element of the \*cost base and \*reduced cost base of a \*CGT asset on 10 May 2005 is the \*market value of the asset on that day if, on that day:
  - (a) the CGT asset was a \*membership interest you held in another entity; and
  - (b) you were a foreign resident, or the trustee of a trust that was not a \*resident trust for CGT purposes; and
  - (c) the CGT asset was a \*post-CGT asset; and
  - (d) the CGT asset did not have the necessary connection with Australia (within the meaning of this Act as in force on that day) disregarding the operation of paragraph (b) of item 5 and paragraph (b) of item 6 of the table in section 136-25 (as in force on that day).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it on that day.

**855-30 Principal asset test**

- (1) The purpose of this section is to define when an entity's underlying value is principally derived from Australian real property (see paragraph 855-5(2)(b)).
- (2) A \*membership interest held by an entity (the *holding entity*) in another entity (the *test entity*) passes the principal asset test if the sum of the \*market values of the test entity's assets that are \*taxable Australian real property exceeds the sum of the \*market values of its assets that are *not* taxable Australian real property.
- (3) For the purposes of subsection (2), treat an asset of an entity (the *first entity*) that is a \*membership interest in another entity (the *other entity*) as if it were instead the following 2 assets:
- (a) an asset that is \*taxable Australian real property (the *TARP asset*);
  - (b) an asset that is not taxable Australian real property (the *non-TARP asset*).
- (4) For the purposes of subsection (2), treat the \*market value of the TARP asset and the non-TARP asset according to the following table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Market value of the TARP asset and the non-TARP asset**

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Item	If:	the market value of the TARP asset is:	the market value of the non-TARP asset is:
1	(a) the first entity's *direct participation interest in the other entity is less than 10%; or  (b) the holding entity's *total participation interest in the other entity is less than 10%	zero	the *market value of the *membership interest mentioned in subsection (3)
2	item 1 does not apply	the product of:  (a) the sum of the *market values of all the assets of the other entity that are *taxable Australian real property; and  (b) the first entity's *direct participation interest in the other entity	the product of:  (a) the sum of the market values of all the assets of the other entity that are <i>not</i> taxable Australian real property; and  (b) the first entity's direct participation interest in the other entity

Note: For the purposes of item 2 of the table, it is necessary to work out the market value of any TARP assets and non-TARP assets in relation to any membership interests held by the other entity before working out the value of the TARP asset and non-TARP asset held by the first entity.

- (5) For the purposes of this section, disregard the \*market value of any asset acquired by the test entity, or by any other entity, if the \*acquisition was done for a purpose (other than an incidental purpose) that included ensuring that a \*membership interest in any entity would not pass the principal asset test in this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**855-35 Reducing a capital gain or loss from a business asset—  
Australian permanent establishments**

- (1) This section applies to a \*CGT asset that is \*taxable Australian property under item 3 of the table in section 855-15 because you have used it at any time in carrying on a \*business through a permanent establishment (within the meaning of section 23AH of the *Income Tax Assessment Act 1936*) in Australia.
- (2) The \*capital gain or \*capital loss you make from a \*CGT event in relation to the asset is reduced if you used it in this way for only part of the period from when you \*acquired it to when the CGT event happened.
- (3) The gain or loss is reduced by this fraction:

$$\frac{\text{Number of days the asset was not used in the way described in subsection (1)}}{\text{Number of days in that period}}$$

**855-40 Capital gains and losses of foreign residents through fixed trusts**

- (1) The purpose of this section is to provide comparable taxation treatment as between direct ownership, and indirect ownership through a \*fixed trust, by foreign residents of \*CGT assets that are not \*taxable Australian property.
- (2) A \*capital gain you make in respect of your interest in a \*fixed trust is disregarded if:
  - (a) you are a foreign resident when you make the gain; and
  - (b) the gain is attributable to a \*CGT event happening to a \*CGT asset of a trust (the **CGT event trust**) that is:
    - (i) the fixed trust; or
    - (ii) another fixed trust in which that trust has an interest (directly, or indirectly through a \*chain of fixed trusts); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) either:

- (i) the asset is not \*taxable Australian property for the CGT event trust at the time of the CGT event; or
- (ii) the asset is an interest in a fixed trust and the conditions in subsections (5), (6), (7) and (8) are satisfied.

Note: Section 115-215 treats a portion of a trust's capital gain as a capital gain made by a beneficiary, and applies the CGT discount to that portion as if the gain were made directly by the beneficiary.

- (3) You are not liable to pay tax as a trustee of a \*fixed trust in respect of an amount to the extent that the amount gives rise to a \*capital gain that is disregarded for a beneficiary under subsection (2).
- (4) To avoid doubt, subsection (3) does not affect the operation of subsection 98A(1) or (3) of the *Income Tax Assessment Act 1936* (about taxing beneficiaries who are foreign residents at the end of an income year).

*Conditions*

- (5) The conditions in subsections (6), (7) and (8) must be satisfied if the relevant \*CGT event happens to an interest in a \*fixed trust (the **first trust**) and the interest is \*taxable Australian property at the time of the CGT event.
- (6) At least 90% (by \*market value) of the \*CGT assets of:
  - (a) the first trust; or
  - (b) a \*fixed trust in which the first trust has an interest (directly, or indirectly through a \*chain of fixed trusts);must not be \*taxable Australian property at the time of the relevant \*CGT event.
- (7) If the condition in subsection (6) is not satisfied for the first trust (but is satisfied for a trust covered by paragraph (6)(b)), the condition in subsection (8) must be satisfied for the first trust, and for each other trust in the \*chain of trusts between the first trust and the trust that satisfied the condition in subsection (6).
- (8) The condition is that, assuming any interest in a \*fixed trust in that \*chain not to be \*taxable Australian property, at least 90% (by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\*market value) of the \*CGT assets of the trust must not be taxable Australian property.

### **Subdivision 855-B—Becoming an Australian resident**

#### **Table of sections**

855-45	Individual or company becomes an Australian resident
855-50	Trust becomes a resident trust
855-55	CFC becomes an Australian resident

#### **855-45 Individual or company becomes an Australian resident**

- (1) If you become an Australian resident, there are rules relevant to each \*CGT asset that you owned just before you became an Australian resident, except an asset:
  - (a) that is \*taxable Australian property; or
  - (b) that you \*acquired before 20 September 1985.

Note: This section has effect subject to section 768-950 (individuals who become Australian residents and are temporary residents immediately after they become Australian residents).
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time you become an Australian resident) is its \*market value at that time.
- (3) Also, Parts 3-1 and 3-3 apply to the asset as if you had \*acquired it at the time you became an Australian resident.
- (4) This section does not apply to an \*ESS interest if:
  - (a) Subdivision 83-C (about employee share schemes) applies to the interest; and
  - (b) the \*ESS deferred taxing point for the interest has not yet occurred.

#### **855-50 Trust becomes a resident trust**

- (1) If a trust becomes a \*resident trust for CGT purposes, there are rules relevant to each \*CGT asset that the trustee owned just before the trust became a resident trust for CGT purposes, except one:
  - (a) that is \*taxable Australian property; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) that the trustee \*acquired before 20 September 1985.
- (2) The first element of the \*cost base and \*reduced cost base of the asset (at the time the trust becomes a \*resident trust for CGT purposes) is its \*market value at that time.
- (3) Also, Parts 3-1 and 3-3 apply to the asset as if the trustee had \*acquired it at the time the trust became a \*resident trust for CGT purposes.

*Exception*

- (4) This section does not apply to a trust if, just before it became a \*resident trust for CGT purposes, it was a \*CFT because of paragraph 342(a) of the *Income Tax Assessment Act 1936*.

Note: This section is disregarded in calculating the attributable income of a trust: see section 102AAZB of the *Income Tax Assessment Act 1936*.

**855-55 CFC becomes an Australian resident**

- (1) This section applies to a \*CFC that stops at a time (the *residence change time*) being a resident of a \*listed country or an \*unlisted country and becomes an Australian resident.
- (2) Section 855-45 does not apply to the \*CFC.
- (3) The modifications of Parts 3-1 and 3-3 of this Act in sections 411 to 414 of the *Income Tax Assessment Act 1936* have the effect they would have, in relation to each \*commencing day asset owned by the \*CFC at the residence change time, if those modifications were used to work out the taxable income of the CFC rather than its \*attributable income.
- (4) However, if a \*capital gain on a \*commencing day asset of the \*CFC (for a period before the residence change time) was \*subject to foreign tax in a \*listed country, the modifications of Parts 3-1 and 3-3 of this Act in sections 411 to 414 of the *Income Tax Assessment Act 1936* have the effect they would have in relation to the asset if:
- (a) those modifications were used to work out the taxable income of the CFC rather than its \*attributable income; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) the \*commencing day of the CFC were the residence change time.

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 5—Administration**

### **Part 5-30—Record-keeping and other obligations**

#### **Division 900—Substantiation rules**

##### **Table of Subdivisions**

	Guide to Division 900
900-A	Application of Division
900-B	Substantiating work expenses
900-C	Substantiating car expenses
900-D	Substantiating business travel expenses
900-E	Written evidence
900-F	Travel records
900-G	Retaining and producing records
900-H	Relief from effects of failing to substantiate
900-I	Award transport payments

##### **Guide to Division 900**

###### **900-1 What this Division is about**

This Division sets out the substantiation rules that apply to certain types of losses or outgoings.

##### **Subdivision 900-A—Application of Division**

###### **Table of sections**

900-5	Application of the requirements of Division 900
900-10	Substantiation requirement
900-12	Application to recipients and payers of certain withholding payments

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-5

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**900-5 Application of the requirements of Division 900**

- (1) The requirements of this Division apply to an individual.
- (2) They also apply to a partnership that includes at least one individual, as if the partnership were an individual.
- (3) They do not apply to any other entity.

**900-10 Substantiation requirement**

To deduct certain types of losses or outgoings, you need to substantiate them under this Division.

Item	For this type of loss or outgoing:	see:
1.	Work expenses	Subdivision 900-B
2.	Car expenses	Subdivision 900-C
3.	Business travel expenses	Subdivision 900-D

Note: There are exceptions to these requirements:

- Subdivision 900-B has some specific exceptions about work expenses.
- Subdivision 900-H provides for relief from the effects of failing to substantiate.
- Subdivision 900-I has an exception about certain losses or outgoings related to award transport payments.

**900-12 Application to recipients and payers of certain withholding payments**

*Application to recipients*

- (1) If an individual receives, or is entitled to receive, \*withholding payments covered by subsection (3), this Division applies to him or her:
  - (a) in the same way as it applies to an employee; and
  - (b) as if an entity that makes (or is liable to make) such payments to him or her were his or her employer; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) as if the withholding payments covered by subsection (3) that he or she receives (or is entitled to receive) were salary or wages.

*Application to payers*

- (2) This Division applies to an entity that makes, or is liable to make, \*withholding payments covered by subsection (3):
- (a) in the same way as it applies to an employer; and
  - (b) as if an individual to whom the entity makes (or is liable to make) such payments were the entity's employee.

*Withholding payments covered*

- (3) This subsection covers a \*withholding payment covered by any of the provisions in Schedule 1 to the *Taxation Administration Act 1953* listed in the table.

<b>Withholding payments covered</b>		
<b>Item</b>	<b>Provision</b>	<b>Subject matter</b>
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director
3	Section 12-45	Payment to office holder
3A	Section 12-47	Payment to *religious practitioner
4	Section 12-50	Return to work payment
5	Subdivision 12-C	Payments for retirement or because of termination of employment
6	Subdivision 12-D	Benefit and compensation payments

**Subdivision 900-B—Substantiating work expenses**

**Table of sections**

900-15	Getting written evidence
900-20	Keeping travel records
900-25	Retaining the written evidence and travel records
900-30	Meaning of <i>work expense</i>
900-35	Exception for small total of expenses

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 900-15

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- 900-40 Exception for laundry expenses below a certain limit
- 900-45 Exception for work expense related to award transport payment
- 900-50 Exception for domestic travel allowance expenses
- 900-55 Exception for overseas travel allowance expenses
- 900-60 Exception for reasonable overtime meal allowance
- 900-65 Crew members on international flights need not keep travel records

**900-15 Getting written evidence**

- (1) To deduct a \*work expense:
- (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.
- Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
- (a) getting written evidence of it under Subdivision 900-E; or
  - (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**900-20 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row.

The travel may be within or outside Australia. Subdivision 900-F tells you about travel records.

Note: Members of international flight crews may be exempt from keeping travel records for losses or outgoings covered by travel allowances: see section 900-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **900-25 Retaining the written evidence and travel records**

- (1) Once you have the material required by section 900-15 or 900-20, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

### **900-30 Meaning of work expense**

#### *General*

- (1) A **work expense** is a loss or outgoing you incur in producing your salary or wages.

Note: This Division also applies to withholding payments that are not salary or wages: see subsection 900-12(3).

#### *Travel allowance expenses included*

- (2) Travel allowance expenses count as \*work expenses. A **travel allowance expense** is a loss or outgoing you incur for travel that is covered by a \*travel allowance. The loss or outgoing must:
  - (a) be for accommodation or for food or drink; or
  - (b) be incidental to the travel.
- (3) A **travel allowance** is an allowance your employer pays or is to pay to you to cover losses or outgoings:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) that you incur for travel away from your ordinary residence that you undertake in the course of your duties as an employee; and
- (b) that are losses or outgoings for accommodation or for food or drink, or are incidental to the travel.

The travel may be within or outside Australia.

Note: This Division also applies to individuals who are not employees: see section 900-12.

*Meal allowance expenses included*

- (4) Meal allowance expenses count as \*work expenses. A **meal allowance expense** is a loss or outgoing that you incur for food or drink that is covered by a \*meal allowance.
- (5) A **meal allowance** is an allowance that your employer pays or is to pay to you as an employee to enable you to buy food or drink. However, an allowance is not a meal allowance if it is a \*travel allowance or part of one.

Note: This Division also applies to individuals who are not employees: see section 900-12.

*Motor vehicle expenses excluded*

- (6) A loss or outgoing to do with a \*motor vehicle is not treated as a \*work expense unless it is:
  - (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most losses or outgoings to do with a \*motor vehicle are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

*Other types of losses or outgoings included*

- (7) In addition to losses or outgoings within the general scope of subsection (1), any of the following is a \*work expense:
  - (a) the decline in value of property you own and that is used, or is \*installed ready for use, by you in order to produce your salary or wages;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) expenditure you incur that qualifies as a deduction under section 25-60 (Parliament election expenses) or section 25-65 (about local government election expenses);
- (c) expenditure you incur that entitles you to a deduction under section 25-100 (transport expenses incurred in your travel between workplaces), other than \*car expenses.

- Note 1: This Division also applies to payments that are *not* salary or wages, but *are* PAYE earnings: see section 900-12.
- Note 2: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).
- Note 3: See Subdivision 900-C for car expenses that are also transport expenses incurred in your travel between workplaces.

### **900-35 Exception for small total of expenses**

- (1) If the total of all the \*work expenses (including \*laundry expenses, but excluding \*travel allowance expenses and \*meal allowance expenses) that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

- Note 1: If the total is more than \$300, you need to substantiate *all* the work expenses, not just the excess over \$300.
- Note 2: Whether or not your work expenses total \$300 or less, for certain expenses that are each \$10 or less and total \$200 or less you can get written evidence by making your own record, instead of getting a document from the supplier: see section 900-125.

- (2) This limit can be increased from time to time by regulations made under section 909-1.
- (3) A \*transport expense that Subdivision 900-I (Award transport payments) lets you deduct without following the rules in this Division does not count towards this limit.

### **900-40 Exception for laundry expenses below a certain limit**

- (1) Even if the \*work expenses you claim total more than \$300, you can still deduct up to \$150 of \*laundry expenses without getting written evidence of them.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 900-45

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- (2) However, this exception does not increase the \$300 limit in section 900-35 to \$450: your \*laundry expenses still count toward that limit.

Example: You want to deduct laundry expenses of \$140 and union dues of \$200. These work expenses total more than \$300, so the exception in section 900-35 doesn't apply. This means you must substantiate the union dues expense. However, because of the exception in this section, you don't need to get written evidence of the laundry expenses.

- (3) This limit can be increased from time to time by regulations made under section 909-1.
- (4) A *laundry expense* is a \*work expense to do with washing, drying or ironing clothes (but not dry cleaning).

**900-45 Exception for work expense related to award transport payment**

You may be able to deduct, without getting written evidence or keeping travel records, a \*transport expense you incurred that is related to an allowance or reimbursement paid or payable to you by your employer under an \*industrial instrument that was in force on 29 October 1986. Subdivision 900-I tells you about this.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).

**900-50 Exception for domestic travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel within Australia without getting written evidence or keeping travel records if the Commissioner considers reasonable the total of the losses or outgoings you claim for travel covered by the allowance.
- (2) In deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must take into account the total of the losses or outgoings of the following kinds that it would be reasonable for you to incur for the travel:
- (a) accommodation;
  - (b) food or drink;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) losses or outgoings incidental to the travel.

### **900-55 Exception for overseas travel allowance expenses**

- (1) You can deduct a \*travel allowance expense for travel outside Australia without getting written evidence under the same conditions as for domestic \*travel allowances, except that you still have to get written evidence for losses or outgoings for accommodation.
- (2) Consequently, in deciding whether the total of the losses or outgoings you claim is reasonable, the Commissioner must disregard losses or outgoings for accommodation.
- (3) However, for overseas travel covered by a \*travel allowance you must still keep travel records if the travel involves you being away from your ordinary residence for 6 or more nights in a row: Subdivision 900-F tells you about travel records.

### **900-60 Exception for reasonable overtime meal allowance**

You can deduct a \*meal allowance expense without getting written evidence if:

- (a) the allowance is to enable you to buy food or drink in connection with overtime that you work; and
- (b) the allowance is paid or payable to you under an \*industrial instrument; and
- (c) the Commissioner considers reasonable the total of the losses or outgoings you claim that are covered by the allowance.

### **900-65 Crew members on international flights need not keep travel records**

You can deduct a \*travel allowance expense without keeping travel records if:

- (a) the allowance covers travel by you as a crew member of an aircraft; and
- (b) the travel is principally outside Australia; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the total of the losses or outgoings you claim for the travel that are covered by the allowance does not exceed the allowance.

**Subdivision 900-C—Substantiating car expenses**

**Table of sections**

900-70	Getting written evidence
900-75	Retaining the written evidence and odometer records

**900-70 Getting written evidence**

- (1) For the “one-third of actual expenses” method or the “log book” method of deducting a \*car expense, you need to substantiate the expense by getting written evidence. Subdivision 900-E tells you about the evidence you need.  
Subdivision 28-E tells you about the “one-third of actual expenses” method and Subdivision 28-F tells you about the “log book” method.
- (2) If you are using the “one-third of actual expenses” method and your expense is for fuel or oil, you have a choice of either:
  - (a) getting written evidence of it under Subdivision 900-E; or
  - (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

- (3) If you are using the “log book” method and your expense is for fuel or oil, you do not need to get written evidence of it, because section 28-100 already requires you to keep odometer records for the period when you \*held the \*car in the income year.

**900-75 Retaining the written evidence and odometer records**

- (1) Once you have the material required by this Subdivision, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 900-G. The period for which you must retain it is called the *retention period*.

- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

### **Subdivision 900-D—Substantiating business travel expenses**

#### **Table of sections**

900-80	Getting written evidence
900-85	Keeping travel records
900-90	Retaining the written evidence and travel records
900-95	Meaning of <i>business travel expense</i>

#### **900-80 Getting written evidence**

- (1) To deduct a \*business travel expense:
  - (a) it must qualify as a deduction under some provision of this Act outside this Division; and
  - (b) you need to substantiate it by getting written evidence.Subdivision 900-E tells you about the evidence you need.

To find out whether an expense qualifies as a deduction under this Act, see  
Division 8 (Deductions).

- (2) If your expense is for fuel or oil, you have a choice of either:
  - (a) getting written evidence of it under Subdivision 900-E; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) keeping odometer records for the period when you owned or leased the \*car in the income year.

Subdivision 28-H tells you about odometer records.

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**900-85 Keeping travel records**

You need to keep travel records if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row. Subdivision 900-F tells you about travel records.

**900-90 Retaining the written evidence and travel records**

- (1) Once you have the material required by section 900-80 or 900-85, you must retain it for 5 years. There is no need to lodge it with your \*income tax return. The Commissioner may require you to produce it: see Subdivision 900-G. The period for which you must retain it is called the *retention period*.
- (2) The 5 years start on the due day for lodging your \*income tax return for the income year. If you lodge your return later, the 5 years start on the day you lodge it.
- (3) However, the \*retention period is extended if, when the 5 years end, you are involved in a dispute with the Commissioner that relates to the expense. See section 900-170.
- (4) If you do not retain the material for the \*retention period, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5) If you lose any of the material, there are rules that might help you in section 900-205.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **900-95 Meaning of *business travel expense***

### *General*

- (1) A ***business travel expense*** is a \*travel expense, in so far as you incur it in producing your assessable income other than salary or wages.

### *Travel expense*

- (2) A loss or outgoing is a ***travel expense*** if you incur it for travel by you that involves you being away from your ordinary residence for at least one night. The travel may be within or outside Australia.

### *Salary and wages travel expenses excluded*

- (3) In so far as you incur \*travel expenses in producing your salary or wages, the expenses are not treated as \*business travel expenses. Instead, they are dealt with as \*work expenses in Subdivision 900-B.

Note: This Division also applies to withholding payments that are not salary or wages: see subsection 900-12(3).

### *Travel allowance expenses excluded*

- (4) \*Travel allowance expenses are not treated as \*business travel expenses. They too are dealt with as \*work expenses in Subdivision 900-B.

### *Motor vehicle expenses excluded*

- (5) A loss or outgoing to do with a \*motor vehicle is not treated as a \*business travel expense unless it is:
- (a) a loss or outgoing incurred, or a payment made, in respect of travel outside Australia; or
  - (b) a taxi fare or similar loss or outgoing.

However, most \*motor vehicle expenses are covered by the rules about \*car expenses. See Division 28 and Subdivision 900-C.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 900-E—Written evidence**

### **Guide to Subdivision 900-E**

#### **900-100 What this Subdivision is about**

This Subdivision tells you how you must get written evidence to support a claim for a deduction.

#### **Table of sections**

##### **Operative provisions**

900-105	Ways of getting written evidence
900-110	Time limits
900-115	Written evidence from supplier
900-120	Written evidence of depreciating asset expense
900-125	Evidence of small expenses
900-130	Evidence of expenses considered otherwise too hard to substantiate
900-135	Evidence on a payment summary

#### **Operative provisions**

##### **900-105 Ways of getting written evidence**

Each of the following sections has a set of rules for a particular way of getting written evidence to substantiate a deduction. Which ones you can use depends on the type of expense. You only need to use one set of rules to support an expense.

##### **900-110 Time limits**

- (1) There is no time limit for getting written evidence of an expense (unless you want to record the expense yourself under section 900-125 or 900-130). But until you get written evidence of it, you are not entitled to a deduction for the expense.
- (2) If when you lodge your <sup>\*</sup>income tax return for the income year you have good reason to expect to get written evidence of the expense within a reasonable time, you can deduct the expense without

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



actually getting the evidence. But if you don't get the evidence within a reasonable time, your entitlement to the deduction ceases. If you have already deducted the expense, your assessment may be amended to disallow the deduction.

- (3) Even if you only get written evidence of the expense *after* the end of the income year, you deduct the expense for that income year, not the income year in which you get the evidence.

### **900-115 Written evidence from supplier**

- (1) You may use this set of rules for any type of expense except the decline in value of a \*depreciating asset.
- (2) You must get a document from the supplier of the goods or services the expense is for. The document must set out:
  - (a) the name or business name of the supplier; and
  - (b) the amount of the expense, expressed in the currency in which it was incurred; and
  - (c) the nature of the goods or services; and
  - (d) the day the expense was incurred; and
  - (e) the day it is made out.
- (3) There are 2 exceptions to these requirements:
  - (a) if the document does not show the day the expense was incurred, you may use a bank statement or other reasonable, independent evidence that shows when it was paid;
  - (b) if the document the supplier gave you does not specify the nature of the goods or services, you may write in the missing details yourself before you lodge your \*income tax return for the income year.
- (4) The document must be in English. However, if the expense was incurred in a country outside Australia, the document can instead be in a language of that country.

### **900-120 Written evidence of depreciating asset expense**

- (1) You may use this set of rules only for a \*depreciating asset expense.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 900-125

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- (2) You must get evidence of the original acquisition of the \*depreciating asset. It must be a document that you get from the supplier of the asset and that specifies:
  - (a) the name or business name of the supplier; and
  - (b) the cost of the asset to you; and
  - (c) the nature of the asset; and
  - (d) the day you acquired the asset; and
  - (e) the day it is made out.
- (3) However, if the document the supplier gave you does not specify the nature of the asset, you may write in the missing details yourself before you lodge your \*income tax return for the income year in which you first claim a deduction for the decline in value of the asset.
- (4) If you don't get the document in time, for example because you only decided to use the asset for income-producing purposes several years after you acquired it, there are rules that might help you in Subdivision 900-H (Relief from effects of failing to substantiate).
- (5) The document must be in English. However, if you \*imported the asset into Australia, the document can instead be in a language of the country from which the asset was originally exported.

**900-125 Evidence of small expenses**

- (1) If your expense is small, and you have a small total of small expenses, you can make a record of the expenses instead of getting a document from the supplier.
- (2) Each expense must be \$10 or less, and the total of all your expenses that:
  - (a) are each \$10 or less; and
  - (b) you incurred in the income year and wish to deduct; and
  - (c) you must get written evidence for under this Division;must be \$200 or less. These limits can be increased from time to time by regulations made under section 909-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) If the expense is not the decline in value of a \*depreciating asset, you must get a document with the same information as required by section 900-115, except that you may create the document and record all the details yourself. You must do so as soon as possible after incurring the expense.
- (4) If the expense is the decline in value of a \*depreciating asset, you must, as soon as possible after the last day of the income year, record in a document the following:
  - (a) the nature of the property;
  - (b) the amount of the decline in value;
  - (c) who made the record;
  - (d) the day the record is made.
- (5) A record must be in English.

**900-130 Evidence of expenses considered otherwise too hard to substantiate**

- (1) If the Commissioner considers it unreasonable to expect you to have got written evidence of an expense in any other way permitted by this Subdivision, you can use the method in section 900-125 to get written evidence of your claim.
- (2) The expense may be more than \$10 and does not count towards the \$200 limit in section 900-125.

**900-135 Evidence on a payment summary**

- (1) If the nature and amount of a \*work expense are shown on your copy of a \*payment summary given to you by your employer, you can use the copy as written evidence of the expense.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).
- (2) Expenses of the same nature need not be separately itemised; it is acceptable if they are totalled together on the \*payment summary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 900-F—Travel records**

### **Guide to Subdivision 900-F**

#### **900-140 What this Subdivision is about**

This Subdivision tells you how to keep travel records. A travel record is a record of activities you undertake during your travel.

#### **Table of sections**

900-145 Purpose of a travel record

##### **Operative provisions**

900-150 Recording activities in travel records

900-155 Showing which of your activities were income-producing activities

#### **900-145 Purpose of a travel record**

The purpose of a travel record is to show which of your activities were undertaken in the course of producing your assessable income, so that your losses or outgoings, or portions of them, can be attributed to income-producing purposes.

#### **Operative provisions**

#### **900-150 Recording activities in travel records**

- (1) You record an activity by specifying in a diary or similar document:
  - (a) the nature of the activity;
  - (b) the day and approximate time when it began;
  - (c) how long it lasted;
  - (d) where you engaged in it.
- (2) An activity must be recorded before it ends, or as soon as possible afterwards. Each entry must be in English.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **900-155 Showing which of your activities were income-producing activities**

- (1) You need not record an income-producing activity. But if you don't, the activity cannot be taken into account in working out the extent to which you can deduct an expense you incur for the travel.

Example: If you fly to Los Angeles for the sole purpose of attending a 7 day conference, but you don't record the conference in your travel record, you cannot deduct the cost of the air fare. This is so even if you have written evidence that you paid the fare (eg a receipt), as required by Subdivision 900-E.

- (2) You don't need to record any other kind of activity, although you may do so.

### **Subdivision 900-G—Retaining and producing records**

#### **Guide to Subdivision 900-G**

#### **900-160 What this Subdivision is about**

This Subdivision tells you how long you need to retain records of an expense and when you have to produce those records.

#### **Table of sections**

900-165 The retention period

##### **Operative provisions**

900-170 Extending the retention period if an expense is disputed

900-175 Commissioner may tell you to produce your records

900-180 How to comply with a notice

900-185 What happens if you don't comply

#### **900-165 The retention period**

Whenever you are required to retain records of an expense under this Division or Division 28, you need to retain the records for 5 years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Operative provisions**

### **900-170 Extending the retention period if an expense is disputed**

The \*retention period is automatically extended if one of the following types of dispute relating to the expense is unresolved when the 5 years end:

- (a) an objection;
- (b) a review or appeal arising from an objection;
- (c) a request for amendment of an assessment.

The extension lasts until the dispute is resolved.

### **900-175 Commissioner may tell you to produce your records**

- (1) The Commissioner may give you a written notice telling you to produce records of expenses specified in the notice. The records must be ones that you have to retain for the \*retention period: you do not have to produce records if the retention period for those records is over.
- (2) The notice must give you 28 days or more to comply, starting on the day after the notice is given. The Commissioner may allow you more time to comply with the notice.

### **900-180 How to comply with a notice**

- (1) To comply with the notice, you must produce to the Commissioner, for each of the expenses, the material that this Division or Division 28 requires you to retain during the \*retention period.
- (2) You must also produce a summary that, for each expense for which you produce written evidence (see Subdivision 900-E):
  - (a) notes the expense; and
  - (b) has a cross-reference to the written evidence of the expense; and
  - (c) summarises the particulars set out in the written evidence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) if the expense was in a foreign currency—shows the amount of the expense in Australian currency.

The summary must be in English in a form approved by the Commissioner.

### **900-185 What happens if you don't comply**

- (1) If you do not comply with a notice for a particular expense, you cannot deduct the expense. If you have already deducted it, your assessment may be amended to disallow the deduction.
- (2) You do not commit an offence merely by not complying with the notice, despite section 8C of the *Taxation Administration Act 1953*.

## **Subdivision 900-H—Relief from effects of failing to substantiate**

### **Table of sections**

900-195	Commissioner's discretion to review failure to substantiate
900-200	Reasonable expectation that substantiation would not be required
900-205	What if your documents are lost or destroyed?

### **900-195 Commissioner's discretion to review failure to substantiate**

Not doing something necessary to follow the rules in this Division does not affect your right to a deduction if the nature and quality of the evidence you have to substantiate your claim satisfies the Commissioner:

- (a) that you incurred the expense; and
- (b) that you are entitled to deduct the amount you claim.

### **900-200 Reasonable expectation that substantiation would not be required**

Not doing something necessary to follow the rules in this Division does not affect your right to deduct an amount if the only reason was that you had a reasonable expectation that you would not need to do it in order to be able to deduct that amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**900-205 What if your documents are lost or destroyed?**

- (1) If you have a *complete copy* of a document that is lost or destroyed during the \*retention period, it is treated as the original from the time of the loss or destruction.
- (2) If you don't have such a copy, but the Commissioner is satisfied that you took reasonable precautions to prevent the loss or destruction, the rest of this section explains what to do.
- (3) If the lost or destroyed document was a travel record, log book or other document that is *not* written evidence of an expense under Subdivision 900-E, you do not need to replace it; your deduction is not affected by your failing to retain or produce the document.
- (4) If the lost or destroyed document *was* written evidence, you must try to get a substitute document that meets all the original requirements (except the time limit for getting the original).
- (5) If you succeed, your deduction is not affected by your failing to retain or produce the original document. The substitute document is treated as the original from the time of the loss or destruction.
- (6) If it is not reasonably possible to succeed, your deduction is not affected by your failing to retain or produce the original document.
- (7) If it is reasonably possible for you to get a substitute document, but you don't get one, this section does not protect you from the consequences of failing to retain or produce the original.

**Subdivision 900-I—Award transport payments**

**Guide to Subdivision 900-I**

**900-210 What this Subdivision is about**

This Subdivision tells you when you can deduct an expense related to an award transport payment without getting written evidence or keeping travel records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

- 900-215 Deducting an expense related to an award transport payment
- 900-220 Definition of *award transport payment*
- 900-225 Substituted industrial instruments
- 900-230 Changes to industrial instruments applied for before 29 October 1986
- 900-235 Changes to industrial instruments solely referable to matters in the instrument
- 900-240 Deducting in anticipation of receiving award transport payment
- 900-245 Effect of exception in this Subdivision on exception for small total of expenses
- 900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions

## Operative provisions

### 900-215 Deducting an expense related to an award transport payment

#### *The exception*

- (1) If:
- (a) you are paid one or more \*award transport payments in the income year; and
  - (b) the total of the \*transport expenses, to the extent that they relate to the award transport payments, that you incur during any income year and claim as deductions for any income year is no more than the total amount of the payments; and
  - (c) those transport expenses qualify as a deduction under some provision of this Act outside this Division;
- then you can deduct those transport expenses without getting written evidence or keeping travel records.

To find out whether an expense qualifies as a deduction under this Act, see Division 8 (Deductions).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 900-220

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*Increases to amounts payable under industrial instrument must be ignored*

- (2) For each \*award transport payment, you can deduct no more than the amount you could have deducted if the \*industrial instrument the payment is under were still in force as it was on 29 October 1986. If your claim exceeds this amount, you cannot use the exception for the expenses.

**900-220 Definition of *award transport payment***

*Award transport payment*

- (1) An ***award transport payment*** is a \*transport payment covering particular travel that was paid under an \*industrial instrument that was in force on 29 October 1986.

*Transport payment*

- (2) A ***transport payment*** is an amount your employer pays you, or is to pay you, for travel by you in the course of working for the employer that is:
- (a) an allowance (or part of an allowance) for the sole or main purpose of covering your \*transport expenses; or
  - (b) a reimbursement to which section 15-70 applies that is for the whole or a part of a \*car expense. However, an amount is not a ***transport payment*** if it is, or is part of, a \*travel allowance.

Note: This Division also applies to entities that are *not* employers, but pay (or are liable to pay) withholding payments covered by subsection 900-12(3).

*Transport expense*

- (3) A ***transport expense*** is a loss or outgoing to do with transport, including the decline in value of a \*depreciating asset used in connection with transport, but not including a loss or outgoing for accommodation or for food or drink, or expenditure incidental to transport.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**900-225 Substituted industrial instruments**

An \*industrial instrument that comes into force in substitution for another industrial instrument is taken to be a continuation of the original instrument.

**900-230 Changes to industrial instruments applied for before 29 October 1986**

- (1) Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if they were made in response to an application made on or before 29 October 1986 that sought increases in \*transport payments.
- (2) If the application was amended after 29 October 1986, the alterations made to the \*industrial instrument count as being made on 29 October 1986 only if they did not result in increases in \*transport payments that were greater than increases in those payments sought by the application as at 29 October 1986.

**900-235 Changes to industrial instruments solely referable to matters in the instrument**

Changes made to an \*industrial instrument after 29 October 1986 are taken to have been made on 29 October 1986 if the whole amount of the change is determined solely by reference to matters that were contained in the industrial instrument on 29 October 1986.

**900-240 Deducting in anticipation of receiving award transport payment**

If:

- (a) you have incurred a \*transport expense during an income year; and
- (b) when you lodge your \*income tax return for the income year, you reasonably believe that you will later receive an \*award transport payment to cover the expense;

you may deduct the expense without getting written evidence or keeping travel records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**900-245 Effect of exception in this Subdivision on exception for small total of expenses**

A \*transport expense that section 900-215 lets you deduct without getting written evidence or keeping travel records does not count towards the \$300 limit in section 900-35.

Note: Section 900-35 tells you that if the total of all the work expenses that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.

**900-250 Effect of exception in this Subdivision on methods of calculating car expense deductions**

- (1) If the exception in this Subdivision lets you deduct, without getting written evidence or keeping travel records, losses or outgoings (*exempt losses or outgoings*) that are or include \*car expenses, or parts of \*car expenses, your use of the 4 methods for calculating deductions for car expenses for the \*car is affected.

*You may elect not to use the exception*

- (2) However, if you do not want your use of the 4 methods to be affected, you may elect not to use the exception in this Subdivision for the \*award transport payments you are paid in the income year. If you so elect, the rest of this section does not affect you.

*“Cents per kilometre” method*

- (3) You can still use the “cents per kilometre” method (see Subdivision 28-C) of deducting \*car expenses you incurred for the \*car in the income year. However, the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres.

*“12% of original value” and “one-third of actual expenses” methods*

- (4) You cannot use the “12% of original value” method (see Subdivision 28-D) or the “one-third of actual expenses” method

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(see Subdivision 28-E) of deducting \*car expenses you incurred for the \*car in the income year.

*“Log book” method*

- (5) You can still use the “log book” method (see Subdivision 28-F) of deducting \*car expenses you incurred for the \*car in the income year. If you do:
- (a) the kilometres the car travelled during the income year in the course of travel covered by the \*award transport payment or payments are not counted as \*business kilometres; and
  - (b) in working out the amount (if any) you can deduct for such a car expense that consists partly of an exempt loss or outgoing, Subdivision 28-F is applied to the whole of the car expense, without excluding the part that consists of an exempt loss or outgoing.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 5-35—Miscellaneous**

### **Division 905—Offences**

#### **905-5 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 909—Regulations**

### **909-1 Regulations**

- (1) The Governor-General may make regulations prescribing matters that:
  - (a) this Act requires or permits to be prescribed; or
  - (b) are necessary or convenient to prescribe for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties for offences against the regulations. A penalty may not exceed a fine of 5 penalty units.

Note: Section 4AA of the *Crimes Act 1914* deals with penalty units.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 6—The Dictionary**

### **Part 6-1—Concepts and topics**

#### **Division 950—Rules for interpreting this Act**

##### **Table of sections**

950-100	What forms part of this Act
950-105	What does <i>not</i> form part of this Act
950-150	Guides, and their role in interpreting this Act

##### **950-100 What forms part of this Act**

- (1) These all form part of this Act:
- the headings of the Chapters, Parts, Divisions and Subdivisions of this Act;
  - \*Guides;
  - the headings of the sections and subsections of this Act;
  - the headings for groups of sections of this Act (group headings);
  - the notes and examples (however described) that follow provisions of this Act.
- (2) The asterisks used to identify defined terms form part of this Act. However, if a term is *not* identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

##### **950-105 What does *not* form part of this Act**

These do *not* form part of this Act:

- footnotes and endnotes;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Tables of Subdivisions;
- Tables of sections.

### **950-150 Guides, and their role in interpreting this Act**

- (1) A **Guide** consists of:
  - (a) sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.; or
  - (b) a Subdivision, Division or Part that is identified as a Guide by a provision in the Subdivision, Division or Part.
- (2) Guides form part of this Act, but they are kept separate from the operative provisions. In interpreting an operative provision, a Guide may only be considered:
  - (a) in determining the purpose or object underlying the provision; or
  - (b) to confirm that the provision's meaning is the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision; or
  - (c) in determining the provision's meaning if the provision is ambiguous or obscure; or
  - (d) in determining the provision's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Act and the purpose or object underlying the provision, leads to a result that is manifestly absurd or is unreasonable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 960—General**

### **Subdivision 960-C—Foreign currency**

#### **Table of sections**

960-49	Objects of this Subdivision
960-50	Translation of amounts into Australian currency
960-55	Application of translation rules

#### **960-49 Objects of this Subdivision**

The objects of this Subdivision are as follows:

- (a) to set out a basic rule requiring an amount in a \*foreign currency to be translated into an Australian dollar amount (the basic rule is subject to the functional currency rules in Subdivision 960-D and to certain specific exclusions);
- (b) to ensure that the rules for identifying the exchange rate for the translation of a foreign currency amount into Australian dollars:
  - (i) reflect an appropriate prevailing exchange rate; and
  - (ii) take into account, as appropriate, commercial practices for the translation of foreign currency amounts into Australian dollars.

#### **960-50 Translation of amounts into Australian currency**

- (1) For the purposes of this Act, an amount in a \*foreign currency is to be translated into Australian currency.

##### *Examples of an amount*

- (2) The following are examples of an amount:
  - (a) an amount of \*ordinary income;
  - (b) an amount of an expense;
  - (c) an amount of an obligation;
  - (d) an amount of a liability;
  - (e) an amount of a receipt;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (f) an amount of a payment;
  - (g) an amount of consideration;
  - (h) a value.
- (3) The amounts set out in paragraphs (2)(b) to (h) may be amounts on revenue account, capital account or otherwise.

*Amounts that are elements in the calculation of other amounts*

- (4) In applying this section:
- (a) first, translate any amounts that are elements in the calculation of other amounts (except \*special accrual amounts); and
  - (b) then, calculate the other amounts.

*Special accrual amounts*

- (5) In applying this section:
- (a) calculate a \*special accrual amount without translation; and
  - (b) then, translate the special accrual amount.

*Special translation rules*

- (6) The table has effect:

<b>Special translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	forex realisation event 4 happens when you cease to have an obligation, or a part of an obligation, to pay *foreign currency, and neither of subparagraphs 775-55(1)(b)(ii) and (iii) applies	for the purposes of section 775-55, the amount of the obligation, or the part of the obligation, at the tax recognition time (see subsection 775-55(7)) is to be translated to Australian currency at the exchange rate applicable at that time.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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Item	In this case...	this is the result...
2	cost of a *depreciating asset	(a) if you incur an obligation in return for your starting to hold the asset, and the obligation is not satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when you begin to hold the asset; or (b) if you incur an obligation in return for your starting to hold the asset, and the obligation is satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when the obligation is satisfied.
3	value of an item of *trading stock on hand at the end of an income year, where you have elected to use its *cost	the value is to be translated to Australian currency at the exchange rate applicable at the time when the item became on hand.
4	value of an item of *trading stock on hand at the end of an income year, where you have elected to use: (a) its market selling value; or (b) its replacement value	the value is to be translated to Australian currency at the exchange rate applicable at the end of the income year.
5	a transaction or event that: (a) involves an amount of money or the *market value of other property; and (b) is relevant for the purposes of Part 3-1 or 3-3; to the extent to which the amount or value is relevant for the purposes of Part 3-1 or 3-3	the amount or value is to be translated, for the purposes of Part 3-1 or 3-3, to Australian currency at the exchange rate applicable at the time of the transaction or event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
6	an amount of *ordinary income	(a) if the amount is received at or before the time when it is *derived—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable when it is derived.
7	an amount of *statutory income (other than an amount included in assessable income under Division 102)	(a) if the amount is received at or before the time when the requirement first arose to include it in your assessable income—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when the requirement first arose to include it in your assessable income.
8	an amount that you deduct (other than under Division 40)	(a) if the amount is paid at or before the time when it became deductible—the amount is to be translated to Australian currency at the exchange rate applicable at the time of payment; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when it became deductible.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
9	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film; or</p> <p>(c) the company's *total film expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-20 or 376-65</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable at the time when principal photography commences or production of the animated image commences.</p>
9A	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-45</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable when *post, digital and visual effects production for the film commences.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
9B	an amount that is relevant for the purposes of quantifying: (a) the total of all of a company's *production expenditure on a *film; or (b) the total of the company's *qualifying Australian production expenditure on a film; or (c) the company's *total film expenditure on a film;  to the extent to which the amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-15, 376-40 or 376-60	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that qualifying Australian production expenditure is incurred on the film.
10	an amount that Division 12 of Part 2.5 in Schedule 1 to the <i>Taxation Administration Act 1953</i> requires to be withheld from a payment	the amount is to be translated to Australian currency at the exchange rate applicable at the time when the amount is required to be withheld under that Division.
11	an amount of a receipt or a payment, where none of the above items apply	the amount is to be translated to Australian currency at the exchange rate applicable at the time of the receipt or payment.

- (7) Subsection (6) has effect subject to any modifications made by the regulations. For this purpose, *modifications* includes additions, omissions and substitutions.

*Regulations about translation*

- (8) An entity must comply with the regulations (if any) in translating an amount into Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (9) Regulations made for the purposes of subsection (8) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the \*accounting standards:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

*Operation of certain provisions unaffected*

- (10) This section does not affect the operation of the following provisions:
- (aa) section 220-110 (\*maximum franking credit);
  - (a) section 775-210 (notional loans under \*facility agreements);
  - (b) Subdivision 960-D (functional currency);
  - (c) subsection 974-35(6) (valuation of financial benefits for the purposes of the debt/equity provisions).

**960-55 Application of translation rules**

- (1) Section 960-50 applies to:
- (a) a transaction, event or thing that:
    - (i) involves an amount in a \*foreign currency; and
    - (ii) occurs on or after the applicable commencement date (within the meaning of Division 775); or
  - (b) a transaction, event or thing that:
    - (i) involves an amount in a foreign currency; and
    - (ii) occurs before the applicable commencement date (within the meaning of Division 775);to the extent to which the transaction, event or thing is relevant for the purposes of Division 775; or
  - (c) an amount that Division 12 of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* requires to be withheld from a payment, if the time when the amount is required to be withheld occurs on or after 1 July 2003; or
  - (d) a payment that Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953* requires to be reported, if the amount is paid on or after 1 July 2003.

Note: For *applicable commencement date*, see section 775-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Exceptions*

- (2) Despite subsection (1), section 960-50 does not apply to a transaction, event or thing that involves:
- (a) an amount covered by subsection 775-165(1); or
  - (b) a right, or a part of a right, covered by subsection 775-165(2); or
  - (c) an obligation, or a part of an obligation, covered by subsection 775-165(4).

Note: Subsections 775-165(1), (2) and (4) are transitional provisions relating to forex realisation events.

**Subdivision 960-D—Functional currency**

**Guide to Subdivision 960-D**

**960-56 What this Subdivision is about**

The net income of any of the following entities (or parts of entities) that keeps its accounts solely or predominantly in a particular foreign currency can be worked out in that currency, with the net amount being translated into Australian currency:

- (a) an Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*;
- (b) a permanent establishment;
- (c) an offshore banking unit;
- (d) a controlled foreign company (CFC);
- (e) a transferor trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Operative provisions**

### **960-59 Object of this Subdivision**

The object of this Subdivision is, for the purposes of reducing compliance costs and reflecting commercial practice, to allow certain entities (or parts of entities) whose accounts are kept solely or predominantly in a particular \*foreign currency (the *functional currency*) to calculate their net incomes by reference to the functional currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**960-60 You may choose a functional currency**

(1) The table has effect:

<b>Choosing to use a functional currency</b>			
<b>Item</b>	<b>If you are:</b>	<b>you may choose to use the *applicable functional currency to..</b>	<b>with effect from the start of..</b>
1	an Australian resident who is required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i>	work out so much of your taxable income or tax loss as is not subject to a choice made by you under any of the other items of this table	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
2	(a) an Australian resident carrying on an activity or business at or through an *overseas permanent establishment; or (b) a foreign resident carrying on an activity or business at or through an *Australian permanent establishment	work out the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-60

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**Choosing to use a functional currency**

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Item	If you are:	you may choose to use the *applicable functional currency to...	with effect from the start of...
3	an *offshore banking unit	work out your total assessable OB income (within the meaning of Division 9A of Part III of the <i>Income Act Assessment Act 1936</i> ) and your total allowable OB deductions (within the meaning of that Division)	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
4	an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC)	work out the *attributable income of the CFC	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the CFC's *statutory accounting period in which you make the choice; or (b) in any other case—the CFC's statutory accounting period following the one in which you make the choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Choosing to use a functional currency**

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<b>Item</b>	<b>If you are:</b>	<b>you may choose to use the *applicable functional currency to...</b>	<b>with effect from the start of...</b>
5	a *transferor trust	work out your attributable income (within the meaning of Division 6AAA of Part III of the <i>Income Tax Assessment Act 1936</i> )	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

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Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

- (2) A choice must be in writing.
- (3) A choice under item 1 of the table in subsection (1) continues in effect until:
  - (a) a withdrawal of the choice takes effect (see section 960-90); or
  - (b) immediately after the end of the income year in which you cease to be subject to a requirement to prepare financial reports under section 292 of the *Corporations Act 2001*; whichever happens first.
- (4) A choice under item 2, 3, 4 or 5 of the table in subsection (1) continues in effect until a withdrawal of the choice takes effect (see section 960-90).

**960-61 Functional currency for calculating capital gains and losses on indirect Australian real property interests**

- (1) Subsection (2) applies if:
  - (a) you are a foreign resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a \*CGT event happens in relation to a \*CGT asset that is an \*indirect Australian real property interest for you; and
  - (c) the sole or predominant currency in which you keep your accounts at the time of the CGT event is a currency other than Australian currency.
- (2) You must use the \*applicable functional currency to work out the amount of your \*capital gain or \*capital loss (if any).

**960-65 Backdated startup choice**

The table has effect:

<b>Backdated startup choice</b>		
<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
1	you make a choice under item 1 of the table in subsection 960-60(1)	(a) both: <ul style="list-style-type: none"> <li>(i) you were in existence at the start of the income year in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or</li> </ul> (b) both: <ul style="list-style-type: none"> <li>(i) you came into existence during the income year in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after you came into existence or within 30 days after the commencement of this section.</li> </ul>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Backdated startup choice**

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<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
2	you make a choice under item 2 of the table in subsection 960-60(1)	(a) both: (i) the permanent establishment was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or  (b) both: (i) the permanent establishment came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the permanent establishment came into existence or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Backdated startup choice**

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<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
3	you make a choice under item 3 of the table in subsection 960-60(1)	(a) both: (i) the *offshore banking unit was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or  (b) both: (i) the offshore banking unit came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the offshore banking unit came into existence or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Backdated startup choice**

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<b>Item</b>	<b>In this case:</b>	<b>the choice is a <i>backdated startup choice</i> if...</b>
4	you make a choice under item 4 of the table in subsection 960-60(1)	(a) both: <ul style="list-style-type: none"> <li>(i) you are an attributable taxpayer of the CFC at the beginning of the CFC's *statutory accounting period in which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section; or</li> </ul> (b) both: <ul style="list-style-type: none"> <li>(i) you became an attributable taxpayer in relation to the CFC during the CFC's statutory accounting period during which you made the choice; and</li> <li>(ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section.</li> </ul>
5	you make a choice under item 5 of the table in subsection 960-60(1)	you make the choice within 90 days after the beginning of an income year or within 30 days after the commencement of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**960-70 What is the *applicable functional currency*?**

*Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001*

- (1) If you make a choice under item 1 of the table in subsection 960-60(1) with effect from the start of a particular income year, your ***applicable functional currency*** for:
- (a) that income year; and
  - (b) each later income year for which the choice is in effect;
- is the sole or predominant \*foreign currency in which you kept your accounts at the time when you made the choice.

*Permanent establishment, offshore banking unit or transferor trust*

- (2) If you make a choice under item 2, 3 or 5 of the table in subsection 960-60(1) in relation to a \*permanent establishment, an \*offshore banking unit or a \*transferor trust with effect from the start of a particular income year, the ***applicable functional currency*** of the establishment, unit or trust for:
- (a) that income year; and
  - (b) each later income year for which the choice is in effect;
- is the sole or predominant \*foreign currency in which the establishment, unit or trust kept its accounts at the time when you made the choice.

*Controlled foreign company*

- (3) If you make a choice under item 4 of the table in subsection 960-60(1) in relation to a \*controlled foreign company (CFC) with effect from the start of a particular \*statutory accounting period, the ***applicable functional currency*** of the CFC for:
- (a) that statutory accounting period; and
  - (b) each later statutory accounting period for which the choice is in effect;
- is the sole or predominant \*foreign currency in which the CFC kept its accounts at the time when you made the choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

*Calculating capital gains and losses on indirect Australian real property interests*

- (3A) If subsection 960-61(2) applies, your **applicable functional currency** for the purposes of that subsection is the sole or predominant currency in which you keep your accounts at the time of the \*CGT event.

*Accounts*

- (4) For the purposes of this section, **accounts** means:
- (a) ledgers; and
  - (b) journals; and
  - (c) statements of financial performance; and
  - (d) profit and loss accounts; and
  - (e) balance-sheets; and
  - (f) statements of financial position;
- and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

**960-75 What is a *transferor trust*?**

A **transferor trust** is a trust where, having regard to all relevant circumstances, it would be reasonable to conclude that another entity is, or is likely to be, an attributable taxpayer in relation to the trust for the purposes of Division 6AAA of Part III of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**960-80 Translation rules**

(1) The table has effect:

<b>Translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
1	(a) you are an Australian resident required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i> ; and (b) you have made a choice under item 1 of the table in subsection 960-60(1), and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, so much of your taxable income or tax loss as is not the subject of a choice made by you under any other item of that table: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, so much of your taxable income as is not the subject of a choice made by you under any other item of that table is to be translated into Australian currency.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
2	(a) you are: <ul style="list-style-type: none"> <li>(i) an Australian resident carrying on an activity or business at or through an *overseas permanent establishment; or</li> <li>(ii) a foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and</li> </ul> (b) you have made a choice under item 2 of the table in subsection 960-60(1) in relation to the permanent establishment, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the taxable income derived from the activity or business carried on at or through the permanent establishment is to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
3	(a) you are an * offshore banking unit (OBU); and (b) you have made a choice under item 3 of the table in subsection 960-60(1) in relation to the OBU, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your total assessable OB income (within the meaning of Division 9A of Part III of the <i>Income Tax Assessment Act 1936</i> ) and your total OB deductions (within the meaning of that Division): (i) an amount that is not in the * applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the total assessable OB income and the total allowable OB deductions are to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Translation rules**

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<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
4	(a) you are an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC, and that choice is in effect for a *statutory accounting period of the CFC	(a) first, for the purpose of working out, for the statutory accounting period, the *attributable income of the CFC: <ul style="list-style-type: none"> <li>(i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and</li> <li>(ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and</li> <li>(iii) the applicable functional currency is taken not to be a foreign currency; and</li> <li>(iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and</li> </ul> (b) second, the attributable income is to be translated into Australian currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Translation rules</b>		
<b>Item</b>	<b>In this case...</b>	<b>these rules apply...</b>
5	(a) you are a *transferor trust; and (b) you have made a choice under item 5 of the table in subsection 960-60(1) in relation to the trust, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your attributable income (within the meaning of Division 6AAA of Part III of the <i>Income Tax Assessment Act 1936</i> ): (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of <i>foreign currency</i> in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the attributable income is to be translated into Australian currency.
6	(a) you are a *foreign resident who makes a *capital gain or *capital loss from a *CGT event in relation to an asset that is an *indirect Australian real property interest; and (b) you are required by subsection 960-61(2) to work out the amount of your capital gain or capital loss in the *applicable functional currency	(a) first, for the purpose of working out, for the income year, the amount of your capital gain or capital loss from the CGT event, an amount that is not in the applicable functional currency is to be translated into the applicable functional currency; and (b) second, the amount of the capital gain or capital loss is to be translated into Australian currency.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

*Examples of an amount*

- (2) The following are examples of an amount:
- (a) an amount of \*ordinary income;
  - (b) an amount of an expense;
  - (c) an amount of an obligation;
  - (d) an amount of a liability;
  - (e) an amount of a receipt;
  - (f) an amount of a payment;
  - (g) an amount of consideration;
  - (h) a value;
  - (i) a monetary limit or other amount set out in this Act or any other law of the Commonwealth.
- (3) The amounts set out in paragraphs (2)(b) to (i) may be amounts on revenue account, capital account or otherwise.

*Amounts that are elements in the calculation of other amounts*

- (4) In applying this section:
- (a) first, translate any amounts that are elements in the calculation of other amounts (except \*special accrual amounts); and
  - (b) then, calculate the other amounts.

*Special accrual amounts*

- (5) In applying this section:
- (a) calculate a \*special accrual amount without translation and without applying the first rule set out in the relevant item of the table in subsection (1); and
  - (b) then, translate the special accrual amount to Australian currency for the purposes of applying the second rule set out in the relevant item of the table in subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Special translation rules*

- (6) Subsection 960-50(6) has effect, in relation to the translation of an amount into the \*applicable functional currency, as if each reference in that subsection to Australian currency were a reference to the applicable functional currency.

*Regulations about translation*

- (7) An entity must comply with the regulations (if any) in translating an amount into:
- (a) the \*applicable functional currency; or
  - (b) Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

- (8) Regulations made for the purposes of subsection (7) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the \*accounting standards:
- (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.

**960-85 Special rule about translation—events that happened before the current choice took effect**

*Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001*

- (1) If:
- (a) as the result of a choice (the **current choice**) made by you under item 1 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the \*applicable functional currency; and
  - (b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the **event time**) before the current choice took effect;
- the table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special rule about translation**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	at the event time, no previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

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*Permanent establishment, offshore banking unit, CFC or transferor trust*

(2) If:

- (a) as the result of a choice (the **current choice**) made by you under item 2, 3, 4 or 5 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the \*applicable functional currency; and
- (b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the **event time**) before the current choice took effect;

the table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 960-90

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**Special rule about translation**

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<b>Item</b>	<b>In this case...</b>	<b>this is the result...</b>
1	at the event time, no previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

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**960-90 Withdrawal of choice**

- (1) The table has effect if you have made a choice under section 960-60:

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
1	(a) you are an Australian resident who is required to prepare financial reports under section 292 of the <i>Corporations Act 2001</i> ; and  (b) your *applicable functional currency has ceased to be the sole or predominant currency in which you keep your accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
2	(a) you are an Australian resident carrying on an activity or business at or through an *overseas permanent establishment or a foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and  (b) the *applicable functional currency of the permanent establishment has ceased to be the sole or predominant currency in which the establishment keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.
3	(a) you are an *offshore banking unit (OBU); and  (b) the *applicable functional currency of the OBU has ceased to be the sole or predominant currency in which the OBU keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-90

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**Withdrawal**

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<b>Item</b>	<b>In this case:</b>	<b>you may withdraw your choice with effect from immediately after the end of...</b>
4	(a) you are an attributable taxpayer (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> ) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC; and (c) the *applicable functional currency of the CFC has ceased to be the sole or predominant currency in which the CFC keeps its accounts (within the meaning of section 960-70)	the CFC's *statutory accounting period in which you withdraw your choice.
5	(a) you are a *transferor trust; and (b) the *applicable functional currency of the trust has ceased to be the sole or predominant currency in which the trust keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

- (2) A withdrawal must be in writing.
- (3) Withdrawing a choice does not prevent you from making a fresh choice under section 960-60.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 960-E—Entities

### Table of sections

960-100	Entities
960-105	Certain entities treated as agents

### 960-100 Entities

(1) **Entity** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;
- (d) a partnership;
- (e) any other unincorporated association or body of persons;
- (f) a trust;
- (g) a \*superannuation fund;
- (h) an \*approved deposit fund.

Note: The term **entity** is used in a number of different but related senses. It covers all kinds of legal person. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

(1A) Paragraph (1)(e) does not include a \*non-entity joint venture.

(2) The trustee of a trust, of a \*superannuation fund or of an \*approved deposit fund is taken to be an **entity** consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note 1: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

Note 2: The entity that is the trustee of a trust or fund does not change merely because of a change in the person who is the trustee of the trust or fund, or persons who are the trustees of the trust or fund.

(3) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **entity**.

Example: In addition to his or her personal capacity, an individual may be:

- sole trustee of one or more trusts; and
- one of a number of trustees of a further trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-105

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In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

- (4) If a provision refers to an *entity* of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

**Example:** A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

**Note:** Under section 87-35, certain parts of Australian governments and authorities are treated as separate entities for the purposes of ascertaining whether another entity is conducting a personal services business.

**960-105 Certain entities treated as agents**

- (1) This Act applies to an entity as if the entity were an agent of another entity (the *principal*) if:
- (a) the principal is outside Australia; and
  - (b) the entity is in Australia and, on behalf of the principal, holds money of the principal or has control, receipt or disposal of money of the principal.
- (2) This Act, or a provision of this Act, applies to an entity as if the entity were an agent of another entity if the Commissioner determines in writing that the entity is the agent or sole agent of the other entity for the purposes of this Act or of that provision.
- (3) A determination under subsection (2) is not a legislative instrument.

**Subdivision 960-F—Distribution by corporate tax entities**

**Table of sections**

960-115	Meaning of <i>corporate tax entity</i>
960-120	Meaning of <i>distribution</i>

**960-115 Meaning of *corporate tax entity***

An entity is a *corporate tax entity* at a particular time if:

- (a) the entity is a company at that time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) the entity is a \*corporate limited partnership in relation to the income year in which that time occurs; or
- (c) the entity is a \*corporate unit trust in relation to the income year in which that time occurs; or
- (d) the entity is a \*public trading trust in relation to the income year in which that time occurs.

**960-120 Meaning of *distribution***

(1) What constitutes a *distribution* by various \*corporate tax entities is set out in the following table:

<b>Distribution</b>		
<b>Item</b>	<b>Corporate tax entity</b>	<b>Distribution</b>
1	company	a dividend, or something that is taken to be a dividend, under this Act
2	*corporate limited partnership	(a) a distribution made by the partnership, whether in money or in other property, to a partner in the partnership, other than a distribution, or so much of a distribution, as is attributable to profits or gains arising during an income year in relation to which the partnership was not a corporate limited partnership (b) something that is taken to be a dividend by the partnership under this Act
3	*corporate unit trust	a unit trust dividend, as defined in subsection 102D(1) of the <i>Income Tax Assessment Act 1936</i>
4	*public trading trust	a unit trust dividend, as defined in section 102M of the <i>Income Tax Assessment Act 1936</i>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A \*corporate tax entity *makes a distribution* in the form of a dividend on the day on which the dividend is paid, or taken to have been paid.

### Subdivision 960-G—Membership of entities

#### Table of sections

960-130	Members of entities
960-135	Membership interest in an entity
960-140	Ordinary membership interest

#### 960-130 Members of entities

- (1) The following table sets out who is a *member* of various entities.

Members		
Item	Entity	Member
1	company	a member of the company or a stockholder in the company
2	partnership	a partner in the partnership
3	trust (except a *corporate unit trust or a *public trading trust)	a beneficiary, unitholder or object of the trust
4	*corporate unit trust	a unitholder of the trust
5	*public trading trust	a unitholder of the trust

- (2) If 2 or more entities jointly hold interests or rights that give rise to membership of another entity, each of them is a *member* of the other entity.
- (3) An entity is *not a member* of another entity just because the entity holds one or more interests or rights relating to the other entity that are \*debt interests. This subsection has effect despite subsections (1) and (2) of this section.

Example: An entity is *not* a member of a company as defined in this section merely because it is a member of the company in the ordinary sense of the term because it holds a finance share in the company, if the finance share is a debt interest. However, if the entity holds other

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

shares in the company that are not debt interests, it will be a member because of those other shares.

### **960-135 Membership interest in an entity**

If you are a \*member of an entity:

- (a) each interest, or set of interests, in the entity; or
- (b) each right, or set of rights, in relation to the entity;

by virtue of which you are a member of the entity is a *membership interest* of yours in the entity.

Note: In conjunction with subsection 960-130(3), this means that a debt interest is *not* a membership interest.

Example: A member of a company holds a finance share in a company that is a debt interest and some other shares in the company that are not debt interests. Only the other shares are membership interests in the company. The finance share is not, because the member is not a member of the company because of that share (see subsection 960-130(3)).

### **960-140 Ordinary membership interest**

A \*membership interest in a \*corporate tax entity is an *ordinary membership interest* if:

- (a) in the case of a membership interest in a company—it is an ordinary share; and
- (b) in the case of a membership interest in a \*corporate limited partnership—it is an interest in the income of the partnership; and
- (c) in the case of a membership interest in a \*corporate unit trust or \*public trading trust—it is a unit in the trust.

### **Subdivision 960-GP—Participation interests in entities**

#### **Table of sections**

960-180	Total participation interest
960-185	Indirect participation interest
960-190	Direct participation interest
960-195	Non-portfolio interest test

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 960-180 Total participation interest

An entity's *total participation interest* at a particular time in another entity is the sum of:

- (a) the entity's \*direct participation interest in the other entity at that time; and
- (b) the entity's \*indirect participation interest in the other entity at that time.

### 960-185 Indirect participation interest

- (1) Work out the *indirect participation interest* that an entity (the *holding entity*) holds at a particular time in another entity (the *test entity*) by multiplying:
  - (a) the holding entity's \*direct participation interest (if any) in another entity (the *intermediate entity*) at that time;by:
  - (b) the sum of:
    - (i) the intermediate entity's direct participation interest (if any) in the test entity at that time; and
    - (ii) the intermediate entity's indirect participation interest (if any) in the test entity at that time (as worked out under one or more other applications of this section).
- (2) If there is more than one intermediate entity to which paragraph (1)(a) applies at that time, the holding entity's *indirect participation interest* is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate entities.

### 960-190 Direct participation interest

- (1) Use the following table to work out the *direct participation interest* that one entity holds in another entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Direct participation interest**

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	<b>If the other entity is this kind of entity:</b>	<b>the direct participation interest that the first entity holds in the other entity is:</b>
1	A company (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> )	the direct control interest (within the meaning of section 350 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity holds in the other entity
2	A trust (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i> )	the direct control interest (within the meaning of section 351 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity holds in the other entity
3	A partnership	the direct control interest (within the meaning of section 350 of the <i>Income Tax Assessment Act 1936</i> ) that the first entity would hold in the other entity, if the assumptions in subsection (3) of this section were made

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(2) For the purposes of subsection (1):

- (a) apply sections 350 and 351 of the *Income Tax Assessment Act 1936* as if those sections apply for the purposes of this Division rather than only for the purposes of Part X of that Act; and
- (b) do not apply subsections 350(6) and (7) and 351(3) and (4) of that Act.

(3) For the purposes of item 3 of the table in subsection (1), assume that:

- (a) the \*partnership is a company; and
- (b) the partners in the partnership are shareholders in the company; and
- (c) the total amount of assets or capital contributed to the partnership is the total paid-up share capital of the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) a partner's right of distribution of capital, assets or profits on the dissolution of the partnership is a shareholder's right to distribution of capital or profits of the company on winding-up; and
- (e) a partner's right of distribution of capital, assets or profits otherwise than on the dissolution of the partnership is a shareholder's right to distribution of capital or profits of the company otherwise than on winding-up.

### 960-195 Non-portfolio interest test

An interest held by an entity (the *holding entity*) in another entity (the *test entity*) passes the non-portfolio interest test at a time if the sum of the \*direct participation interests held by the holding entity and its \*associates in the test entity at that time is 10% or more.

### Subdivision 960-H—Abnormal trading in shares or units

#### Table of sections

960-220	Meaning of <i>trading</i>
960-225	Abnormal trading
960-230	Abnormal trading—5% of shares or units in one transaction
960-235	Abnormal trading—suspected 5% of shares or units in a series of transactions
960-240	Abnormal trading—suspected acquisition or merger
960-245	Abnormal trading—20% of shares or units traded over 60 day period

### 960-220 Meaning of *trading*

#### *Shares in a listed public company*

- (1) There is a *trading* in \*shares in a company if there is an issue, redemption or transfer of those shares, or any other dealing in those shares, but only if it changes the respective proportions in which all the registered holders of shares in the company:
  - (a) can exercise the voting power in the company; or
  - (b) have the right to receive, as registered holders (whether or not for their own benefit) any dividends that the company may pay; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) have the right to receive, as registered holders (whether or not for their own benefit) any distribution of capital of the company.

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

*Units in a unit trust*

- (2) There is a **trading** in units in a unit trust if there is an issue, redemption or transfer of those units, or any other dealing in those units, but only if it changes the respective proportions in which all the registered holders of units in the trust hold (whether beneficially or not) interests in the trust income or trust capital.

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

**960-225 Abnormal trading**

- (1) There is an **abnormal trading** in \*shares in a company, or in units in a unit trust, if a \*trading in the shares or units is abnormal having regard to all relevant factors, including these:
- (a) the timing of the trading, when compared with the normal timing for trading in the company's shares or in the trust's units;
  - (b) the number of shares or units traded, when compared with the normal number of the company's shares, or the trust's units, traded;
  - (c) any connection between the trading and any other trading in the company's shares or in the trust's units;
  - (d) any connection between the trading and a \*tax loss or other deduction of the company or trust.
- (2) There may also be an abnormal trading under any of the following provisions.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**960-230 Abnormal trading—5% of shares or units in one transaction**

There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if 5% or more of the shares or units are \*traded in one transaction.

**960-235 Abnormal trading—suspected 5% of shares or units in a series of transactions**

- (1) There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if the company or trustee knows or reasonably suspects that an entity (or an entity and one or more of the entity's \*associates) has acquired (or redeemed) 5% or more of the shares or units in 2 or more transactions and would not have done so if the company or trust did not have a \*tax loss or other deduction.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the time of the particular transaction that causes the 5% figure to be exceeded.

**960-240 Abnormal trading—suspected acquisition or merger**

There is an *abnormal trading* in \*shares in a company, or in units in a unit trust, if a \*trading in those shares or units happens which the company or trustee knows or reasonably suspects is part of an acquisition or merger of the company with another company, or of the trust with another trust.

**960-245 Abnormal trading—20% of shares or units traded over 60 day period**

- (1) There is an *abnormal trading* in \*shares in a company or units in a unit trust if more than 20% of the shares or units are \*traded during a 60 day period.

*Time when abnormal trading happens*

- (2) The \*abnormal trading happens at the end of the 60 day period concerned.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## **Subdivision 960-J—Family relationships**

### **Guide to Subdivision 960-J**

#### **960-250 What this Subdivision is about**

This Subdivision has 2 principles for defining family relationships.

The first principle is to treat an unmarried couple (whether of the same sex or different sexes) in the same way as a married couple if:

- (a) their relationship is registered under particular State or Territory laws; or
- (b) they live together on a genuine domestic basis.

The second principle is to treat anyone who is defined to be an individual's child in the same way as the individual's natural child would be treated.

Both principles extend to tracing other family relationships, including beyond couples and children and their parents.

#### **Table of sections**

##### **Operative provisions**

960-252 Object of this Subdivision

960-255 Family relationships

#### **Operative provisions**

##### **960-252 Object of this Subdivision**

- (1) The first object of this Subdivision is to ensure that the same consequences flow under this Act and the other Acts to which this Subdivision applies from the relationship between 2 people who

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

are an unmarried couple (whether of the same sex or different sexes) as from a marriage, if:

- (a) the relationship is registered under a \*State law or \*Territory law (as mentioned in paragraph (a) of the definition of *spouse* in subsection 995-1(1)); or
  - (b) they live together on a genuine domestic basis.
- (2) The second object of this Subdivision is to ensure that under this Act and the other Acts to which this Subdivision applies, anyone who is defined to be an individual's \*child is treated in the same way as if he or she were the individual's natural child.

### **960-255 Family relationships**

#### *Relationships between couples*

- (1) If one individual is the \*spouse of another individual because of the definition of *spouse* in subsection 995-1(1), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were legally married to the other individual.

Example: George and Angelika are not legally married but live together on a genuine domestic basis in a relationship as a couple. This Act treats them as part of each other's family.

#### *Relationships involving children*

- (2) If one individual is the \*child of another individual because of the definition of *child* in subsection 995-1(1), relationships traced to, from or through the individual, and family groups of which either individual is a member, are to be determined in the same way as if the individual were the natural child of the other individual.

Example: Clare's stepfather Frank has a sister Angela. This Act applies as if Angela were Clare's aunt because Clare is defined to be Frank's child. That is, Clare's relationship to Angela is determined on the basis that Clare is Frank's natural child.

#### *Application*

- (3) Subsections (1) and (2) apply for the purposes of this Act. They also apply for the purposes of a provision of another Act if one or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

more of the following applies for the purposes of that provision (or would apply if it were used in the provision):

- (a) the definition of *child* in subsection 995-1(1);
- (b) the definition of *parent* in subsection 995-1(1);
- (c) the definition of *relative* in subsection 995-1(1);
- (d) the definition of *spouse* in subsection 995-1(1).

## Subdivision 960-M—Indexation

### Guide to Subdivision 960-M

#### 960-260 What this Subdivision is about

There are a number of provisions in this Act that require amounts to be indexed. This Subdivision shows you:

- how to index those amounts; and
- how to calculate the indexation factor.

#### Table of sections

960-265 The provisions for which indexation is relevant

##### Operative provisions

960-270 Indexing amounts

960-275 *Indexation factor*

960-280 *Index number*

960-285 Indexation—superannuation and employment termination

#### 960-265 The provisions for which indexation is relevant

This table sets out the provisions for which indexation is relevant.

Provisions for which indexation is relevant		
Item	Topic of provision:	See:
1	Car limit	section 40-230
2	Capital gains—cost base	Parts 3-1 and 3-3

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-270

<b>Provisions for which indexation is relevant</b>		
<b>Item</b>	<b>Topic of provision:</b>	<b>See:</b>
3	Capital gains—Improvements as separate assets	Subdivision 108-D
4	child care offset limit	section 61-495
4A	Education expenses tax offset limit	section 61-660
5	*Genuine redundancy payments and *early retirement scheme payments—base amount	subsection 83-170(3)
6	*Genuine redundancy payments and *early retirement scheme payments—service amount	subsection 83-170(3)
7	Reduction of superannuation contributions—pre-1 July 88 funding credits (unused amount at end of previous income year)	subsection 295-265(2)
8	*Employment termination payments—*ETP cap amount	section 82-160
9	*Excess contributions tax on superannuation contributions—*concessional contributions cap	subsection 292-20(2)
10	*Excess contributions tax on superannuation contributions—index amount (*CGT cap amount)	subsection 292-105(4)
11	*Superannuation benefits—index amount (*low rate cap amount)	subsection 307-345(4)
12	*Superannuation benefits—index amount (*untaxed plan cap amount)	subsection 307-350(4)
13	Thresholds for application of Division 250	sections 250-25 and 250-30

Note: There are provisions of the *Income Tax Assessment Act 1936* dealing with indexation that have not yet been rewritten.

## Operative provisions

### 960-270 Indexing amounts

- (1) Some provisions of this Act require amounts to be indexed. You index an amount by multiplying it by its \*indexation factor.
- (2) You do not index the amount if its \*indexation factor is 1 or less.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**960-275 Indexation factor**

- (1) For indexation of amounts on an annual basis, the *indexation factor* is:

$$\frac{\text{Sum of the index numbers for the quarters in the year ending on 31 March just before the start of the relevant financial year}}{\text{Sum of the index numbers for the quarters in the year ending on the previous 31 March}}$$

- (1A) However, for indexation of the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the *indexation factor* is:

$$\frac{\text{*Index number for the quarter ending on 31 March just before the start of the relevant income year}}{\text{*Index number for the quarter ending on the previous 31 March}}$$

- (2) For indexation of the \*cost base of a \*CGT asset (except the first element of the cost base of an asset covered by subsection (3)), the *indexation factor* for expenditure in an element of the cost base is:

$$\frac{\text{*Index number for the quarter ending on 30 September 1999}}{\text{*Index number for the quarter in which the expenditure was incurred}}$$

The expenditure can include giving property: see section 103-5.

Note 1: This rule does not apply to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time: see section 114-1.

Note 2: This rule applies even if you do not actually pay some of the expenditure until a later time (for example, under a contract to purchase an asset by instalments).

Note 3: There are rules affecting when the expenditure was incurred: see sections 114-15 and 114-20.

- (3) For indexation of the first element of the \*cost base of a \*CGT asset that is:

- (a) a \*share in a company; or
- (b) a unit in a unit trust;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the ***indexation factor*** for an amount in the first element of the \*cost base of the asset that was paid to the company or trust at a time after it was \*acquired is:

\*Index number for the quarter ending on 30 September 1999

\*Index number for the quarter in which the amount was paid

The payment can include giving property: see section 103-5.

Example: Peter acquires shares in a company. The shares are partly-paid, and the company makes a call on the shares. Peter sells the shares to Narina before he is liable to pay the call.

The amount Narina paid to Peter for the shares is indexed under subsection 960-275(2) from the quarter in which she incurred the expenditure to acquire the shares.

The amount Narina later pays for the call on the shares is indexed in accordance with subsection 960-275(3) from the quarter in which she made that later payment.

Note 1: This subsection does not apply to shares or units you acquired before 16 August 1989: see section 960-275 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: This subsection does not apply to an amount paid after 11.45 am on 21 September 1999 or an amount paid in relation to a CGT asset acquired after that time: see section 114-1.

- (4) However, you cannot index expenditure in the third element of the \*cost base of a CGT asset (costs of ownership).
- (5) You work out the \*indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it would be rounded up to 1.103.

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

### **960-280** ***Index number***

- (1) In most cases, the ***index number*** for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Car limit*

- (2) For calculating the \*car limit, the ***index number*** for a quarter is the index number for the motor vehicle purchase sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities, first published by the Australian Statistician for the quarter.
- (3) If the Australian Statistician changes the reference base for an \*index number, only index numbers published in terms of the new base are to be used after the change.

*Genuine redundancy, early retirement schemes, pre-1 July 88 funding credits*

- (4) For calculating the amounts mentioned in the provisions listed at items 5, 6 and 7 in section 960-265, the ***index number*** for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician in respect of that month.
- (5) Subsection (3) does not apply to the index numbers mentioned in subsection (4).

*Exception—superannuation and employment termination*

- (6) This section does not apply in relation to amounts mentioned in the provisions listed at items 8 to 12 in section 960-265.

Note: For the indexation of those amounts, see section 960-285.

**960-285 Indexation—superannuation and employment termination**

- (1) This section applies in relation to an amount mentioned in a provision listed at items 8 to 12 in section 960-265.

*Indexing amounts*

- (2) You index the amount by:
  - (a) firstly:
    - (i) if the amount is mentioned in item 9 in section 960-265 (concessional contributions cap)—multiplying the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- amount for the 2009-2010 financial year by its  
\*indexation factor mentioned in subsection (3A); or
- (ii) otherwise—multiplying the amount for the 2007-2008  
income year or financial year by its indexation factor  
mentioned in subsection (4); and
- (b) next, rounding the result in paragraph (a) down to the nearest  
multiple of \$5,000.

Example 1: If the amount to be indexed is \$140,000 and the indexation factor  
increases this to an indexed amount of \$143,000, the indexed amount  
is rounded back down to \$140,000.

Example 2: If the amount to be indexed is \$140,000 and the indexation factor  
increases this to an indexed amount of \$146,000, the indexed amount  
is rounded down to \$145,000.

- (3) You do not index the amount if its indexation factor mentioned in  
subsection (3A) or (4) is 1 or less.

*Indexation factor*

- (3A) For indexation of the amount on an annual basis in accordance  
with subparagraph (2)(a)(i), the ***indexation factor*** is:

\*Index number mentioned in subsection (6) for the quarter ending  
on 31 December just before the start of the relevant income year or financial year

\*Index number mentioned in subsection (6)  
for the quarter ending on 31 December 2008

- (4) For indexation of the amount on an annual basis in accordance  
with subparagraph (2)(a)(ii), the ***indexation factor*** is:

\*Index number mentioned in subsection (6) for the quarter ending  
on 31 December just before the start of the relevant income year or financial year

\*Index number mentioned in subsection (6)  
for the quarter ending on 31 December 2006

- (5) You work out the \*indexation factor mentioned in subsection (3A)  
or (4) to 3 decimal places (rounding up if the fourth decimal place  
is 5 or more).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Index number*

- (6) For calculating the amounts, the *index number* for a quarter is the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician in respect of that month.

## **Subdivision 960-S—Market value**

### **Guide to Subdivision 960-S**

#### **960-400 What this Subdivision is about**

The expression “market value” is often used in this Act with its ordinary meaning.

However, in some cases that expression has a meaning affected by this Subdivision.

#### **Table of sections**

##### **Operative provisions**

- 960-405 Effect of GST on market value of an asset  
960-410 Market value of non-cash benefits  
960-415 Amounts that depend on market value

#### **Operative provisions**

##### **960-405 Effect of GST on market value of an asset**

- (1) The *market value* of an asset at a particular time is reduced by the amount of the \*input tax credit (if any) to which you would be entitled assuming that:
- (a) you had \*acquired the asset at that time; and
  - (b) the acquisition had been solely for a \*creditable purpose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 960-410

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- (2) Subsection (1) does not apply:
- (a) to an asset the \*supply of which cannot be a \*taxable supply;  
or
  - (b) in working out the \*market value of economic benefits, or of \*equity or loan interests, for the purposes of Part 3-95 (about value shifting).

Note: Some assets, such as shares, cannot be the subject of a taxable supply.

**960-410 Market value of non-cash benefits**

In working out the *market value* of a \*non-cash benefit, disregard anything that would prevent or restrict conversion of the benefit to money.

**960-415 Amounts that depend on market value**

To avoid doubt, apply the rules in this Subdivision to the \*market value component of any calculation that involves market value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 974—Debt and equity interests**

### **Table of Subdivisions**

974-A	General
974-B	Debt interests
974-C	Equity interests
974-D	Common provisions
974-E	Non-share distributions by a company
974-F	Related concepts

### **Subdivision 974-A—General**

#### **Guide to Division 974**

##### **974-1 What this Division is about**

This Division tells you whether an interest is a debt interest, or an equity interest, for tax purposes. An interest that could be characterised as both a debt interest and an equity interest will be treated as a debt interest for tax purposes (except for certain interests that fund returns on equity interests).

Whether an interest is a debt interest or an equity interest matters because returns on debt interests are not frankable but may be deductible while returns on equity interests are not deductible but may be frankable.

This Division extends beyond shares the range of interests that are recognised as equity in a company. An interest that is an equity interest in a company but is not a share will be treated in the same way as a share for some tax purposes (particularly in relation to the determination of the tax treatment of returns on the interest).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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This Division also tells you how to work out which distributions made in respect of a non-share equity interest in a company will be non-share dividends and which will be non-share capital returns. Those that are non-share dividends will be treated, for most tax purposes, in the same way as dividends.

### **Table of sections**

974-5 Overview of Division

#### **Operative provisions**

974-10 Object

### **974-5 Overview of Division**

#### *Test for distinguishing debt and equity interests*

- (1) The test for distinguishing between debt interests and equity interests focuses on economic substance rather than mere legal form (see subsection 974-10(2)). The test is designed to assess the economic substance of an interest in terms of its impact on the issuer's position.

#### *Debt interests*

- (2) Subdivision 974-B tells you when an interest is a debt interest in an entity. The basic test is in section 974-20.

#### *Equity interests*

- (3) Subdivision 974-C tells you when an interest is an equity interest in a company. The basic test is in section 974-75.

#### *Tie breaker between debt and equity*

- (4) If an interest satisfies both the debt test and the equity test, it is treated as a debt interest and not an equity interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Distributions in relation to equity interests that are not shares*

- (5) If you have an equity interest in a company that is not a share, Subdivision 974-E tells you what will count as a non-share distribution, a non-share dividend and a non-share capital return in relation to the interest.

*Concepts used in the debt and equity tests*

- (6) Subdivision 974-F defines a number of concepts that are used in the debt and equity tests (financing arrangement, effectively non-contingent obligation, benchmark rate of return and converting interest).

## **Operative provisions**

### **974-10 Object**

- (1) An object of this Division is to establish a test for determining for particular tax purposes whether a \*scheme, or the combined operation of a number of schemes:
- (a) gives rise to a \*debt interest; or
  - (b) gives rise to an \*equity interest.

Note: The test is used, for example, for:

- (a) identifying distributions that may be frankable and which may be subject to dividend withholding tax; and
  - (b) identifying returns that may be deductible to the company making the return; and
  - (c) resolving uncertainty as to the proper tax treatment for debt/equity hybrid interests (interests that have some debt qualities and some equity qualities); and
  - (d) identifying debt capital for the purposes of Division 820 (thin capitalisation rules).
- (2) Another object of this Division is that the test referred to in subsection (1) is to operate on the basis of the economic substance of the rights and obligations arising under the \*scheme or schemes rather than merely on the basis of the legal form of the scheme or schemes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 974-10

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Note 1: The basic indicator of the economic character of a debt interest is the non-contingent nature of the returns. The basic indicator of the economic character of an equity interest, on the other hand, is the contingent nature of the returns (or convertibility into an interest of that nature).

Note 2: The test is intended to operate, for example, to:

- (a) deny deductibility (but allow franking) for “interest” in relation to a scheme that has the legal form of a loan if the economic substance of the rights and obligations arising under the relevant scheme gives the interest characteristics that are the same as or similar to those of a dividend on an ordinary share (and thereby prevent deductible returns on equity); and
- (b) allow a deduction (but not franking) for a “dividend” in relation to a scheme that has the legal form of an ordinary share if the economic substance of the rights and obligations arising under the relevant scheme gives the dividend characteristics that are the same as or similar to those of deductible interest on an ordinary loan (and thereby prevent frankable returns on debt).

This will not happen if a provision in this Act specifically provides for a different treatment for the interest or dividend.

- (3) Another object of this Division is that the combined effect of \*related schemes be taken into account in appropriate cases:
  - (a) to ensure that the test operates effectively on the basis of the economic substance of the rights and obligations arising under the schemes rather than merely on the basis of the legal form of the schemes; and
  - (b) to prevent the test being circumvented by entities merely entering into a number of separate schemes instead of a single scheme.
- (4) Another object of this Division is to identify the distributions and credits made in respect of \*non-share equity interests in a company that are to be treated as \*dividends (*non-share dividends*) and those that are to be treated as returns of capital (*non-share capital returns*).

Note: Non-share dividends will generally be included in the recipient’s assessable income and may be frankable.

- (5) The Commissioner must have regard to the objects stated in subsections (1) to (3) in exercising the power to make a determination under any of the following provisions:
  - (a) subsection 974-15(4);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) subsection 974-60(3), (4) or (5);
- (c) section 974-65;
- (d) subsection 974-70(4);
- (e) subsection 974-150(1).

Note: An entity can apply to the Commissioner to have a determination made and can object under Part IVC of the *Taxation Administration Act 1953* if it is dissatisfied with a determination (see section 974-112).

- (6) Regulations may also be made under the provisions of this Division:
- (a) to clarify the meaning of certain words and phrases in the light of emerging commercial practices, conditions and products; and
  - (b) to give guidance on the detailed operation of particular provisions.

The regulations must be consistent with the objects stated in subsections (1) to (3).

- (7) Without limiting subsection 13(3) of the *Legislative Instruments Act 2003*, the regulations made for the purposes of this Division may specify different rules for different classes of circumstances.

## **Subdivision 974-B—Debt interests**

### **Table of sections**

974-15	Meaning of <i>debt interest</i>
974-20	The test for a debt interest
974-25	Exceptions to the debt test
974-30	Providing a financial benefit
974-35	Valuation of financial benefit—general rules
974-40	Valuation of financial benefits—rights and options to terminate early
974-45	Valuation of financial benefits—convertible interests
974-50	Valuation of financial benefits—value in present value terms
974-55	The debt interest and its issue
974-60	Debt interest arising out of obligations owed by a number of entities
974-65	Commissioner's power

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 974-15 Meaning of *debt interest*

#### *Single scheme giving rise to debt interest*

- (1) A \*scheme gives rise to a **debt interest** in an entity if the scheme, when it comes into existence, satisfies the debt test in subsection 974-20(1) in relation to the entity.

Note 1: A debt interest can also arise under subsection (2) (related schemes) or section 974-65 (Commissioner's discretion).

Note 2: Section 974-55 defines various aspects of the debt interest that arises.

#### *Related schemes giving rise to debt interest*

- (2) Two or more \*related schemes (the **constituent schemes**) together give rise to a **debt interest** in an entity if:
- (a) the entity enters into, participates in or causes another entity to enter into or participate in the constituent schemes; and
  - (b) a scheme with the combined effect or operation of the constituent schemes (the **notional scheme**) would satisfy the debt test in subsection 974-20(1) in relation to the entity if the notional scheme came into existence when the last of the constituent schemes came into existence; and
  - (c) it is reasonable to conclude that the entity intended, or knew that a party to the scheme or one of the schemes intended, the combined economic effects of the constituent schemes to be the same as, or similar to, the economic effects of a debt interest.

This is so whether or not the constituent schemes come into existence at the same time and even if none of the constituent schemes would individually give rise to that or any other \*debt interest.

Note: Section 974-105 explains the effect, for tax purposes, of actions taken under the schemes.

- (3) Subsection (2) does not apply if each of the \*schemes individually gives rise to a \*debt interest in the entity.
- (4) Two or more \*related schemes do not give rise to a **debt interest** in an entity under subsection (2) if the Commissioner determines that it would be unreasonable to apply that subsection to those schemes.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:
- (a) the purpose of the \*schemes (considered both individually and in combination);
  - (b) the effects of the schemes (considered both individually and in combination);
  - (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
  - (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
  - (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
  - (f) any other relevant circumstances.
- (6) If:
- (a) 2 or more \*related schemes give rise to a \*debt interest in an entity; and
  - (b) one or more of those schemes (the *hedging scheme or schemes*) are schemes for hedging or managing financial risk; and
  - (c) the other scheme or schemes give rise to a debt interest in the entity even if the hedging scheme or schemes are disregarded;

the debt interest that arises from the schemes is taken, for the purposes of Division 820 (the thin capitalisation rules), not to include the hedging scheme or schemes.

Note: This means that in these circumstances the losses associated with the hedging scheme or schemes are not debt deductions under section 820-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 974-20 The test for a debt interest

### *Satisfying the debt test*

- (1) A \*scheme satisfies the debt test in this subsection in relation to an entity if:
- (a) the scheme is a \*financing arrangement for the entity; and
  - (b) the entity, or a \*connected entity of the entity, receives, or will receive, a \*financial benefit or benefits under the scheme; and
  - (c) the entity has, or the entity and a connected entity of the entity each has, an \*effectively non-contingent obligation under the scheme to provide a financial benefit or benefits to one or more entities after the time when:
    - (i) the financial benefit referred to in paragraph (b) is received if there is only one; or
    - (ii) the first of the financial benefits referred to in paragraph (b) is received if there are more than one; and
  - (d) it is substantially more likely than not that the value provided (worked out under subsection (2)) will be at least equal to the value received (worked out under subsection (3)); and
  - (e) the value provided (worked out under subsection (2)) and the value received (worked out under subsection (3)) are not both nil.

The scheme does not need to satisfy paragraph (a) if the entity is a company and the interest arising from the scheme is an interest covered by item 1 of the table in subsection 974-75(1) (interest as a member or stockholder of the company).

Note: Section 974-30 tells you when a financial benefit is taken to be provided to an entity.

- (2) The *value provided* is:
- (a) the value of the \*financial benefit to be provided under the \*scheme by the entity or a \*connected entity if there is only one; or
  - (b) the sum of the values of all the financial benefits provided or to be provided under the scheme by the entity or a connected entity of the entity if there are 2 or more.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 974-35 tells you how to value financial benefits.

- (3) The **value received** is:
- (a) the value of the \*financial benefit received, or to be received, under the \*scheme by the entity or a \*connected entity of the entity if there is only one; or
  - (b) the sum of the values of all the financial benefits received, or to be received, under the scheme by the entity or a connected entity if there are 2 or more.
- (4) For the purposes of paragraph (1)(b) and subsections (2) and (3):
- (a) a \*financial benefit to be provided under the \*scheme by the entity or a \*connected entity is taken into account only if it is one that the entity or connected entity has an \*effectively non-contingent obligation to provide; and
  - (b) a financial benefit to be received under the scheme by the entity or a connected entity is taken into account only if it is one that another entity has an effectively non-contingent obligation to provide.

*Multiple financial benefits*

- (5) Paragraphs (1)(b) and (c) apply to 2 or more \*financial benefits whether they are provided at the same time or over a period of time.

*Regulations*

- (6) The regulations:
- (a) may specify circumstances in which paragraph (1)(d) is satisfied or not satisfied; and
  - (b) may otherwise specify rules to be applied in determining whether or not paragraph (1)(d) is satisfied.

**974-25 Exceptions to the debt test**

*Short term schemes*

- (1) A \*scheme does not satisfy the debt test in subsection 974-20(1) in relation to an entity if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 974-30

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- (a) at least a substantial part of a \*financial benefit mentioned in that subsection does not consist of either of the following or a combination of either of the following:
  - (i) a liquid or monetary asset;
  - (ii) an amount of money; and
- (b) the scheme requires the financial benefit mentioned in paragraph 974-20(1)(c) to be provided within a period of no more than 100 days of the receipt of the first financial benefit mentioned in paragraph 974-20(1)(b); and
- (c) the financial benefit mentioned in paragraph 974-20(1)(c):
  - (i) is in fact provided within that period; or
  - (ii) is not provided within that period because the entity required to provide the benefit neglects to provide the benefit within that period (although willing to do so); or
  - (iii) is not provided within that period because the entity required to provide the benefit is unable to provide the benefit within that period (although willing to do so); and
- (d) the scheme is not one of a number of \*related schemes that together are taken to give rise to a \*debt interest under subsection 974-15(2).

*Regulations*

- (2) The regulations may make provision in relation to the application or operation of subsection (1). Without limiting this, the regulations may:
  - (a) specify what constitutes a substantial part of a \*financial benefit for the purposes of paragraph (1)(a); or
  - (b) specify a period to be substituted for the period referred to in paragraph (1)(b).

**974-30 Providing a financial benefit**

*Issue of equity interest*

- (1) The following do not constitute the provision of a \*financial benefit by an entity or a \*connected entity of the entity:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the issue of an \*equity interest in the entity or a connected entity of the entity; or
- (b) an amount that is to be applied in respect of the issue of an equity interest in the entity or a connected entity of the entity.

*Providing a financial benefit to an entity*

- (2) A \*financial benefit is taken to be provided to an entity if it is provided:
  - (a) to the entity; or
  - (b) on the entity's behalf; or
  - (c) for the entity's benefit.

*Obligation to provide future financial benefit*

- (3) For the avoidance of doubt, if you have a present obligation to provide a \*financial benefit to an entity at some time in the future:
  - (a) the financial benefit is taken to be a financial benefit to be provided in the future; and
  - (b) the obligation to provide the financial benefit is taken not to be a financial benefit being provided at the present.

**974-35 Valuation of financial benefits—general rules**

*Value in nominal terms or present value terms*

- (1) For the purposes of this Subdivision:
  - (a) the value of a \*financial benefit received or provided under a \*scheme is its value calculated:
    - (i) in nominal terms if the performance period (see subsection (3)) must end no later than 10 years after the interest arising from the scheme is issued; or
    - (ii) in present value terms (see section 974-50) if the performance period must or may end more than 10 years after the interest arising from the scheme is issued; and
  - (b) the regulations may make provisions relating to the valuation of a financial benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Assume scheme runs its full term*

- (2) The value of a \*financial benefit received or provided under a \*scheme is calculated assuming that the interest arising from the scheme will continue to be held for the rest of its life.

Note 1: Section 974-40 makes specific provision for cases in which there is a right or option to terminate the interest early.

Note 2: Section 974-45 makes specific provision for cases involving convertible interests.

*Performance period*

- (3) The **performance period** is the period within which, under the terms on which the interest is issued, the \*effectively non-contingent obligations of the issuer, and any \*connected entity of the issuer, to provide a \*financial benefit in relation to the interest have to be met.
- (4) An obligation is treated as having to be met within 10 years after the interest is issued if:
- (a) the issuer; or
  - (b) the \*connected entity of the issuer;
- has an \*effectively non-contingent obligation to terminate the interest within that 10 year period even if the terms on which the interest is issued formally allow the obligation to continue after the end of that 10 year period.

*Benefit dependent on variable factor*

- (5) If:
- (a) a \*financial benefit received or provided in respect of an interest depends on a factor that may vary over time (such as a variable interest rate); and
  - (b) that factor is one commonly used in commercial arrangements; and
  - (c) it would be unreasonable to expect any of the parties to the \*scheme to know, or to anticipate accurately, the future value of that factor; and
  - (d) that factor has a particular value (the **starting value**) when the scheme is entered into;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the value of the financial benefit is calculated assuming that the factor's value will retain the starting value for the whole of the life of the scheme.

Note: For example, the value of a return based on a floating interest rate is calculated on the basis that the interest rate remains the interest rate that is applicable when the scheme is entered into.

*Scheme wholly in foreign currency etc.*

- (6) If all the \*financial benefits provided and received under a \*scheme are denominated in a particular foreign currency or in terms of quantities of a particular commodity or other unit of account, they are not to be converted into Australian currency for the purpose of comparing their relative values for the purposes of this Subdivision.

#### **974-40 Valuation of financial benefits—rights and options to terminate early**

- (1) This section deals with the situation in which a party to a \*scheme has a right or option to terminate the scheme early (whether by discharging an obligation early, converting the interest arising from the scheme into another interest or otherwise).

Note 1: An example of terminating a scheme early by discharging an obligation early is terminating a loan by discharging the obligation to repay the principal (and any outstanding interest) early.

Note 2: In certain circumstances, conversion of an interest into another interest can terminate its life (see section 974-45).

- (2) The existence of the right or option is to be disregarded in working out the length of the life of the interest arising from the \*scheme for the purposes of this Subdivision if the party does not have an \*effectively non-contingent obligation to exercise the right or option.
- (3) If the party does have an \*effectively non-contingent obligation to exercise the right or option, the life of the interest ends at the earliest time at which the party will have to exercise the right or option.
- (4) This section does not limit subsection 974-35(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**974-45 Valuation of financial benefits—convertible interests**

- (1) This section deals with the situation in which a \*scheme gives rise to an \*interest that will or may convert into an \*equity interest in a company.
- (2) The life of the interest ends no later than the time when it converts into that \*equity interest.
- (3) The possibility of the conversion is to be disregarded in working out the length of the life of the interest arising from the \*scheme for the purposes of section 974-35 if it is uncertain:
  - (a) whether the interest will ever convert; or
  - (b) when the interest will convert.

Note: Section 974-40 deals with the situation in which a party to the scheme may exercise a right or option to convert the interest.

- (4) This section does not limit subsection 974-35(2).

**974-50 Valuation of financial benefits—value in present value terms**

- (1) Subject to the regulations made for the purposes of subsection (5), the value in present value terms of a \*financial benefit to be provided or received in respect of an interest (the *test interest*) is calculated under subsection (4).
- (2) If you need to calculate the values in present value terms of a number of \*financial benefits, the value of each financial benefit is to be calculated separately.
- (3) The value of a \*financial benefit is to be calculated assuming that all amounts to be paid by an entity in respect of the test interest are paid at the earliest time when the entity becomes liable to pay them.
- (4) The value of a \*financial benefit in present value terms is:

$$\frac{\text{Amount or value of *financial benefit in nominal terms}}{[1 + \text{Adjusted benchmark rate of return}]^n}$$

where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***adjusted benchmark rate of return*** is 75% of the \*benchmark rate of return on the test interest.

***n*** is the number of years in the period starting on the day on which the test interest is issued and ending on the day on which the \*financial benefit is to be provided. If the period includes a part of a year, that part is to be expressed as the fraction:

$$\frac{\text{Number of days in that period}}{\text{Number of days in the year}}$$

***year*** means a period of 12 calendar months.

- (5) The regulations may provide for the method of calculating the value in present value terms of a \*financial benefit.
- (6) Without limiting subsection (5), the regulations may:
  - (a) provide for an entirely different method of calculating the present value of the \*financial benefit; or
  - (b) specify the adjusted \*benchmark rate of return; or
  - (c) provide for a different method of determining the adjusted benchmark rate of return; or
  - (d) specify rules for determining whether a \*debt interest is an \*ordinary debt interest.

### **974-55 The debt interest and its issue**

- (1) If a \*scheme, or 2 or more \*related schemes, give rise to a \*debt interest in an entity, the debt interest:
  - (a) consists of the interest that carries the right to receive a \*financial benefit that the entity or a \*connected entity has an \*effectively non-contingent obligation to provide under the scheme or any of the schemes; and
  - (b) is taken, subject to section 974-60, to be a debt interest in the entity; and
  - (c) is taken to be issued by the entity; and
  - (d) is ***issued*** when the entity (or a connected entity of the entity) first receives a \*financial benefit under the scheme or any of the schemes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) is *on issue* while an effectively non-contingent obligation of the entity (or a connected entity of the entity) to provide a financial benefit under the scheme or any of the schemes remains unfulfilled.
- (2) The interest referred to in paragraph (1)(a) may take the form of a proprietary right, a chose in action or any other form.

**974-60 Debt interest arising out of obligations owed by a number of entities**

- (1) This section deals with the situation in which a \*scheme, or a number of \*related schemes together, would, apart from this section, give rise to the same \*debt interest in 2 or more entities.

Note: A scheme may give rise to the same debt interest in 2 or more entities if each of those entities has non-contingent obligations to provide financial benefits under the scheme.

- (2) The \*debt interest:
- (a) is a debt interest in the entity identified under subsection (3) or (4); and
- (b) is not a debt interest in the other entity or entities.
- (3) The \*debt interest is a debt interest in the entity identified using the following method statement:

*Method statement*

- Step 1. Work out, for each of the entities, the total value of the \*financial benefits that the entity is under an \*effectively non-contingent obligation to provide under the \*scheme or schemes: this is the entity's *obligation value*.
- Step 2. The \*debt interest is taken to be a debt interest in the entity with the greatest obligation value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- Step 3. If it is not possible to determine which entity has the greatest obligation value (whether because of an equality of, or uncertainty as to, obligation values or otherwise), the \*debt interest is taken to be a debt interest in the entity agreed on by all the entities.
- Step 4. If the entities do not agree, the interest is taken to be a \*debt interest in the entity determined by the Commissioner.

- (4) Despite subsection (3), the Commissioner may determine that the \*debt interest is a debt interest in the entity specified in the determination.
- (5) The Commissioner may make the determination only if satisfied, having regard to the economic substance of the relevant transactions, that the \*debt interest is properly considered from a commercial point of view to be an interest in the entity specified in the determination.

#### **974-65 Commissioner's power**

- (1) Despite subsection 974-20(1) (the debt test), the Commissioner may determine that a \*scheme gives rise to a **debt interest** in an entity if the Commissioner considers that:
- (a) the scheme would satisfy paragraphs 974-20(1)(a), (b), (c) and (e); but
  - (b) instead of satisfying paragraph 974-20(1)(d), the scheme would satisfy all the following subparagraphs:
    - (i) it is substantially more likely than not that the value of the \*financial benefit to be provided by the entity (or a \*connected entity of the entity) under the \*effectively non-contingent obligation will be at least equal to the substantial part of the value of the financial benefit received or to be received by the entity (or its connected entity) under the scheme;
    - (ii) it is substantially more likely than not that other financial benefits will be provided by the entity (or its

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- connected entity) to one or more entities under the scheme;
- (iii) it is substantially more likely than not that the sum of the values of the financial benefits mentioned in subparagraphs (i) and (ii) will be at least equal to the value of the financial benefit received by the entity (or its connected entity) under the scheme.
- (2) In making the determination, the Commissioner must have regard to the following:
- (a) the difference between the value of the \*financial benefit received and the value of the financial benefit to be provided under the \*effectively non-contingent obligation;
  - (b) the degree of likelihood of other financial benefits being provided under the \*scheme;
  - (c) the degree of likelihood of the sum of the value of the financial benefits mentioned in subparagraphs (1)(b)(i) and (ii) being equal to or greater than the value of the financial benefit received under the scheme;
  - (d) the particular circumstances surrounding the scheme (including circumstances of the parties to the scheme and their purposes for entering into the scheme).
- (3) If the Commissioner determines under this section that a \*scheme gives rise to a \*debt interest, the scheme has that effect for all purposes of this Division.

### **Subdivision 974-C—Equity interests in companies**

#### **Table of sections**

974-70	Meaning of <i>equity interest</i> in a company
974-75	The test for an equity interest
974-80	Equity interest arising from arrangement funding return through connected entities
974-85	Right or return contingent on economic performance
974-90	Right or return at discretion of company or connected entity
974-95	The equity interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **974-70 Meaning of *equity interest* in a company**

### *Scheme giving rise to equity interest*

- (1) A \*scheme gives rise to an ***equity interest*** in a company if, when the scheme comes into existence:
- (a) the scheme satisfies the equity test in subsection 974-75(1) in relation to the company because of the existence of an interest; and
  - (b) the interest is not characterised as, and does not form part of a larger interest that is characterised as, a \*debt interest in the company, or a \*connected entity of the company, under Subdivision 974-B.

Note 1: An equity interest can also arise under subsection (2) if a notional scheme with the combined effect of a number of related schemes would give rise to an equity interest under this subsection. To do this, the notional scheme would need to satisfy paragraph (b). This means that the related schemes will not give rise to an equity interest if the notional scheme would be characterised as (or form part of a larger interest that would be characterised as) a debt interest in the company or a connected entity.

Note 2: An equity interest can also arise under section 974-80 (arrangements for funding return through connected entities).

Note 3: Section 974-95 defines various aspects of the equity interest that arises.

### *Related schemes giving rise to equity interest*

- (2) Two or more \*related schemes (the ***constituent schemes***) are taken together to give rise to an ***equity interest*** in a company if:
- (a) the company enters into, participates in or causes another entity to enter into or participate in the constituent schemes; and
  - (b) a scheme with the combined effect or operation of the constituent schemes (the ***notional scheme***) would give rise to an \*equity interest in the company under subsection (1) if the notional scheme came into existence when the last of the constituent schemes came into existence; and
  - (c) it is reasonable to conclude that the company intended, or knew that a party to the scheme or one of the schemes intended, the combined economic effects of the constituent

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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schemes to be the same as, or similar to, the economic effects of an equity interest.

This is so whether or not the constituent schemes come into existence at the same time and even if none of the constituent schemes would individually give rise to that or any other equity interest.

Note: Section 974-105 explains the effect, for tax purposes, of actions taken under the schemes.

- (3) Subsection (2) does not apply if each of the constituent \*schemes individually gives rise to an \*equity interest in the company.
- (4) Two or more related \*schemes do not give rise to an \*equity interest in a company under subsection (2) if the Commissioner determines that it would be unreasonable to apply that subsection to those schemes.
- (5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:
  - (a) the purpose of the \*schemes (considered both individually and in combination);
  - (b) the effects of the schemes (considered both individually and in combination);
  - (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
  - (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
  - (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
  - (f) any other relevant circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 974-75 The test for an equity interest

### *Basic test for equity interest*

- (1) A \*scheme satisfies the equity test in this subsection in relation to a company if it gives rise to an interest set out in the following table:

<b>Equity interests</b>	
<b>Item</b>	<b>Interest</b>
1	An interest in the company as a member or stockholder of the company.
2	An interest that carries a right to a variable or fixed return from the company if either the right itself, or the amount of the return, is in substance or effect *contingent on the economic performance (whether past, current or future) of: (a) the company; or (b) a part of the company's activities; or (c) a *connected entity of the company or a part of the activities of a connected entity of the company. The return may be a return of an amount invested in the interest.
3	An interest that carries a right to a variable or fixed return from the company if either the right itself, or the amount of the return, is at the discretion of: (a) the company; or (b) a *connected entity of the company. The return may be a return of an amount invested in the interest.
4	An interest issued by the company that: (a) gives its holder (or a *connected entity of the holder) a right to be issued with an *equity interest in the company or a *connected entity of the company; or (b) is an *interest that will, or may, convert into an equity interest in the company or a connected entity of the company.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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This subsection has effect subject to subsection (2) (requirement for financing arrangement).

Note: Section 974-90 allows regulations to be made clarifying when a right or return is taken to be at discretion of a company or connected entity.

*Financing arrangement*

- (2) A \*scheme that would otherwise give rise to an \*equity interest in a company because of an item in the table in subsection (1) (other than item 1) does not give rise to an equity interest in the company unless the scheme is a \*financing arrangement for the company.

*Form interest may take*

- (3) The interest referred to in item 2, 3 or 4 in the table in subsection (1) may take the form of a proprietary right, a chose in action or any other form.

*Exception for certain at call loans—until 30 June 2005*

- (4) If:
- (a) a \*financing arrangement takes the form of a loan to a company by a \*connected entity; and
  - (b) the loan does not have a fixed term; and
  - (c) either:
    - (i) the loan is repayable on demand made by the connected entity, and repayment is required immediately on the making of the demand, or is required at the end of a particular period after the demand is made (being a period that is not longer than is reasonably necessary to arrange repayment); or
    - (ii) the loan is repayable on the death of the connected entity (if the connected entity is an individual); and
  - (d) the arrangement was entered into on or before 30 June 2005;
- the arrangement does not give rise to an *equity interest* in the company. Instead, the arrangement is taken, despite anything in Subdivision 974-B, to give rise to a *debt interest* in the company. This subsection ceases to have effect on 1 July 2005.

Note: If this subsection ceases to have effect in relation to an interest that is, according to the other provisions of this Division, an equity interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



immediately after the cessation, an adjustment to the company's non-share capital account will occur at that time (see subsection 164-15(2)).

- (5) If, while subsection (4) applies to a \*financing arrangement, a circumstance occurs that would otherwise have attracted the operation of subsection 974-110(1) or (2) in relation to the arrangement:
- (a) that subsection of section 974-110 does not apply to change the result that subsection (4) of this section produces in relation to the arrangement; but
  - (b) for the purpose of applying this Division in relation to the arrangement after subsection (4) of this section has ceased to have effect, that subsection of section 974-110 is taken to have produced the result that it would have produced if subsection (4) of this section had not applied to the arrangement.

*Further exception for certain related party at call loans*

- (6) In applying this Division in relation to a particular \*scheme and a particular income year (which may be the income year in which the scheme is entered into or a later income year), the scheme is taken not to give rise to an **equity interest** in a company, and instead to give rise to a **debt interest** in the company, if:
- (a) the scheme takes the form of a loan to the company that satisfies paragraphs (4)(a), (b) and (c); and
  - (b) the company's \*GST turnover (worked out at the end of the income year) is less than \$20,000,000.

Note: If this subsection does not apply in relation to the previous income year or the next income year, and the scheme gives rise to an equity interest according to the other provisions of this Division, an adjustment to the company's non-share capital account will occur at the end of the previous income year or the start of the next income year (see subsections 164-15(2) and 164-20(3)).

- (7) For the purpose of paragraph (6)(b), the question whether a company's \*GST turnover (worked out at the end of an income year) is less than \$20,000,000 is to be determined in accordance with subsection 188-10(2) of the \*GST Act, as if that amount of \$20,000,000 were a turnover threshold for the purposes of that subsection of the GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**974-80 Equity interest arising from arrangement funding return through connected entities**

- (1) This section deals with the situation in which:
- (a) an interest carries a right to a variable or fixed return from a company; and
  - (b) the interest is held by a \*connected entity of the company; and
  - (c) apart from this section, the interest would not be an \*equity interest in the company; and
  - (ca) the \*scheme that gives rise to the interest is a \*financing arrangement for the company; and
  - (d) there is a scheme, or a series of schemes, designed to operate so that the return to the connected entity is to be used to fund (directly or indirectly) a return to another person (the *ultimate recipient*).
- (2) The interest is an *equity interest* in the company if:
- (a) the amount of the return to the ultimate recipient is in substance or effect \*contingent on the economic performance (whether past, current or future) of:
    - (i) the company; or
    - (ii) a part of the company's activities; or
    - (iii) a \*connected entity of the company or a part of the activities of a connected entity of the company; or
  - (b) either the right itself, or the amount of the return to the ultimate recipient, is at the discretion of:
    - (i) the company; or
    - (ii) a connected entity of the company; or
  - (c) the interest in respect of which the return to the ultimate recipient is made or another interest that arises from the scheme, or any of the schemes, referred to in paragraph (1)(d):
    - (i) gives the ultimate recipient (or a connected entity of the ultimate recipient) a right to be issued with an \*equity interest in the company or a connected entity of the company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) is an \*interest that will, or may, convert into an equity interest in the company or a connected entity of the company;

and if the interest does not form part of a larger interest that is characterised as a \*debt interest in the entity in which it is held, or a \*connected entity, under Subdivision 974-B. The return may be a return of an amount invested in the interest.

Note 1: Section 974-90 allows regulations to be made clarifying when a right or return is taken to be at the discretion of a company or connected entity.

Note 2: Paragraphs (a), (b) and (c) parallel items 2, 3 and 4 of the table in subsection 974-75(1).

Example: Company A, Company B1, Company B2 and Company B3 are connected entities.

Company B1 operates Trust Fund C. An interest in Trust Fund C is issued to person H and the return on that interest is contingent on the economic performance of Company A.

Trust Fund C lends the money paid by H for the purchase of the interest to Company B1 which lends the money to Company B2 which lends the money to Company B3 which lends the money to Company A.

Under the arrangements under which the interest is issued and the loans made, payments of interest by Company A on the loan that Company B3 makes to Company A are intended to pass back through Company B2 and Company B1 to fund the return on H's interest in Trust Fund C.

Under subsection (2), Company B3 will have an equity interest in Company A. If the return to Company B3 were itself contingent on Company A's performance, Company B3's interest would be an equity interest in Company A under item 2 of the table in subsection 974-75(1) (and not under subsection (2) of this section).

Company B2 has an equity interest in Company B3 and Company B1 has an equity interest in Company B2. This is because the returns they get are intended to fund the return on H's interest in Trust Fund C and that return is contingent on the economic performance of Company A (which is related to both Company B3 and Company B2).

- (3) The interest referred to in paragraph (1)(a) or (2)(c) may take the form of a proprietary right, a chose in action or any other form.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 974-85 Right or return contingent on economic performance

- (1) A right, or the amount of a return, is not *contingent on the economic performance* of an entity, or a part of the entity's activities, merely because the right or return is contingent on:
  - (a) the ability or willingness of an entity to meet the obligation to satisfy the right to the return; or
  - (b) the receipts or turnover of the entity or the turnover generated by those activities.
- (2) The regulations may specify circumstances in which a right or return is to be taken to be contingent, or not contingent, on the economic performance of an entity or a part of an entity's activities.
- (3) The regulations may provide that paragraph (1)(b) does not apply in the circumstances specified in the regulations.
- (4) The regulations may provide that an interest that:
  - (a) is covered by item 2 in the table in subsection 974-75(1) or paragraph 974-80(2)(a); and
  - (b) arises in the circumstances specified in the regulations;is not an *equity interest* because of:
  - (c) the limited extent to which the right or return that the interest carries is \*contingent on the economic performance of an entity or a part of the entity's activities; or
  - (d) the practical insignificance of the right or return that the interest carries being contingent on that performance.

### 974-90 Right or return at discretion of company or connected entity

The regulations may specify circumstances in which a right, or the amount of a return, is to be taken to be *at the discretion* of a company or a \*connected entity of the company.

### 974-95 The equity interest

- (1) If a \*scheme gives rise to an \*equity interest in a company because of an item of the table in subsection 974-75(1), the equity interest consists of the interest referred to in that item.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If 2 or more \*related schemes give rise to an \*equity interest in a company because of an item of the table in subsection 974-75(1), the equity interest consists of the combination of interests under the schemes that satisfy the requirements of that item.
- (3) Subsection 974-80(2) also provides that certain interests are \*equity interests in a company.
- (4) If the returns on a \*non-share equity interest in a company are payable to 2 or more entities:
  - (a) each entity is taken to be the holder of a non-share equity interest in the company; and
  - (b) each entity's non-share equity interest consists of the interests that:
    - (i) constitute the non-share equity interest; and
    - (ii) are held by that entity.
- (5) The company in which an \*equity interest exists is taken to be the issuer of the interest.

### **Subdivision 974-D—Common provisions**

#### **Table of sections**

974-100	Treatment of convertible and converting interests
974-105	Effect of action taken in relation to interest arising from related schemes
974-110	Effect of material change
974-112	Determinations by Commissioner

#### **974-100 Treatment of convertible and converting interests**

- (1) If a \*debt interest is an \*interest that will or may convert into an \*equity interest, the conversion is taken, for the purposes of this Division to give rise to a new interest (and is not treated merely as a continuation of the debt interest).
- (2) If an \*equity interest is an \*interest that will or may convert into a \*debt interest, the conversion is taken, for the purposes of this Division to give rise to a new interest (and is not treated merely as a continuation of the equity interest).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**974-105 Effect of action taken in relation to interest arising from related schemes**

- (1) If:
- (a) a \*scheme, or schemes, give rise to a \*debt interest in an entity or an \*equity interest in a company; and
  - (b) the entity or company pays a return, or undertakes any other transaction, in respect of any of the following (the *component element*):
    - (i) the scheme; or
    - (ii) a part of the scheme; or
    - (iii) one of those schemes; or
    - (iv) a part of one of those schemes;

then, for the purposes of the provisions that subsection (2) covers, the return is taken to be paid, or the transaction to have been undertaken, in respect of the debt interest or equity interest and not in respect of the component element.

Example: Company A issues a convertible note to Company B. Company C, a connected entity of Company B, provides a binding collateral undertaking to Company A that Company B will exercise the option to convert the note into shares in Company A. The convertible note and the undertaking are related schemes that may give rise to an equity interest in Company A if their combined effect satisfies section 974-70. If so, the returns on the note are taken to be returns in respect of the equity interest.

- (2) This subsection covers:
- (a) the provisions of this Division (other than this section); and
  - (b) any other provision of this Act whose operation depends on an expression whose meaning is given by this Division.

**974-110 Effect of material change**

*Change to existing scheme—general rule*

- (1) If:
- (a) a \*scheme or schemes give rise to a \*debt interest (or an \*equity interest) in a company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the scheme, or one or more of the schemes, are subsequently changed, including where one or more (but not all) of the schemes cease to exist; and
- (c) the scheme or schemes as they exist immediately after the change would give rise to an equity interest (or a debt interest) in the company if they came into existence when the change occurred; and
- (d) subsection (1A) does not apply to the change;

this Division applies after the change as if the scheme or schemes as they exist immediately after the change came into existence when the change occurred.

Note 1: This will mean that the characterisation of the interest will change at that time.

Note 2: This section can apply to an interest a number of times so that, for example, an interest that is equity when issued may change to debt because of one subsequent change and then back to equity because of a later change.

Note 3: There will be an adjustment to the company's non-share capital account when the change occurs (see subsections 164-15(2) and 164-20(3)).

*Change to existing scheme—special rule for changing a related party at call etc. loan to a private company from equity to debt*

(1A) If:

- (a) a \*scheme takes the form of a loan that satisfies paragraphs 974-75(4)(a), (b) and (c); and
- (b) the scheme gives rise to an \*equity interest (disregarding the effect this subsection has on the characterisation of the interest because of the change referred to in paragraph (c) of this subsection); and
- (c) the scheme is subsequently changed; and
- (d) the change occurs in the period starting immediately after the end of a particular income year (the *year of effect*) and ending at the end of the earlier of the following days:
  - (i) the due date for lodgment of the company's \*income tax return for the year of effect;
  - (ii) the date of lodgment of the company's income tax return for the year of effect; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) the scheme, as it exists immediately after the change, would give rise to a \*debt interest in the company if the interest came into existence when the change occurred; and
- (f) the company is a \*private company in relation to the year of effect; and
- (g) subsection 974-75(6) does not apply in relation to the loan and the year of effect; and
- (h) the company elects that this subsection is to apply to the change;

this Division applies as if the scheme, as it exists immediately after the change, had come into existence at the start of the year of effect, and as if no other change of a kind referred to in subsection (1) had occurred in relation to the interest in the period commencing at the start of the year of effect and ending when the first-mentioned change was made.

Note 1: This will mean that:

- (a) the characterisation of the interest will change, with effect back to the start of the year of effect; and
- (b) that characterisation will not be affected by other changes that occurred after the start of the year of effect and before the change to which this subsection applies.

Note 2: This section can apply to an interest a number of times so that, for example, an interest that is an equity interest when issued may change to debt because of one subsequent change and then back to equity because of a later change.

Note 3: An adjustment to the company's non-share capital account will be taken to have occurred at the start of the year of effect (see subsection 164-20(3)).

- (1B) An election for the purposes of paragraph (1A)(h):
- (a) must be in writing; and
  - (b) can only be made in the period referred to in paragraph (1A)(d); and
  - (c) cannot be revoked.

*Entering into a new related scheme*

- (2) If:
- (a) a \*scheme or schemes give rise to a \*debt interest (or an \*equity interest) in a company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) the company subsequently enters into, participates in or causes another entity to enter into or participate in a new \*related scheme; and
- (c) the scheme or schemes, together with:
  - (i) the new related scheme; and
  - (ii) any other related scheme that the entity (or company) enters into, participates in or causes another entity to enter into or participate in before the new related scheme is entered into;would give rise to an equity interest (or a debt interest) in the company if they all came into existence when the new related scheme is entered into;

this Division applies after the new related scheme is entered into as if all the schemes referred to in paragraph (c) had come into existence when the new related scheme is entered into.

Note 1: This will mean that the characterisation of the interest will change at that time.

Note 2: This section can apply to an interest a number of times so that, for example, an interest that is equity when issued may change to debt because of one subsequent change and then back to equity because of a later change.

Note 3: There will be an adjustment to the company's non-share capital account when the change occurs (see subsections 164-15(2) and 164-20(3)).

*All prior changes to be taken into account*

- (3) In applying paragraphs (1)(c), (1A)(e) and (2)(c) to the \*scheme or schemes, take into account:
  - (a) all changes to the scheme or schemes that occur before the change or before the new related scheme is entered into; and
  - (b) all \*related schemes entered into before the change or before the new related scheme is entered into; and
  - (c) all changes to related schemes referred to in paragraph (b) that occur before the change or before the new related scheme is entered into.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **974-112 Determinations by Commissioner**

### *Determinations covered by this section*

- (1) This section covers a determination by the Commissioner under any of the following provisions:
- (a) subsection 974-15(4);
  - (b) subsection 974-60(3), (4) or (5);
  - (c) section 974-65;
  - (d) subsection 974-70(4);
  - (e) subsection 974-150(1).

### *Determination on own initiative or on application*

- (2) The Commissioner may make a determination covered by this section:
- (a) on his or her own initiative; or
  - (b) on an application made under subsection (3).

### *Application for determination*

- (3) An entity may apply to the Commissioner for a determination covered by this section in relation to:
- (a) an interest of which the entity is the issuer; or
  - (b) an interest of which the entity would be the issuer:
    - (i) if the determination were made; or
    - (ii) if the determination were not made.

Note: Paragraph (b) may apply, for example, if the effect of the determination applied for would be to allow, or to prevent, a number of related schemes giving rise to a debt interest or an equity interest.

- (4) The application:
- (a) must be in writing; and
  - (b) must set out the grounds on which the applicant thinks the determination should be made; and
  - (c) must set out any information relevant to deciding whether to make the determination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Review of determinations*

- (5) A taxpayer who is dissatisfied with a determination covered by this section may object against the determination in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**Subdivision 974-E—Non-share distributions by a company**

**Table of sections**

974-115	Meaning of <i>non-share distribution</i>
974-120	Meaning of <i>non-share dividend</i>
974-125	Meaning of <i>non-share capital return</i>

**974-115 Meaning of *non-share distribution***

A company makes a *non-share distribution* to you if:

- (a) you hold a \*non-share equity interest in the company; and
- (b) the company:
  - (i) distributes money to you; or
  - (ii) distributes other property to you; or
  - (iii) credits an amount to you;as the holder of that interest.

**974-120 Meaning of *non-share dividend***

- (1) Subject to subsection (2), all \*non-share distributions are *non-share dividends*.
- (2) A \*non-share distribution is not a *non-share dividend* to the extent to which the company debits the distribution against:
  - (a) the company's \*non-share capital account; or
  - (b) the company's \*share capital account.

**974-125 Meaning of *non-share capital return***

A *non-share capital return* is a \*non-share distribution to the extent to which it is not a \*non-share dividend.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 974-F—Related concepts

### Table of sections

974-130	Financing arrangement
974-135	Effectively non-contingent obligation
974-140	Ordinary debt interest
974-145	Benchmark rate of return
974-150	Schemes
974-155	Related schemes
974-160	Financial benefit
974-165	Convertible and converting interests

### 974-130 Financing arrangement

- (1) A \*scheme is a **financing arrangement** for an entity if it is entered into or undertaken:
  - (a) to raise finance for the entity (or a \*connected entity of the entity); or
  - (b) to fund another scheme, or a part of another scheme, that is a \*financing arrangement under paragraph (a); or
  - (c) to fund a return, or a part of a return, payable under or provided by or under another scheme, or a part of another scheme, that is a financing arrangement under paragraph (a).
- (2) The following are examples of \*schemes that are generally entered into or undertaken to raise finance:
  - (a) a bill of exchange;
  - (b) income securities;
  - (c) a \*convertible interest that will convert into an \*equity interest.

Note: Paragraph (a) is likely to be relevant for debt interests, paragraph (b) for equity interests and paragraph (c) for both.
- (3) The following are examples of \*schemes that are generally not entered into or undertaken to raise finance:
  - (a) a derivative that is used solely for managing financial risk;
  - (b) a contract for personal services entered into in the ordinary course of a business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: These may be relevant for both debt interests and equity interests.

- (4) For the purposes of subsection (1), the following \*schemes are taken not to be entered into or undertaken to raise finance:
- (a) a lease or bailment that satisfies all of the following:
    - (i) the property leased or bailed is not property to which Division 16D of Part III of the *Income Tax Assessment Act 1936* (arrangements relating to the use of property) applies;
    - (ii) the lease or bailment is not a relevant agreement for the purposes of section 128AC of that Act (deemed interest in respect of hire-purchase and certain other arrangements);
    - (iii) the lease or bailment is not an \*arrangement to which Division 240 of this Act (about arrangements treated as a sale and loan), or Division 242 of this Act (about luxury car leases), applies;
    - (v) the lessee or bailee, or a \*connected entity of the lessee or bailee, is not to, and does not have an obligation (whether contingent or not) or a right to, acquire the leased or bailed property;
    - (vi) Division 250 of this Act does not apply to a person and the property leased or bailed;
  - (b) a securities lending arrangement under section 26BC of the *Income Tax Assessment Act 1936*;
  - (c) a life insurance or general insurance contract undertaken as part of the issuer's ordinary course of business;
  - (d) a scheme for the payment of royalties (within the meaning of the *Income Tax Assessment Act 1936*) other than:
    - (i) a qualifying arrangement for the purposes of Division 16D of Part III of the *Income Tax Assessment Act 1936*; or
    - (ii) a relevant agreement for the purposes of section 128AC of that Act; or
    - (iii) a scheme or arrangement for the payment of royalties in relation to an asset if Division 250 of this Act applies to a person and the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) The regulations may:
- (a) specify that particular \*schemes are not ***financing arrangements***; and
  - (b) specify circumstances in which a scheme will not be a ***financing arrangement***.

#### **974-135 Effectively non-contingent obligation**

- (1) There is an ***effectively non-contingent obligation*** to take an action under a \*scheme if, having regard to the pricing, terms and conditions of the scheme, there is in substance or effect a non-contingent obligation (see subsections (3), (4) and (6)) to take that action.
- (2) Without limiting subsection (1), that subsection applies to:
- (a) providing a \*financial benefit under the \*scheme; or
  - (b) terminating the scheme.
- (3) An obligation is ***non-contingent*** if it is not contingent on any event, condition or situation (including the economic performance of the entity having the obligation or a \*connected entity of that entity), other than the ability or willingness of that entity or connected entity to meet the obligation.
- (4) The existence of the right of the holder of an \*interest that will or may convert into an \*equity interest in a company to convert the interest does not of itself make the issuer's obligation to repay the investment not non-contingent.
- (5) An obligation to redeem a preference share is not contingent merely because there is a legislative requirement for the redemption amount to be met out of profits or a fresh issue of \*equity interests.
- (6) In determining whether there is in substance or effect a non-contingent obligation to take the action, have regard to the artificiality, or the contrived nature, of any contingency on which the obligation to take the action depends.

Note: The artificiality, or the contrived nature, of a contingency would tend to indicate that there is, in substance or effect, a non-contingent obligation to take that action.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (7) An obligation of yours is not *effectively non-contingent* merely because you will suffer some detrimental practical or commercial consequences if you do not fulfil the obligation.

Note: For example, a contingent obligation to make payments in respect of an income security issued by an approved deposit-taking institution (ADI) is not effectively non-contingent merely because of the detrimental effect non-payment would have on the ADI's business.

- (8) The regulations may make further provisions relating to the following:
- (a) what constitutes a non-contingent obligation;
  - (b) what does not constitute a non-contingent obligation;
  - (c) what constitutes an \*effectively non-contingent obligation;
  - (d) what does not constitute an effectively non-contingent obligation.

#### **974-140 Ordinary debt interest**

- (1) A \*debt interest arising from a scheme is an *ordinary debt interest* if none of the obligations under the scheme is in substance or effect \*contingent on the economic performance of:
- (a) the issuer of the interest; or
  - (b) a \*connected entity; or
  - (c) a part of the operations of the issuer or a connected entity.
- (2) The regulations may specify rules for determining whether a \*debt interest is an \*ordinary debt interest.

#### **974-145 Benchmark rate of return**

- (1) The *benchmark rate of return* for an interest (the *test interest*) in an entity is the annually compounded internal rate of return on an \*ordinary debt interest that:
- (a) is issued, immediately before the test interest is issued, by the entity, or an equivalent entity, to an entity that is not a \*connected entity; and
  - (b) has a comparable maturity date; and
  - (c) is in the same currency; and
  - (d) is issued in the same market; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 974-150

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- (e) has the same credit status; and
  - (f) has the same degree of subordination to debts owed to the ordinary creditors of the issuer.
- (2) If there is no interest that satisfies subsection (1), the **benchmark rate of return** for the test interest is the annually compounded internal rate of return on an interest that is closest to the test interest in the respects referred to in that subsection (adjusted appropriately to take account of the differences between that interest and the test interest).
- (3) The regulations may:
- (a) specify the meaning to be given to an expression used in this section; or
  - (b) provide for a different method of determining the <sup>\*</sup>benchmark rate of return.

### 974-150 Schemes

- (1) The Commissioner:
- (a) may determine that what would otherwise be a single <sup>\*</sup>scheme is to be treated for the purposes of this Division as 2 or more separate schemes; and
  - (b) may determine that the schemes are to be taken for the purposes of this Division to not be <sup>\*</sup>related schemes.
- (2) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (2), have regard to the following:
- (a) the purpose of the <sup>\*</sup>scheme (considered both as a whole and in terms of its individual components);
  - (b) the effects of the scheme and each of its components (considered both as a whole and in terms of its individual components);
  - (c) the rights and obligations of the parties to the scheme (considered both as a whole and in relation to its individual components);
  - (d) whether the scheme (when considered as a whole or in terms of its individual components) provides the basis for, or

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- underpins, an interest issued to investors with the expectation that the interest can be assigned to other investors;
- (e) whether the scheme (when considered as a whole or in terms of its individual components) comprises a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
  - (f) any other relevant circumstances.
- (3) The regulations:
- (a) may provide that, in the circumstances specified in the regulations, what would otherwise be a single \*scheme is to be treated for the purposes of this Division as 2 or more separate schemes; and
  - (b) may provide that the schemes are to be taken for the purposes of this Division to not be \*related schemes.

### **974-155 Related schemes**

- (1) Subject to subsection (3), 2 \*schemes are **related** to one another if they are related to one another in any way.
- (2) Without limiting subsection (1), 2 \*schemes are **related** to each other if:
  - (a) the schemes are based on stapled instruments; or
  - (b) one of the schemes would, from a commercial point of view, be unlikely to be entered into unless the other scheme was entered into; or
  - (c) one of the schemes depends for its effect on the operation of the other scheme; or
  - (d) one scheme complements or supplements the other; or
  - (e) there is another scheme to which both the schemes are related because of a previous application or applications of this subsection.
- (3) Two \*schemes are not **related** to one another merely because:
  - (a) one refers to the other; or
  - (b) they have a common party.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The regulations may specify circumstances in which 2 \*schemes:
- (a) are taken to be related to one another; or
  - (b) are taken not to be related to one another.

#### 974-160 Financial benefit

- (1) In this Act:

*financial benefit:*

- (a) means anything of economic value; and
  - (b) includes property and services; and
  - (c) includes anything that regulations made for the purposes of subsection (3) provide is a financial benefit;  
even if the transaction that confers the benefit on an entity also imposes an obligation on the entity.
- (2) In applying subsection (1), benefits and obligations are to be looked at separately and not set off against each other.
- (3) The regulations may provide that a thing specified in the regulations is a *financial benefit* for the purposes of this Act.

#### 974-165 Convertible and converting interests

An interest (the *first interest*) is an *interest that will or may convert into another interest* (the *second interest*) if:

- (a) the first interest, or a part of the first interest, must be or may be converted into the second interest; or
- (b) the first interest, or a part of the first interest, must be or may be redeemed, repaid or satisfied by:
  - (i) the issue or transfer of the second interest (whether to the holder of the first interest or to some other person);  
or
  - (ii) the acquisition of the second interest (whether by the holder of the first interest or by some other person); or
  - (iii) the application in or towards paying-up (in whole or in part) the balance unpaid on the second interest (whether the second interest is to be issued to the holder of the first interest or to some other person); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the holder of the first interest has, or is to have, a right or option to have allotted or transferred to the holder or to some other person, or for the holder or some other person otherwise to acquire:
  - (i) the second interest; or
  - (ii) a right or option to acquire the second interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 975—Concepts about companies

### Table of Subdivisions

- 975-A General
- 975-G What is a company's share capital account?
- 975-W Wholly-owned groups of companies

### Subdivision 975-A—General

#### Table of sections

- 975-150 *Position to affect rights* in relation to a company
- 975-155 When is an entity a *controller* (for CGT purposes) of a company?
- 975-160 When an entity has an *associate-inclusive control interest*

### 975-150 *Position to affect rights in relation to a company*

- (1) A person is *in a position to affect rights* of a company in relation to another company if the person has a right, power or option:
  - (a) to acquire those rights from one or other of those companies;  
or
  - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (2) It does not matter whether the person has the right, power or option because of the \*constitution of one or other of those companies, any agreement or otherwise.
- (3) However, the right, power or option of an owner of \*ownership interests in the \*head entity of a \*demerger group to \*acquire, under a \*demerger, ownership interests in the \*demerged entity is not a right, power or option covered by subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**975-155 When is an entity a controller (for CGT purposes) of a company?**

An entity (the *first entity*) is a *controller (for CGT purposes)* of a company if:

- (a) the first entity has an \*associate-inclusive control interest in the company of at least 50%; or
- (b) the first entity has an associate-inclusive control interest in the company of at least 40% and entities other than the first entity or associates of the first entity do not control the company; or
- (c) the first entity controls the company (alone or with an \*associate).

**975-160 When an entity has an associate-inclusive control interest**

- (1) An entity has an *associate-inclusive control interest* in a company in the circumstances set out in Subdivision A of Division 3 of Part X of the *Income Tax Assessment Act 1936*.
- (2) However, in working out whether an entity has an associate-inclusive control interest of a particular percentage for the purposes of section 975-155, there are these modifications to the way Part X of that Act operates:
  - (a) that Part is applied to any company, including one acting as a trustee; and
  - (b) subsection 349(4) applies in all cases in working out which entity holds a direct control interest or a control tracing interest equal to 100%; and
  - (c) subsections 350(6) and (7) and 355(1) are ignored; and
  - (d) despite subsection 352(2), an interposed entity may be taken into account in calculating an indirect control interest if the interposed entity is:
    - (i) a company of which the first entity or an \*associate is a controller; or
    - (ii) a partnership or a trust; and
  - (e) section 354 applies as if it referred to partnerships rather than CFP's; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(f) section 355 applies as if it referred to trusts rather than CFT's.

- Note 1: Part X of the *Income Tax Assessment Act 1936* defines company to exclude a company in the capacity of a trustee.
- Note 2: The terms direct control interest and control tracing interest are relevant to working out associate-inclusive control interests in a company: see sections 350, 351, 353, 354 and 355 of that Act.
- Note 3: Under subsection 349(4) of that Act, if 2 or more entities would have a direct control interest or a control tracing interest in a company or trust equal to 100%, only one of them holds the interest.
- Note 4: Subsections 350(6) and (7) of that Act deal with direct control interests in a company. They deal with interests held by Australian entities. Under subsection 355(1), certain entities are taken to hold a control tracing interest in a trust equal to 100%.
- Note 5: Paragraphs (2)(d), (e) and (f) of this section are necessary because Part X of the *Income Tax Assessment Act 1936* applies only to CFE's (which comprise CFC's, CFP's and CFT's).

### Subdivision 975-G—What is a company's share capital account?

#### Table of sections

975-300 Meaning of *share capital account*

#### 975-300 Meaning of *share capital account*

- (1) A company's *share capital account* is:
- (a) an account that the company keeps of its share capital; or
  - (b) any other account (whether or not called a share capital account) that satisfies the following conditions:
    - (i) the account was created on or after 1 July 1998;
    - (ii) the first amount credited to the account was an amount of share capital.
- (2) If a company has more than one account covered by subsection (1), the accounts are taken, for the purposes of this Act, to be a single account.

Note: Because the accounts are taken to be a single account (the *combined share capital account*), tainting of any of the accounts has the effect of tainting the combined share capital account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) However, if a company's \*share capital account is \*tainted, that account is taken not to be a share capital account for the purposes this Act, other than:
- (a) subsection 118-20(6); and
  - (b) Division 197; and
  - (ba) paragraph 202-45(e); and
  - (c) the definition of *paid-up share capital* in subsection 6(1) of the *Income Tax Assessment Act 1936*; and
  - (d) subsection 44(1B) of the *Income Tax Assessment Act 1936*; and
  - (f) subsection 159GZZZQ(5) of the *Income Tax Assessment Act 1936*.

## **Subdivision 975-W—Wholly-owned groups of companies**

### **Table of sections**

975-500	Wholly-owned groups
975-505	What is a 100% subsidiary?

### **975-500 Wholly-owned groups**

Two companies are members of the same *wholly-owned group* if:

- (a) one of the companies is a \*100% subsidiary of the other company; or
- (b) each of the companies is a \*100% subsidiary of the same third company.

### **975-505 What is a 100% subsidiary?**

- (1) A company (the *subsidiary company*) is a *100% subsidiary* of another company (the *holding company*) if all the \*shares in the subsidiary company are beneficially owned by:
- (a) the holding company; or
  - (b) one or more 100% subsidiaries of the holding company; or
  - (c) the holding company and one or more 100% subsidiaries of the holding company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, the subsidiary company is *not* a **100% subsidiary** of the holding company if a person is <sup>\*</sup>in a position to affect rights, in relation to the subsidiary company, of:
  - (a) the holding company; or
  - (b) a 100% subsidiary of the holding company.
- (3) The subsidiary company is also not a **100% subsidiary** of the holding company if at some future time a person will be <sup>\*</sup>in a position to affect rights as described in subsection (2).
- (4) A company (other than the subsidiary company) is a **100% subsidiary** of the holding company if, and only if:
  - (a) it is a 100% subsidiary of the holding company; or
  - (b) it is a 100% subsidiary of a 100% subsidiary of the holding company;because of any other application or applications of this section.

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<sup>\*</sup>To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 977—Realisation events, and the gains and losses they realise for income tax purposes**

### **Table of sections**

#### **CGT assets**

977-5	Realisation event
977-10	Loss realised for income tax purposes
977-15	Gain realised for income tax purposes

#### **Trading stock**

977-20	Realisation event
977-25	Disposal of trading stock: loss realised for income tax purposes
977-30	Ending of an income year: loss realised for income tax purposes
977-35	Disposal of trading stock: gain realised for income tax purposes
977-40	Ending of an income year: gain realised for income tax purposes

#### **Revenue assets**

977-50	Meaning of <i>revenue asset</i>
977-55	Loss or gain realised for income tax purposes

### **CGT assets**

#### **977-5 Realisation event**

For a \*CGT asset, a *realisation event* is a \*CGT event (except CGT event E4 and CGT event G1).

#### **977-10 Loss realised for income tax purposes**

- (1) A loss is *realised for income tax purposes* by a \*realisation event that happens to a \*CGT asset if, and only if, an entity makes a \*capital loss from the event. That capital loss is the loss realised by the event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 977-15

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- (2) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event, the \*capital loss is reduced by the same amount.

**977-15 Gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event that happens to a \*CGT asset if, and only if, an entity makes a \*capital gain from the event. That capital gain is the gain that is realised by the event.
- (2) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event, the \*capital gain is reduced by the same amount.

**Trading stock**

**977-20 Realisation event**

For an item of \*trading stock, a *realisation event* is a disposal of the item or the ending of an income year.

**977-25 Disposal of trading stock: loss realised for income tax purposes**

- (1) A loss is *realised for income tax purposes* by a \*realisation event consisting of disposal of an item of \*trading stock if, and only if:
- (a) the item is disposed of, for less than its \*cost, in the same income year in which it became part of the trading stock on hand of the entity disposing of it; or
  - (b) the item is disposed of in a later income year for less than its \*value as trading stock of the entity on hand at the start of the later income year.
- (2) The loss that is realised for income tax purposes by the event is the difference between the amount included in the entity's assessable income because of the disposal and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the later income year;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

as appropriate.

- (3) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the later income year;
- as appropriate, is reduced by the same amount.

**977-30 Ending of an income year: loss realised for income tax purposes**

- (1) A loss is *realised for income tax purposes* by a \*realisation event that happens to an item of \*trading stock and consists of the ending of an income year if, and only if, the \*value of the item, as trading stock of an entity on hand at the end of that income year, is less than:
- (a) its \*cost, if it became part of the trading stock on hand of the entity during that income year; or
  - (b) otherwise, its value as trading stock of the entity on hand at the start of that income year.
- (2) The loss that is realised for income tax purposes by the event is the difference between the \*value of the item, as \*trading stock of the entity on hand at the end of that income year and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the income year;
- as appropriate.
- (3) If a provision of this Act reduces the loss that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the income year;
- as appropriate, is reduced by the same amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**977-35 Disposal of trading stock: gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event consisting of disposal of an item of \*trading stock if, and only if:
  - (a) the item is disposed of, for more than its \*cost, in the same income year in which it became part of the trading stock on hand of the entity disposing of it; or
  - (b) the item is disposed of in a later income year for more than its \*value as trading stock of the entity on hand at the start of the later income year.
- (2) The gain that is realised for income tax purposes by the event is the difference between the amount included in the entity's assessable income because of the disposal and:
  - (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the later income year;as appropriate.
- (3) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event, the amount that is included in the assessable income of the entity because of the disposal is reduced by the same amount.

**977-40 Ending of an income year: gain realised for income tax purposes**

- (1) A gain is *realised for income tax purposes* by a \*realisation event that happens to an item of \*trading stock and consists of the ending of an income year if, and only if, the \*value of the item, as trading stock of an entity on hand at the end of that income year, is greater than:
  - (a) its \*cost, if it became part of the trading stock on hand of the entity during that income year; or
  - (b) otherwise, its value as trading stock of the entity on hand at the start of that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The gain that is realised for income tax purposes by the event is the difference between the \*value of the item, as \*trading stock of the entity on hand at the end of that income year and:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as trading stock on hand at the start of the income year;
- as appropriate.
- (3) If a provision of this Act reduces the gain that would, apart from that provision, be \*realised for income tax purposes by the event:
- (a) the amount that the entity can deduct for the item's \*cost; or
  - (b) the item's \*value as \*trading stock on hand at the start of the income year;
- as appropriate, is increased by the same amount.

## Revenue assets

### 977-50 Meaning of *revenue asset*

A \*CGT asset is a *revenue asset* if, and only if:

- (a) the profit or loss on your disposing of the asset, ceasing to own it, or otherwise realising it, would be taken into account, in calculating your assessable income or \*tax loss, otherwise than as a \*capital gain or \*capital loss; and
- (b) the asset is neither \*trading stock nor a \*depreciating asset.

### 977-55 Loss or gain realised for income tax purposes

For a \*revenue asset:

- (a) disposing of, ceasing to own, or otherwise realising, the asset is a *realisation event*; and
- (b) a loss is *realised for income tax purposes* by the \*realisation event if, and only if, there is a loss on the event; and
- (c) a gain is *realised for income tax purposes* by the realisation event if, and only if, there is a profit on the event; and
- (d) the loss or profit on the event is the loss or gain realised for income tax purposes; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 6** The Dictionary

**Part 6-1** Concepts and topics

**Division 977** Realisation events, and the gains and losses they realise for income tax purposes

Section 977-55

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- (e) if a provision of this Act reduces the loss or gain that would, apart from that provision, be realised for income tax purposes by the event, the loss or profit to be taken into account in calculating your assessable income or \*tax loss is reduced by the same amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 976—Imputation

### Table of sections

976-1	Franked part of a distribution
976-5	Unfranked part of a distribution
976-10	The part of a distribution that is franked with an exempting credit
976-15	The part of a distribution that is franked with a venture capital credit

### 976-1 Franked part of a distribution

The *franked part* of a \*distribution is an amount worked out using the formula:

$$\text{*Franking credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

### 976-5 Unfranked part of a distribution

The *unfranked part* of a \*distribution is the amount that is left after deducting the \*franked part of the distribution from the total distribution.

### 976-10 The part of a distribution that is franked with an exempting credit

The part of a distribution that is franked with an exempting credit is worked out using the formula:

$$\text{*Exempting credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**976-15 The part of a distribution that is franked with a venture capital credit**

The part of a distribution that is franked with a venture capital credit is worked out using the formula:

$$\text{*Venture capital credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Part 6-5—Dictionary definitions

### Division 995—Definitions

#### 995-1 Definitions [see Notes 2 and 3]

- (1) In this Act, except so far as the contrary intention appears:

**4% manner** has the meaning given by section 43-145.

**70% DFE rule** has the meaning given by section 394-35.

**95% services indirect value shift** has the meaning given by section 727-700.

**100% subsidiary** has the meaning given by section 975-505.

**165-CC tagged asset** has the meaning given by section 715-30.

**170-D deferred loss** has the meaning given by section 715-310.

**AAT** means the Administrative Appeals Tribunal.

**ABN** has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

**abnormal trading** has the meaning given by Subdivision 960-H.

**Aboriginal** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**above-average special professional income** has the meaning given by section 405-15.

**acceptable amount** of an instalment for an <sup>\*</sup>instalment quarter has the meaning given by section 45-232 in Schedule 1 to the *Taxation Administration Act 1953*.

**accountable membership interest** has the meaning given by section 208-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***accountable partial interest*** has the meaning given by section 208-35.

***accounting principles***: A matter is in accordance with ***accounting principles*** if it is in accordance with:

- (a) \*accounting standards; or
- (b) if there are no accounting standards applicable to the matter—authoritative pronouncements of the Australian Accounting Standards Board that apply to the preparation of financial statements.

***accounting principles for tax cost setting*** has the meaning given by:

- (a) subsection 705-70(3); and
- (b) subsection 711-45(1A).

***accounting standards*** has the same meaning as in the *Corporations Act 2001*.

***accrued leave transfer payment*** has the meaning given by subsection 26-10(2).

***accumulated HELP debt*** has the meaning given by section 140-25 of the *Higher Education Support Act 2003*.

***acquire***:

- (a) a \*CGT asset: you ***acquire*** a CGT asset (in its capacity as a CGT asset) in the circumstances and at the time worked out under Division 109 (including under a provision listed in Subdivision 109-B); and

Note: A CGT asset acquired before 20 September 1985 may be treated as having been acquired on or after that day: see, for example, Division 149.

- (b) an item of \*intellectual property: an entity does not ***acquire*** an item of intellectual property merely because a licence relating to a patent, design or copyright is surrendered to the entity.

***acquisition time*** has the meaning given by section 58-5.

***acquisition year*** has the meaning given by section 58-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**active asset** has the meaning given by section 152-40.

**active foreign business asset** of a company that is a foreign resident has the meaning given by section 768-540.

**active foreign business asset percentage** of a company has the meaning given by section 768-510.

**active participant:**

- (a) in a \*scheme under which there is a \*direct value shift, has the meaning given by subsection 725-65(2); and
- (b) in a \*scheme under which there is an \*indirect value shift, has the meaning given by subsection 727-530(3).

**actuary** means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

**additional investment requirements for ESVCLPs** has the meaning given by subsection 118-428(1).

**ADI** (authorised deposit-taking institution) means a body corporate that is an ADI for the purposes of the *Banking Act 1959*.

**ADI equity capital** of an entity at a particular time means the total of the following:

- (a) all the entity's \*equity capital at that time; and
- (b) the total value of all the \*debt interests \*issued by the entity that satisfy all of the following:
  - (i) at that time, the interests are \*on issue and have been on issue for 90 days or more;
  - (ii) none of the interests gives rise to any cost, at any time, that is covered by paragraph 820-40(1)(a).

A debt interest is treated as having satisfied subparagraph (b)(i) at that time if it was on issue at that time, and the total period for which it remains on issue is 90 days or more.

**adjustable value:**

- (a) of a \*depreciating asset, has the meaning given by section 40-85; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ba) of an asset, for the purposes of determining the consequences of a choice under any of sections 715-100, 715-105, 715-125, 715-130 and 715-185, has the meaning given by section 715-145; and
- (b) of an \*equity or loan interest:
  - (i) for the purposes of determining the consequences of a \*direct value shift—has the meaning given by sections 725-240, 725-315 and 725-325; and
  - (ii) for the purposes of determining the consequences of an \*indirect value shift—has the meaning given by sections 727-830, 727-835 and 727-840.

***adjustable value method*** means the method (for determining the effect of \*indirect value shifts) for which Subdivision 727-H provides.

***adjusted assessed tax*** has the meaning given by section 45-375 in Schedule 1 to the *Taxation Administration Act 1953*.

***adjusted assessed taxable income*** has the meaning given by section 45-370 in Schedule 1 to the *Taxation Administration Act 1953*.

***adjusted available frankable profits*** has the meaning given by subsection 215-25(2).

***adjusted average debt*** has the meaning given by sections 820-85, 820-120, 820-185 and 820-225.

***adjusted average equity capital*** has the meaning given by sections 820-300, 820-330, 820-589 and 820-613.

***adjusted on-lent amount*** has the meaning given by sections 820-100, 820-200 and 820-210.

***adjusted tax*** on \*adjusted taxable income or on \*adjusted withholding income has the meaning given by section 45-340 in Schedule 1 to the *Taxation Administration Act 1953*.

***adjusted taxable income*** has the meaning given by sections 45-330 and 45-480 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***adjusted unrealised loss*** at an \*alteration time for a company has the meaning given by section 165-115U.

***adjusted withholding income*** has the meaning given by sections 45-335 and 45-485 in Schedule 1 to the *Taxation Administration Act 1953*.

***adopted child*** of a person means someone the person has adopted:

- (a) under a \*State law or \*Territory law about adoption of children; or
- (b) under a \*foreign law about adoption of children, if the adoption would be recognised as valid under a State law or Territory law.

***affected interest:***

- (a) in the \*losing entity for an \*indirect value shift, has the meaning given by section 727-460; or
- (b) in the \*gaining entity for an indirect value shift, has the meaning given by section 727-465.

***affected owner:***

- (a) of \*down interests, has the meaning given by section 725-80; and
- (b) of \*up interests, has the meaning given by section 725-85; and
- (c) for an \*indirect value shift, has the meaning given by section 727-530.

***affiliate*** has the meaning given by section 328-130.

***AFOF*** means an \*Australian venture capital fund of funds.

***agent:*** this Act applies to some entities that are not agents in the same way as it applies to agents: see section 960-105.

***aggregated turnover*** has the meaning given by section 328-115.

***Agriculture Department*** means the Department that:

- (a) deals with matters arising under section 1 of the *Farm Household Support Act 1992*; and
- (b) is administered by the \*Agriculture Minister.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***Agriculture Minister*** means the Minister administering section 1 of the *Farm Household Support Act 1992*.

***Agriculture Secretary*** means the Secretary of the \*Agriculture Department.

***alienated personal services payment*** has the meaning given by section 13-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***All Groups Consumer Price Index number*** means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

***allocable cost amount*** has the meaning given by section 705-60 and subsection 711-20(1).

***allocated annuity*** means an \*immediate annuity that satisfies the requirements of subregulation 1.05(4) of the Superannuation Industry (Supervision) Regulations.

***allocated pension*** means a \*current pension that satisfies the requirements of subregulation 1.06(4) of the Superannuation Industry (Supervision) Regulations.

***allowable OB deduction*** has the meaning given by subsection 121EF(2) of the *Income Tax Assessment Act 1936*.

***alteration time***:

- (a) for a company has the meaning given by sections 165-115L, 165-115M, 165-115N, 165-115P, 165-115Q, 715-245, 715-250 and 719-725; and
- (b) for a trust, has the meaning given by section 715-270.

***amount*** includes a nil amount.

***amount required to be withheld*** by an entity from a \*withholding payment means:

- (a) the amount that the entity must withhold from the payment under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (aa) the amount that Division 13 in that Schedule requires the entity to pay to the Commissioner in respect of the \*alienated personal services payment to which the withholding payment relates; or
  - (b) the amount that Division 14 in that Schedule requires the entity to pay to the Commissioner in respect of the \*non-cash benefit of which the withholding payment consists;
- or that amount as varied by the Commissioner under section 15-15 in the Schedule.

**amount withheld** by an entity from a \*withholding payment means:

- (a) an amount that the entity withheld from the payment under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*; or
- (aa) an amount that the entity paid to the Commissioner under Division 13 in that Schedule in respect of the \*alienated personal services payment to which the withholding payment relates; or
- (b) an amount that the entity paid to the Commissioner under Division 14 in that Schedule in respect of the \*non-cash benefit of which the withholding payment consists.

**ancillary mining activities** has the meaning given by section 40-740.

**annual instalment component** of your \*tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**annual payer** means an entity that has become an annual payer under section 45-140 in Schedule 1 to the *Taxation Administration Act 1953*, and has not since ceased to be an annual payer under section 45-150 or 45-155 or former section 45-180 in that Schedule.

**annual tax period election** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**annual turnover** has the meaning given by section 328-120.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**annuity** includes:

- (a) an annuity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or
- (b) a pension, within the meaning of the *Retirement Savings Accounts Act 1997*.

**annuity instrument** means an instrument that secures the grant of an annuity (whether dependent on the life of an individual or not).

**apartment building** has the meaning given by section 43-95.

**applicable functional currency** has the meaning given by section 960-70.

**applicable fund earnings** has the meaning given by section 305-75.

**apportionable deductions** are:

- (a) amounts deducted or deductible under section 25-75 (which provides a deduction for rates and land tax); or
- (b) amounts deducted or deductible under section 30-15 because of item 1, 2, 7 or 8 in the table in that section, except amounts deducted or deductible for gifts of trading stock in cases where:
  - (i) the gifts are covered by section 70-90 (which has the effect that the giver's assessable income includes the market value of the gift); and
  - (ii) no election has been made, or is made, under Subdivision 385-E (which allows the giver to choose to spread the market value of a gift of live stock over the giver's assessable income for 5 income years or to reduce the amount included in the giver's assessable income by the cost of replacement live stock).

**approved child care** has the meaning given by section 61-475.

**approved child care fees** has the meaning given by section 61-490.

**approved deposit fund** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**approved deposit fund payment** has the meaning given by section 307-5.

**approved form** has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

**approved investment plan**, of an \*ESVCLP, has the meaning given by subsection 13-15(2) of the *Venture Capital Act 2002*.

**approved management plan** for land has the meaning given by section 40-640.

**approved occupational clothing guidelines** has the meaning given by subsection 34-55(1).

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

**APRA** means the Australian Prudential Regulation Authority.

**arm's length**: in determining whether parties deal at **arm's length**, consider any connection between them and any other relevant circumstance.

**arm's length capital amount**:

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-315; and
- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-410.

**arm's length debt amount**:

- (a) for an \*outward investing entity (non-ADI)—has the meaning given by section 820-105; and
- (b) for an \*inward investing entity (non-ADI)—has the meaning given by section 820-215.

**arrangement** means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

**arrangement payment** has the meaning given by section 240-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**arrangement payment period** has the meaning given by section 240-70.

**arrangement period** for a \*tax preferred use of an asset has the meaning given by section 250-65.

**artistic support** has the meaning given by subsection 405-25(5).

**Arts Department** means the Department that:

- (a) deals with matters arising under section 1 of the *National Gallery Act 1975*; and
- (b) is administered by the \*Arts Minister.

**Arts Minister** means the Minister administering section 1 of the *National Gallery Act 1975*.

**Arts Secretary** means the Secretary of the \*Arts Department.

**artwork** means:

- (a) a painting, sculpture, drawing, engraving or photograph; or
- (b) a reproduction of such a thing; or
- (c) property of a similar description or use.

**assessable film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is assessable income.

**assessable income** has the meaning given by sections 6-5, 6-10, 6-15, 17-10 and 17-30.

For the effect of GST-related amounts on assessable income, see Division 17.

Note: For income years before 1997-98, **assessable income** has the meaning given by section 6-3 of the *Income Tax (Transitional Provisions) Act 1997*.

**assessable non-primary production income** has the meaning given by subsection 392-85(2).

**assessable primary production income** has the meaning given by subsection 392-80(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**assessable professional income** has the meaning given by subsection 405-20(1).

**assessable recoupment** has the meaning given by section 20-20.

**assessment**, in relation to a \*tax-related liability, has the meaning given by a \*taxation law that provides for the assessment of the amount of the liability.

Note: The table lists provisions of taxation laws that define **assessment**.

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**Taxation laws that define *assessment***

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<b>Item</b>	<b>Taxation law</b>	<b>Provision</b>
1	<i>Income Tax Assessment Act 1936</i>	subsection 6(1)
5	<i>Fringe Benefits Tax Assessment Act 1986</i>	subsection 136(1)
10	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	section 2
15	<i>Superannuation Guarantee (Administration) Act 1992</i>	section 6
20	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	section 43
25	<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	section 38
30	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	section 31

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**assessment day** for an income year of a \*life insurance company has the meaning given by section 219-45.

**asset-based income tax regime** has the meaning given by section 830-105.

**asset included in the total assets** of a company that is a foreign resident has the meaning given by section 768-545.

**associate** has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Note: Under section 87-35, Australian government agencies, and certain parts of Australian governments and authorities, are not treated as

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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associates for the purposes of ascertaining whether an entity is conducting a personal services business.

***associated government entity*** means:

- (a) for the Commonwealth—each authority of the Commonwealth; or
- (b) for an authority of the Commonwealth—each other authority of the Commonwealth; or
- (c) for a State—each authority of the State; or
- (d) for an authority of a State—each other authority of the State; or
- (e) for a Territory—each authority of the Territory; or
- (f) for an authority of a Territory—each other authority of the Territory.

***associate entity*** has the meaning given by section 820-905.

***associate entity debt*** has the meaning given by section 820-910.

***associate entity equity*** has the meaning given by section 820-915.

***associate entity excess amount*** has the meaning given by section 820-920.

***associate-inclusive control interest*** in a company has the meaning given by section 975-160.

***associate interest*** has the meaning given by section 820-905.

***at risk*** has the meaning given by section 118-430.

***attributable income*** has the meaning given by Division 7 of Part X of the *Income Tax Assessment Act 1936*.

***attributable taxpayer*** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

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

***auditing principles***: a matter is in accordance with ***auditing principles*** if it is in accordance with:

- (a) \*auditing standards; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if there are no auditing standards applicable to the matter—authoritative pronouncements of the Auditing and Assurance Standards Board that apply to the preparation of financial statements.

**auditing standard** has the same meaning as in the *Corporations Act 2001*.

**Australian Business Register** means the Australian Business Register established and maintained under the *A New Tax System (Australian Business Number) Act 1999*.

**Australian Business Registrar** means the Registrar of the \*Australian Business Register.

**Australian controlled foreign entity** has the meaning given by section 820-745.

**Australian controller:**

- (a) of a \*controlled foreign company mentioned in paragraph 820-745(a)—has the meaning given by section 820-750; and
- (b) of a \*controlled foreign trust—has the meaning given by section 820-755; and
- (c) of a \*controlled foreign corporate limited partnership—has the meaning given by section 820-760.

**Australian corporate tax entity:** an entity is an **Australian corporate tax entity** at a particular time if the entity is:

- (a) a \*corporate tax entity at that time; and
- (b) for a company or a \*corporate limited partnership—an Australian resident at that time; and
- (c) for a \*corporate unit trust or a \*public trading trust—a \*resident unit trust for the income year in which that time occurs.

**Australian entity** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**Australian financial services licence** has the meaning given by section 761A of the *Corporations Act 2001*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Australian fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**Australian government agency** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth or of a State or a Territory.

**Australian law** means a \*Commonwealth law, a \*State law or a \*Territory law.

**Australian legislature** means:

- (a) the Parliament of the Commonwealth of Australia; or
- (b) the Parliament of a State; or
- (c) the Legislative Assembly for the Australian Capital Territory; or
- (d) the Legislative Assembly of the Northern Territory of Australia.

**Australian/overseas fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**Australian permanent establishment**, of an entity, means a \*permanent establishment of the entity that is in Australia.

**Australian resident** means a person who is a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Australian source**: \*ordinary income or \*statutory income has an Australian source if, and only if, it is \*derived from a source in Australia for the purposes of the *Income Tax Assessment Act 1936*.

**Australian superannuation fund** has the meaning given by section 295-95.

**Australian trust** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**Australian venture capital fund of funds** has the meaning given by subsection 118-410(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**authorised ASIO officer** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**authorised law enforcement agency officer** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**available expense** has the meaning given by section 175-30.

**available fraction** for a \*bundle of losses has the meaning given by sections 707-320, 719-310 and 719-315.

**available frankable profits** has the meaning given by section 215-20 and affected by subsection 215-25(1).

**available income** has the meaning given by section 175-30.

**available loss exposure amount** has the meaning given by paragraph 830-50(1)(a).

**average equity capital** has the meaning given by sections 820-395, 820-420 and 820-615.

**average income** has the meaning given in subsection 392-45(1).

**average taxable professional income** has the meaning given by subsections 405-50(1) and (2).

**averaging adjustment** has the meaning given in section 392-75.

**averaging component** has the meaning given in subsection 392-90(1).

**award transport payment** has the meaning given by section 900-220.

**balancing adjustment event** has the meaning given by section 40-295.

**BAS amounts** means any debts or credits that arise directly under the \*BAS provisions.

Note: BAS stands for Business Activity Statement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**base assessment** has the meaning given by sections 45-320 and 45-470 in Schedule 1 to the *Taxation Administration Act 1953*.

**base interest rate** has the meaning given by section 8AAD of the *Taxation Administration Act 1953*.

**base penalty amount:** the base penalty amount for calculating the amount of an administrative penalty is worked out under the relevant provision in this table:

<b>Base penalty amount</b>		
<b>Item</b>	<b>For a penalty for this:</b>	<b>See:</b>
1	False or misleading statement Position not reasonably arguable	Section 284-90 in Schedule 1 to the <i>Taxation Administration Act 1953</i>
2	*Schemes	Section 284-160 in that Schedule
3	Failure to lodge returns etc.	Section 286-80 in that Schedule

**base year:**

- (a) for an entitlement to a \*tax offset under Subdivision 61-I—has the meaning given by sections 61-430 and 61-450; and
- (b) otherwise—has the meaning given by sections 45-320 and 45-470 in Schedule 1 to the *Taxation Administration Act 1953*.

**basic assessable income** has the meaning given by subsection 392-45(2).

**basic rates** has the meaning given by subsection 392-35(4).

**basic taxable income** has the meaning given by section 392-15.

**BAS provisions** means:

- (a) Part VII of the *Fringe Benefits Tax Assessment Act 1986*; and
- (b) the \*indirect tax law; and
- (c) Parts 2-5 and 2-10 in Schedule 1 to the *Taxation Administration Act 1953* (which are about the PAYG system).

Note: BAS stands for Business Activity Statement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***behaviour that is harmful or abusive*** means one or more of the following:

- (a) emotional abuse;
- (b) sexual abuse;
- (c) physical abuse;
- (d) suicide;
- (e) self-harm;
- (f) substance abuse;
- (g) harmful gambling.

***benchmark franking percentage*** has the meaning given by section 203-30.

***benchmark instalment rate*** has the meaning given by sections 45-360 and 45-530 in Schedule 1 to the *Taxation Administration Act 1953*.

***benchmark rate of return*** for an interest has the meaning given by section 974-145.

***benchmark rule*** is the rule in section 203-25.

***benchmark tax*** has the meaning given by sections 45-365 and 45-535 in Schedule 1 to the *Taxation Administration Act 1953*.

***bereavement Subdivision*** has the meaning given by section 52-20.

***bid period*** has the meaning given by section 9 of the *Corporations Act 2001*.

***borrowed securities amount*** of an entity at a particular time means the total of the liabilities of the entity, to the extent that they meet these conditions:

- (a) the value of the liability at that time is worked out by reference to the value at that time of securities that the entity has short sold;
- (b) as at that time, the entity has settled the sale using securities it acquired under one or more of these \*arrangements:
  - (i) a reciprocal purchase agreement (otherwise known as a repurchase agreement);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) a sell-buyback arrangement;
- (iii) a securities loan arrangement.

***borrowing*** means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

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

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

***bundle*** of losses has the meaning given by section 707-315.

***business*** includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

***business day*** means a day other than:

- (a) a Saturday or a Sunday; or
- (b) a day which is a public holiday for the whole of:
  - (i) any State; or
  - (ii) the Australian Capital Territory; or
  - (iii) the Northern Territory.

***business kilometres*** has the meaning given by sections 28-25, 28-50, 28-75 and 28-90.

***business meeting*** has the meaning given by subsections 32-65(3) and (4).

***business travel expense*** has the meaning given by section 900-95.

***business use percentage*** has the meaning given by section 28-90.

***capital allowance*** means a deduction under:

- (a) Division 40 (capital allowances) of this Act; or
- (ab) Division 43 (capital works) of this Act; or
- (ac) Subdivision 328-D (capital allowances for small business entities) of this Act; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) former Division 10BA of Part III of that Act (Australian films); or
- (e) former Division 10B of Part III of that Act (copyright in Australian films); or
- (f) section 73B of that Act (research and development).

**capital gain:** for each \*CGT event a **capital gain** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital gain.

Note 2: For income years before 1998-99, **capital gain** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**capital loss:** for each \*CGT event a **capital loss** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital loss.

Note 2: For income years before 1998-99, **capital loss** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**capital proceeds** has the meaning given by Division 116.

**capital protected borrowing** has the meaning given by section 247-10.

**capital protection** has the meaning given by section 247-10.

**capital stake** has the meaning given by section 166-235.

**capped life** of a \*depreciating asset has the meaning given by section 40-102.

**car** means a \*motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.

**carbon sequestration** has the meaning given by section 40-1015.

**car expense** has the meaning given by section 28-13.

**car fringe benefit** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**car-less day** has the meaning given by section 28-45.

**car limit** has the meaning given by section 40-230.

**carried interest:**

- (a) of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF—has the meaning given by subsections 104-255(4) and (6); and
- (b) of a \*limited partner in a \*VCMP—has the meaning given by subsections 104-255(5) and (6).

**carrying on** an \*enterprise includes doing anything in the course of the commencement or termination of the enterprise.

**cash management trust** means a trust that satisfies these requirements:

- (a) the trust is of a kind commonly known as a cash management trust;
- (b) each unit in the trust carries the same rights as every other unit in the trust.

**cash settlable** has the meaning given by subsection 230-45(2).

**cessation event**, in relation to a \*provisional head company of a \*MEC group, has the meaning given by subsection 719-60(6).

**CFC** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**CFT** has the meaning given by section 342 of the *Income Tax Assessment Act 1936*.

**CGT asset** has the meaning given by section 108-5.

**CGT cap amount** has the meaning given by section 292-105.

**CGT concession stakeholder** has the meaning given by subsection 152-60.

**CGT event** means any of the CGT events described in Division 104. A CGT event described by number (for example: **CGT event AI**) refers to the relevant event in that Division.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**CGT exempt amount** has the meaning given by section 152-315.

**CGT retirement exemption limit** has the meaning given by section 152-320.

**chain of trusts** has the meaning given by section 104-71.

**changeover time** for a company has the meaning given by sections 165-115C, 165-115D and 719-705.

**child**: without limiting who is a child of an individual, each of the following is the **child** of an individual:

- (a) the individual's \*adopted child, stepchild or exnuptial child;
- (b) a child of the individual's \*spouse;
- (c) someone who is a child of the individual within the meaning of the *Family Law Act 1975*.

**child care base week** has the meaning given by section 61-470.

**child care offset limit** has the meaning given by section 61-495.

**child event** has the meaning given by section 61-360.

**class** of a taxable income or a \*tax loss of a \*life insurance company has the meaning given by section 320-133.

**class**: \*membership interests in a company or trust form a **class** if the interests have the same, or substantially the same, rights.

**Climate Change Department** means the Department that:

- (a) deals with matters arising under section 1 of the *National Greenhouse and Energy Reporting Act 2007*; and
- (b) is administered by the \*Climate Change Minister.

**Climate Change Minister** means the Minister administering section 1 of the *National Greenhouse and Energy Reporting Act 2007*.

**Climate Change Secretary** means the Secretary of the \*Climate Change Department.

**closing pool balance** has the meaning given by:

- (a) for a low-value pool—section 40-440; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) for a \*general small business pool or a \*long life small business pool—section 328-200.

*closing pool value* has the meaning given by section 40-830.

*collectable* has the meaning given by section 108-10.

*commencing day* of a \*CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

*commencing day asset* of a \*CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

*commercial horticulture* has the meaning given by 40-535.

*Commissioner* means the Commissioner of Taxation.

Note: The office of Commissioner of Taxation is created by section 4 of the *Taxation Administration Act 1953*.

*Commissioner's instalment rate* has the meaning given by section 45-115 in Schedule 1 to the *Taxation Administration Act 1953*.

*committed capital* of a partnership has the meaning given by section 118-445.

*common ownership*: see *under common ownership*.

*common-ownership nexus*: see section 727-400.

*common stake* has the meaning given by section 124-783.

*common stakeholder* has the meaning given by section 124-783.

*Commonwealth education or training payment* has the meaning given by subsection 52-145(1).

*Commonwealth labour market program* has the meaning given by subsection 52-145(2).

*Commonwealth law* means a law of the Commonwealth.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***Commonwealth of Nations country*** means:

- (a) a foreign country that is a member of the Commonwealth of Nations; or
- (b) a colony, overseas territory or protectorate of such a member; or
- (c) a territory for whose international relations such a member is responsible;

other than one declared by the regulations not to be a Commonwealth of Nations country.

***company*** means:

- (a) a body corporate; or
  - (b) any other unincorporated association or body of persons;
- but does not include a partnership or a \*non-entity joint venture.

Note 1: Division 830 treats foreign hybrid companies as partnerships.

Note 2: A reference to a company includes a reference to a corporate limited partnership: see section 94J of the *Income Tax Assessment Act 1936*.

***company's share***:

- (a) of a partnership's \*notional loss or \*notional net income—has the meaning given by sections 165-80 and 165-85; and
- (b) of a partnership's \*full year deductions—has the meaning given by sections 165-90.

***comparison rate*** has the meaning given by section 392-55.

***compensable work-related trauma*** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

***completed***, in relation to a \*film, has the meaning given by subsection 376-55(2).

***complying approved deposit fund*** means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

***complying superannuation entity*** means:

- (a) a \*complying superannuation fund; or
- (b) a \*complying approved deposit fund; or
- (c) a \*pooled superannuation trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***complying superannuation/FHSA asset*** has the meaning given by subsection 320-170(6).

***complying superannuation/FHSA asset pool*** has the meaning given by subsection 320-170(6).

***complying superannuation/FHSA class***:

- (a) for a taxable income of a \*life insurance company—has the meaning given by section 320-137; or
- (b) for a \*tax loss of a \*life insurance company—has the meaning given by section 320-141.

***complying superannuation/FHSA liabilities*** of a \*life insurance company means liabilities of the company under \*life insurance policies referred to in subsection 320-190(1).

***complying superannuation/FHSA life insurance policy*** means a \*life insurance policy that:

- (a) is held by:
  - (i) the trustee of a fund that is a \*complying superannuation fund or a \*complying approved deposit fund; or
  - (ii) the trustee of a \*pooled superannuation trust; or
- (b) is held by an individual and:
  - (i) provides for an \*annuity that is not presently payable, if the annuity was purchased out of a \*superannuation lump sum or an \*employment termination payment; or
  - (ii) is so held in the benefit fund of a \*friendly society, being a fund that is a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993*; or
- (c) is held by another \*life insurance company and is a \*complying superannuation/FHSA asset of that company; or
- (d) is an \*FHSA;

and is not an \*excluded complying superannuation/FHSA life insurance policy.

***complying superannuation fund*** means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***complying superannuation plan*** means:

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

***component*** of your \*tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

***concessional contributions*** has the meaning given by sections 292-25 and 292-165.

***concessional contributions cap*** has the meaning given by section 292-20.

***conduit foreign income*** has the meaning given by Subdivision 802-A.

***connected entity*** of an entity means:

- (a) an \*associate of the entity; or
- (b) another member of the same \*wholly owned group if the entity is a company and is a member of such a group.

***connected with***: an entity is ***connected with*** you in the circumstances described in section 328-125.

Note: This meaning is affected by section 152-42.

***connecting power to land or upgrading the connection*** has the meaning given by section 40-655.

***conservation covenant*** has the meaning given by section 31-5.

***consideration receivable***:

- (a) ***consideration receivable*** on the disposal of a leased \*car has the meaning given by section 20-115; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) **consideration receivable** for trading stock changing hands has the meaning given by subsection 70-100(11).

**consolidatable group** has the meaning given by section 703-10.

**consolidated group** has the meaning given by section 703-5.

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

**consolidation transitional year** for a \*member of a \*consolidated group or a member of a \*MEC group, is an income year for that member that satisfies both of the following conditions:

- (a) the group is in existence during all or any part of that year;
- (b) Subdivision 45-Q in Schedule 1 to the *Taxation Administration Act 1953* (including that Subdivision as applied under Subdivision 45-S in that Schedule):
  - (i) does not apply at all to the \*head company or the \*provisional head company of the group during that year; or
  - (ii) starts to apply at any time during that year to the head company or the provisional head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), or subsection 45-915(2) or subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv), in that Schedule.

**constitution** of a company means the memorandum and articles of association of the company, or any other rules or document constituting the company or governing its activities.

**constitutional corporation** means:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) a body corporate that is incorporated in a Territory.

**constitutionally protected fund** means a fund that is declared by the regulations to be a constitutionally protected fund.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**construction expenditure** has the meaning given by section 43-70.

**construction expenditure area** has the meaning given by section 43-75.

**contingent on the economic performance** has the meaning given by section 974-85.

**continuing shareholders** has the meaning given by sections 175-10, 175-20, 175-25, 175-45, 175-60, 175-65 and 175-85.

**continuous disability policy** has the meaning given by section 9A of the *Life Insurance Act 1995*.

**contract of reinsurance**, in respect of \*life insurance policies, does not include a contract of reinsurance in respect of:

- (a) the parts of \*complying superannuation/FHSA life insurance policies in respect of which the liabilities of the company that issued the policies are to be discharged out of a \*complying superannuation/FHSA asset pool; or
- (b) policies that are \*exempt life insurance policies.

**contributions segment** has the meaning given by section 307-220.

**contributions-splitting superannuation benefit** has the meaning given by the regulations.

**control (for value shifting purposes)** has the meaning given by sections 727-355, 727-360, 727-365 and 727-375.

**controlled foreign company** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**controlled foreign corporate limited partnership** has the meaning given by section 820-760.

**controlled foreign entity debt** has the meaning given by section 820-885.

**controlled foreign entity equity** has the meaning given by section 820-890.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**controlled foreign trust** has the same meaning as in Part X of the *Income Tax Assessment Act 1936*.

**controller (for CGT purposes)**: an entity is a **controller (for CGT purposes)** of a company in the circumstances mentioned in section 975-155.

**controller (for imputation purposes)** has the meaning given by subsections 207-130(5) and (6).

**convertible interest** means a convertible interest in a company or in a trust or unit trust and:

- (a) a **convertible interest** in a company is an interest of the kind referred to in item 4 of the table in subsection 974-75(1); and
- (b) a **convertible interest** in a trust or unit trust is an interest that has the same or a similar effect in relation to the trust or unit trust.

**convertible note**:

- (a) a **convertible note** of a company has the meaning given by section 82L of the *Income Tax Assessment Act 1936*; and
- (b) a **convertible note** of a trust or unit trust means a note that has the same or a similar effect in relation to the trust or unit trust.

**co-operative company** has the same meaning as in Division 9 of Part III of the *Income Tax Assessment Act 1936*.

**copyright collecting society** means either of the following bodies:

- (a) a body that satisfies all of the following conditions:
  - (i) a declaration under the *Copyright Act 1968* is in force in respect of the body;
  - (ii) the body is a company whose \*constitution contains provisions about the distribution of amounts collected or \*derived by it, including a requirement that a \*member of the society cannot direct the body to pay an amount at a particular time;
  - (iii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a company that satisfies all of the following conditions:
- (i) the company is incorporated under an \*Australian law relating to companies;
  - (ii) the company has and maintains the purpose of collective administration of copyrights;
  - (iii) if the company has other purposes—these purposes are incidental to the purpose described in subparagraph (ii) or, if the company is the \*resale royalty collecting society, relate to the company's functions or duties as resale royalty collecting society;
  - (iv) the company collects or derives, and distributes, income of a kind mentioned in paragraph 51-43(2)(a) or (b);
  - (v) the company's constitution allows any copyright owner, or his or her \*agent, to be a member of the society, or allows all copyright owners of a particular type to be members;
  - (vi) the company's constitution prohibits the payment of \*dividends;
  - (vii) the company's constitution contains provisions about the payment, out of amounts collected or derived by it, of the administrative costs of collecting those amounts;
  - (viii) the company's constitution contains provisions about the distribution of amounts collected or derived by it, including a requirement that an amount must be paid to a member as soon as is reasonably possible after the allocation of the amount to the member, as well as a requirement that a member cannot direct the company to pay an amount at a particular time;
  - (ix) the company's constitution, or contracts with members, contains such other provisions as are prescribed by the regulations (if any), being provisions necessary to ensure that the interests of members or their agents are protected adequately;
  - (x) the company's constitution requires the company to hold amounts on trust for copyright owners who are not members, or for members pending the payment of amounts to them;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (xi) the company's constitution, or contracts with members, allows all members to access the company's records;
- (xii) other conditions prescribed by the regulations (if any) for the purposes of this subparagraph are met.

**corporate change** has the meaning given by section 166-175.

**corporate limited partnership** has the meaning given by section 94D of the *Income Tax Assessment Act 1936*.

**corporate tax entity** has the meaning given by section 960-115.

**corporate tax rate** means the rate of tax in respect of the taxable income of a company covered by subsection 23(2) of the *Income Tax Rates Act 1986*.

**corporate unit trust** has the meaning given by section 102J of the *Income Tax Assessment Act 1936*.

**cost:**

- (a) **cost** of a \*depreciating asset has the meaning given by Subdivision 40-C; and
- (b) **cost** of an item of \*trading stock, in the case of an animal that you acquired by natural increase, has the meaning given by section 70-55.

Note: The cost of an animal acquired by natural increase before the 1997-98 income year is the cost price of the animal under former section 34 of the *Income Tax Assessment Act 1936*. See subsection 70-55(2) of the *Income Tax (Transitional Provisions) Act 1997*.

**cost base** of a \*CGT asset has the meaning given by Subdivision 110-A.

**cost-free debt capital** has the meaning given by section 820-946.

**COT transfer** of a loss has the meaning given by section 707-210.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***created:***

- (a) a \*consolidated group is ***created*** from a \*MEC group if the consolidated group comes into existence under section 703-55 at the time the MEC group ceases to exist (as mentioned in that section); and
- (b) a MEC group is ***created*** from a consolidated group if:
  - (i) the MEC group comes into existence under section 719-40 when a \*special conversion event happens to a \*potential MEC group derived from an \*eligible tier-1 company of a \*top company; and
  - (ii) the eligible tier-1 company was the \*head company of the consolidated group (as mentioned in paragraph 719-40(1)(b)).

***creditable acquisition*** has the meaning given by section 195-1 of the \*GST Act.

***creditable importation*** has the meaning given by section 195-1 of the \*GST Act.

***creditable purpose*** has the meaning given by section 195-1 of the \*GST Act.

***credit absorption tax*** has the meaning given by section 770-15.

***Crown lease*** has the meaning given by section 124-580.

***crystallised pre-July 83 amount***, in relation to a \*superannuation interest, means the amount mentioned in paragraph 307-225(2)(e) in relation to the interest.

***crystallised segment*** has the meaning given by section 307-225.

***cultural organisation*** has the meaning given by section 30-300.

***currency exchange rate effect*** has the meaning given by section 775-105.

***current GST turnover*** has the meaning given by section 195-1 of the \*GST Act.

***current pension*** means a pension that has begun to be paid.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**current termination value** of a \*life insurance policy, or of the \*net risk component of a life insurance policy, has the meaning given in prudential standards made under section 230A of the *Life Insurance Act 1995*.

**current year** means the income year for which you are working out your assessable income and deductions.

**custodian** has the meaning given by section 12-390 in Schedule 1 to the *Taxation Administration Act 1953*.

**datacasting transmitter licence** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**date of the settlement or order**, for a \*structured settlement or a \*structured order, has the meaning given by section 54-5.

**death benefits dependant** has the meaning given by section 302-195.

**death benefit termination payment** has the meaning given by subsection 82-130(3).

**debenture** of a company or unit trust includes debenture stock, bonds, notes and any other securities of the company or trust, whether or not constituting a charge on its assets.

**debt capital**, of an entity and at a particular time, means any \*debt interests issued by the entity that are still \*on issue at that time.

**debt deduction** has the meaning given by section 820-40.

**debt interest** in an entity has the meaning given by Subdivision 974-B.

**debt property** has the meaning given by section 243-30.

**decrease time** for a \*direct value shift has the meaning given by section 725-155.

**decreasing adjustment** has the meaning given by section 195-1 of the \*GST Act.

**deduct** has the meaning given by sections 8-1 and 8-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**deductible gift recipient** has the meaning given by section 30-227.

**deduction** means an amount that you can deduct.

Note: For income years before 1997-98, **deduction** has the meaning given by section 8-3 of the *Income Tax (Transitional Provisions) Act 1997*.

**deduction year** has the meaning given by section 170-20.

**Defence Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Defence Act 1903*; and
- (b) is administered by the Defence Minister.

**Defence Minister** means the Minister administering section 1 of the *Defence Act 1903*.

**Defence Secretary** means the Secretary of the Defence Department.

**deferred BAS payer**, at a particular time, means an entity that has an obligation to notify the Commissioner of a \*BAS amount at that time, other than:

- (a) an entity that has an obligation at that time to give the Commissioner a \*GST return for a monthly \*tax period; or
- (b) an entity whose obligation to notify a BAS amount at that time relates only to one or more of the following:
  - (i) an \*amount withheld by a \*medium withholder or a \*large withholder;
  - (ii) the \*PAYG instalment of an \*annual payer.

Note: You are therefore a deferred BAS payer if you have an obligation to give the Commissioner a GST return for a quarterly tax period or if you are a GST instalment payer within the meaning of the GST Act.

**deferred roll-over gain**: an asset has a deferred roll-over gain at a particular time if:

- (a) before that time there was a roll-over under a provision or former provision of this Act in relation to a disposal or a \*CGT event that happened in relation to the asset; and
- (b) as a result of the roll-over all or part of a \*capital gain from the disposal or CGT event was disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The amount of the deferred roll-over gain is equal to the amount of the capital gain that was disregarded, reduced by the amount (if any) by which the gain has been taken into account in working out a \*net capital gain (section 102-5) or \*net capital loss (section 102-10) in relation to the asset between the roll-over time and the particular time.

***deferred roll-over loss***: an asset has a deferred roll-over loss at a particular time if:

- (a) before that time there was a roll-over under a provision or former provision of this Act in relation to a disposal or a \*CGT event that happened in relation to the asset; and
- (b) as a result of the roll-over all or part of a \*capital loss from the disposal or CGT event was disregarded.

The amount of the deferred roll-over loss is equal to the amount of the capital loss that was disregarded, reduced by the amount (if any) by which the loss has been taken into account in working out a \*net capital gain (section 102-5) or \*net capital loss (section 102-10) in relation to the asset between the roll-over time and the particular time.

***deficit***:

- (a) section 205-40 sets out when a \*franking account is in deficit; and
- (b) section 208-125 sets out when an \*exempting account is in deficit; and
- (c) section 210-130 sets out when a \*venture capital sub-account is in deficit.

***defined benefit interest*** has the meaning given by section 292-175.

***demerged entity*** has the meaning given by section 125-70.

***demerger*** has the meaning given by section 125-70.

***demerger dividend*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***demerger group*** has the meaning given by section 125-65.

***demerger subsidiary*** has the meaning given by section 125-65.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**demerging entity** has the meaning given by section 125-70.

**departing Australia superannuation payment** has the meaning given by section 301-170.

**depository entity** has the meaning given by section 166-260.

**depreciating asset** has the meaning given by section 40-30.

**depreciating asset lease**: a **depreciating asset lease** is an agreement (including a renewal of an agreement) under which the entity that \*holds the \*depreciating asset grants a \*right to use the asset to another entity. However, a **depreciating asset lease** does not include a \*hire purchase agreement or a \*short-term hire agreement.

**derivative financial arrangement** has the meaning given by subsection 230-350(1).

**derive** has a meaning affected by subsection 6-5(4).

**design** of a uniform has the meaning given by subsection 34-25(2).

**development assistance** for a \*film has the meaning given by section 376-55.

**development expenditure** for a \*film means expenditure to the extent to which it is incurred in meeting the development costs for the film and includes expenditure to the extent to which it is incurred on any of the following:

- (a) location surveys and other activities undertaken to assess locations for possible use in the film;
- (b) storyboarding for the film;
- (c) scriptwriting for the film;
- (d) research for the film;
- (e) casting actors for the film;
- (f) developing a budget for the film;
- (g) developing a shooting schedule for the film.

**died in the line of duty** has the meaning given by subsection 302-195(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***diminishing value method*** has the meaning given by sections 40-70 and 40-72.

***dining facility*** has the meaning given by section 32-60.

***direct equity interests*** in a company are \*shares in the company.

***direct forestry expenditure*** has the meaning given by section 394-45.

***direct participation interest*** has the meaning given by section 960-190.

***direct roll-over replacement*** has the meaning given by section 723-110.

***direct small business participation percentage*** has the meaning given by section 152-70.

***direct value shift*** has the meaning given by section 725-145.

***direct voting percentage*** in a company has the meaning given by section 768-550.

***disability policy*** means a \*life insurance policy under which a benefit is payable in the event of:

- (a) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the ***insured***); or
  - (b) injury to, or disability of, the insured as a result of accident or sickness; or
  - (c) the insured being found to have a stated condition or disease;
- but does not include a contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984*.

***disability superannuation benefit*** means a \*superannuation benefit if:

- (a) the benefit is paid to a person because he or she suffers from ill-health (whether physical or mental); and
- (b) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be \*gainfully employed in a capacity for which he or she

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

is reasonably qualified because of education, experience or training.

***disaggregated attributable decrease***: section 727-775 sets out how to determine whether an \*indirect value shift has produced a ***disaggregated attributable decrease*** in the \*market value of an \*equity or loan interest.

***disaggregated attributable increase***: section 727-805 sets out how to determine whether an \*indirect value shift has produced a ***disaggregated attributable increase*** in the \*market value of an \*equity or loan interest.

***disallow***:

- (a) a \*net capital loss—has the meaning given by section 175-40;  
or
- (b) a \*capital loss—has the meaning given by section 175-55.

***disallowed capital allowance percentage*** has the meaning given by subsection 250-150(4).

***discount***: an \*equity or loan interest is issued at a ***discount*** as provided in section 725-150.

***discount capital gain*** has the meaning given by Subdivision 115-A.

***discount percentage*** has the meaning given by Subdivision 115-B.

***discretionary benefits*** means investment account benefits (as defined by section 14 of the *Life Insurance Act 1995*) that are regarded as non-participating benefits for the purposes of that Act solely because of the operation of Prudential Rules No. 22 in force under section 252 of that Act.

***disease*** has the meaning given by subsection 34-20(3).

***disentitling event*** has the meaning given by section 385-163.

***disposal year*** has the meaning given by subsection 385-105(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**dispose of** a \*CGT asset: you **dispose of** a CGT asset (in its capacity as a CGT asset) in the circumstances specified in section 104-10.

**distributable profits** of a company has the meaning given by section 317 of the *Income Tax Assessment Act 1936*.

**distributing body** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**distribution**, by a \*corporate tax entity, has the meaning given by section 960-120.

**distribution event** has the meaning given by subsection 207-120(5).

**distribution statement** has the meaning given by section 202-80.

**divestiture registration requirement**, in relation to an \*ESVCLP, has the meaning given by subsection 9-3(3) of the *Venture Capital Act 2002*.

**dividend** has the meaning given by subsections 6(1) and (4) and 6BA(5) and section 94L of the *Income Tax Assessment Act 1936*.

**dividend stake** has the meaning given by section 166-235.

**dividend stripping operation** has the meaning given by section 207-155.

**Division 230 financial arrangement**: a \*financial arrangement is a **Division 230 financial arrangement** if Division 230 applies in relation to your gains and losses from the arrangement.

**Division 230 starting value**:

- (a) the **Division 230 starting value** of an asset or liability that is or is part of a \*Division 230 financial arrangement to which Subdivision 230-C (fair value method) applies is the amount of the asset or the amount of the liability according to the relevant standards mentioned in section 230-230 that apply in relation to the arrangement; and
- (b) the **Division 230 starting value** of an asset or liability that is or is part of a Division 230 financial arrangement to which

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 230-D (foreign exchange retranslation method) applies is the value of the asset or the amount of the liability according to the relevant standards mentioned in section 230-280 that apply in relation to the arrangement; and

- (c) the ***Division 230 starting value*** of an asset or liability that is or is part of a Division 230 financial arrangement to which Subdivision 230-F (reliance on financial reports method) applies is the value of the asset or the amount of the liability according to the relevant standards mentioned in section 230-420 that apply in relation to the arrangement.

***Division 405 payment*** has the meaning given by section 405-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***Division 405 report*** has the meaning given by section 405-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***Division 410 payment*** has the meaning given by section 410-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***Division 410 report*** has the meaning given by section 410-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***Division 415 payment*** has the meaning given by section 415-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***Division 417 payment*** has the meaning given by section 417-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***down interest*** has the meaning given by section 725-155.

***dual listed company arrangement*** has the meaning given by section 125-60.

***dual listed company voting share*** has the meaning given by section 125-60.

***dual resident investment company*** has the meaning given by section 6F of the *Income Tax Assessment Act 1936*.

***dwelling*** has the meaning given by section 118-115.

***early retirement scheme*** has the meaning given by section 83-180.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***early retirement scheme payment*** has the meaning given by section 83-180.

***early stage venture capital limited partnership*** has the meaning given by subsection 118-407(4).

***Education Department*** means the Department that:

- (a) deals with matters arising under section 1 of the *Student Assistance Act 1973*; and
- (b) is administered by the \*Education Minister.

***Education Minister*** means the Minister administering section 1 of the *Student Assistance Act 1973*.

***Education Secretary*** means the Secretary of the Education Department.

***effective life***: the ***effective life*** of a \*depreciating asset is worked out under sections 40-95, 40-100, 40-102, 40-105 and 40-110.

***effectively non-cancellable*** has the meaning given by section 250-130.

***effectively non-contingent obligation*** has the meaning given by section 974-135.

***election to rely on financial reports*** has the meaning given by section 230-395.

***electronic payment*** means a payment by way of electronic transmission, in an electronic format approved by the Commissioner.

***electronic signature*** of an entity means a unique identification of the entity in electronic form that is approved by the Commissioner.

***element taxed in the fund*** has the meaning given by section 307-275.

***element untaxed in the fund*** has the meaning given by section 307-275.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***eligible continuing substantial member*** of a \*former exempting entity has the meaning given by section 208-155.

***eligible Division 166 company*** means a company:

- (a) that is *not* a \*widely held company; and
- (b) in which:
  - (i) \*voting stakes that carry rights to more than 50% of the voting power in the company; or
  - (ii) \*dividend stakes that carry rights to receive more than 50% of any dividends that the company may pay; or
  - (iii) \*capital stakes that carry rights to receive more than 50% of any distribution of capital of the company; are beneficially owned (whether directly, or \*indirectly through one or more interposed entities) by:
    - (iv) a widely held company; or
    - (v) an entity mentioned in subsection 166-245(2) that satisfies the condition in subsection 166-245(3); or
    - (vi) a \*non-profit company; or
    - (vii) a charitable institution, a charitable fund or any other kind of charitable body; or
  - (viii) 2 or more entities mentioned in subparagraphs (iv) to (vii).

***eligible security*** has the meaning given by section 775-190.

***eligible tier-1 company*** has the meaning given by section 719-15.

***eligible venture capital investment*** has the meaning given by sections 118-425 and 118-427.

Note: This meaning is also affected by subsection 118-435(2).

***eligible venture capital investor*** has the meaning given by subsection 118-415(2).

***eligible venture capital partner*** has the meaning given by section 118-420.

***employee share scheme*** has the meaning given by subsection 83A-10(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***employee share trust*** has the meaning given by subsection 130-85(4).

***employment termination payment*** has the meaning given by section 82-130.

***endowment policy*** has the meaning given by section 295-480.

***ends***, in relation to a \*corporate change, has the meaning given by section 166-175.

***end user*** of an asset has the meaning given by section 250-50.

***end value*** of an asset has the meaning given by section 250-180.

***enterprise*** has the meaning given by section 9-20 of the \*GST Act.

***entertainment*** has the meaning given by section 32-10.

***entitled to child care benefit*** has the meaning given by section 61-480.

***entitlement to child care benefit*** has the meaning given by section 61-480.

***entity*** has the meaning given by section 960-100.

***entity maintenance deduction*** has the meaning given by subsection 86-65(2).

***environmental organisation*** has the meaning given by sections 30-260 and 30-275.

***environmental protection activities*** has the meaning given by section 40-755.

***Environment Department*** means the Department that:

- (a) deals with matters arising under section 1 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) is administered by the \*Environment Minister.

***Environment Minister*** means the Minister administering section 1 of the *Environment Protection and Biodiversity Conservation Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***Environment Secretary*** means the Secretary of the \*Environment Department.

***equity capital*** of an entity at a particular time means the total of the following as at that time:

- (a) the issue price (however described) of each \*equity interest in the entity that is still \*on issue, reduced by so much (if any) of the issue price as remains unpaid;
- (b) the entity's general reserves and asset revaluation reserves;
- (c) the entity's retained earnings;
- (d) the entity's net earnings (if any) for the current year, reduced by:
  - (i) the \*tax the entity expects to pay in respect of those net earnings; and
  - (ii) so much of each distribution to the entity's \*members that has been made or declared as at that time as is attributable to the entity's earnings for the current year;
- (e) if the entity is a \*corporate tax entity—provisions for \*distributions of profit;
- (f) if paragraph (e) does not apply—provisions for distributions to the entity's \*members;

reduced by the total of the following as at that time:

- (g) the entity's negative retained earnings (if any);
- (h) the entity's net loss (if any) for the current year.

***equity holder*** in a company means an entity that holds an \*equity interest in the company.

***equity interest*** in an entity has the meaning given by:

- (a) in the case of a company—Subdivision 974-C; and
- (b) in the case of a trust or partnership—section 820-930.

***equity or loan interest*** has the meaning given by section 727-520.

***ESS deferred taxing point***, for an \*ESS interest, has the meaning given by sections 83A-115 and 83A-120.

Note 1: ESS is short for employee share scheme.

Note 2: For ESS interests acquired before 1 July 2009, see subsection 83A-5(4) of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**ESS interest**, in a company, has the meaning given by subsection 83A-10(1).

Note: ESS is short for employee share scheme.

**ESVCLP** means an \*early stage venture capital limited partnership.

**ETP cap amount** has the meaning given by section 82-160.

**excess concessional contributions** has the meaning given by section 292-20.

**excess concessional contributions tax** means tax imposed under the *Superannuation (Excess Concessional Contributions Tax) Act 2007*.

**excess contributions tax** means:

- (a) \*excess concessional contributions tax; or
- (b) \*excess non-concessional contributions tax.

**excess contributions tax assessment** has the meaning given by section 292-230.

**excess franking offsets** has the meaning given by section 36-55.

**excess non-concessional contributions** has the meaning given by section 292-85.

**excess non-concessional contributions tax** means tax imposed under the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007*.

**excess untaxed roll-over amount** has the meaning given by section 306-15.

**exchangeable interest** has the meaning given by section 130-100.

**excise duty** has the meaning given by the \*GST Act.

**excise law** means:

- (a) the *Excise Act 1901*; and
- (b) any Act that imposes \*excise duty; and
- (c) the *Taxation Administration Act 1953*, so far as it relates to any Act covered by paragraphs (a) and (b); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) any other Act, so far as it relates to any Act covered by paragraphs (a) to (c) (or to so much of that Act as is covered); and
- (e) regulations under any Act, so far as they relate to any Act covered by paragraphs (a) to (d) (or to so much of that Act as is covered).

***excluded complying superannuation/FHSA life insurance policy*** means a \*life insurance policy that:

- (a) provides only for \*superannuation death benefits, \*disability superannuation benefits or temporary disability benefits of a kind referred to in paragraph 295-460(c), that are not \*participating benefits; or
- (b) is an \*exempt life insurance policy.

***excluded equity interest*** has the meaning given by section 820-946.

***excluded loss*** has the meaning given by sections 175-5 and 175-40.

***excluded STB*** has the same meaning as in section 24AT of the *Income Tax Assessment Act 1936*.

***exempt Australian government agency*** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth or of a State or a Territory whose \*ordinary income and \*statutory income is exempt from income tax because of Division 50; or
- (c) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose \*ordinary income and \*statutory income is exempt from income tax under that Division of that Part.

***exempt entity*** means:

- (a) an entity all of whose \*ordinary income and \*statutory income is exempt from income tax because of this Act or because of another \*Commonwealth law, no matter what kind of ordinary income or statutory income the entity might have; or
- (b) an \*untaxable Commonwealth entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: See section 11-5 for a list of entities of the kind referred to in paragraph (a).

**exempt film income** for an income year is so much of the amount, or the sum of the amounts, to which section 26AG of the *Income Tax Assessment Act 1936* applies in relation to you for the income year as is \*exempt income.

**exempt foreign employment income** means amounts that are exempt from tax under section 23AF or 23AG of the *Income Tax Assessment Act 1936*.

**exempt foreign government agency** means:

- (a) the government of a foreign country, or of part of a foreign country; or
- (b) an authority of the government of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency; or
- (c) an authority of the government of part of a foreign country, if the authority is of a similar nature to an authority that is an \*exempt Australian government agency.

**exempt income** has the meaning given by section 6-20.

Note: For income years before 1997-98, **exempt income** has the meaning given by section 6-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**exempting account** means an account that arises under section 208-110.

**exempting credit** has the meaning given by section 208-115.

**exempting debit** has the meaning given by section 208-120.

**exempting deficit** has the meaning given by subsection 208-125(2).

**exempting entity** has the meaning given by section 208-20 and affected by section 220-500 if relevant.

**exempting percentage** has the meaning given by section 208-95.

**exempting surplus** has the meaning given by subsection 208-125(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***exempt institution that is eligible for a refund*** has the meaning given in section 207-115.

Note: This definition is affected by sections 207-119 to 207-136.

***exempt life insurance policy*** has the meaning given by section 320-246.

Note: This definition is affected by section 320-247.

***exempt life insurance policy liabilities*** of a \*life insurance company means liabilities of the company under the \*life insurance policies referred to in subsection 320-245(1).

***expected financial benefits*** has the meaning given by section 250-95.

***exploration or prospecting*** has the meaning given by section 40-730.

***external indirect equity or loan interest*** in a \*subsidiary member of a \*consolidated group or \*MEC group has the meaning given by section 715-610 or 719-775.

***facility agreement*** has the meaning given by section 775-185.

***failure to notify penalty*** means the penalty worked out under Division 2 of Part IIA of the *Taxation Administration Act 1953*.

***fair value election*** has the meaning given by subsection 230-210(1).

***Families Department*** means the Department that:

- (a) deals with matters arising under section 1 of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and
- (b) is administered by the \*Families Minister.

***Families Minister*** means the Minister administering section 1 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

***Families Secretary*** means the Secretary of the \*Families Department.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***family law superannuation payment*** has the meaning given by section 307-5.

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

***farm management deposit*** has the meaning given by Subdivision 393-B.

***feature film*** includes a \*film that is an animated feature film.

***FHSA*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA component*** has the meaning given by section 345-20.

***FHSA holder*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA home acquisition payment*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA ineligibility payment*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA misuse tax*** means tax imposed under the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008*.

***FHSA payment conditions*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA provider*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***FHSA trust*** has the meaning given by the *First Home Saver Accounts Act 2008*.

***film*** means an aggregate of images, or of images and sounds, embodied in any material.

***film authority*** has the meaning given by section 376-55.

***film component*** has the meaning given by section 36-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**film deductions** for an income year are the following:

- (a) amounts you could deduct for the income year under former section 124ZAF of the *Income Tax Assessment Act 1936*;
- (b) amounts that you could deduct for the income year and to which former section 124ZAO of that Act applied in relation to you for the income year.

**film licensed investment company** means a company that has been granted a licence to raise concessional capital under the Film Licensed Investment Company Act 2005 (whether or not the licence has ceased to be in force).

**film loss** has the meaning given by section 36-40.

Note: Section 701-30 (rules about where an entity is not a subsidiary member for the whole of an income year) may affect a film loss.

**final RUNL** has the meaning given by section 715-35.

**financed property** has the meaning given by section 243-30.

**Finance Minister** means the Minister administering section 1 of the *Financial Management and Accountability Act 1997*.

**financial arrangement** has the meaning given by sections 230-45 to 230-55.

**financial benefit** has the meaning given by section 974-160.

**financial entity**, at a particular time, means an entity other than an \*ADI that is any of the following at that time:

- (a) a registered corporation under the *Financial Sector (Collection of Data) Act 2001*;
- (b) a \*securitisation vehicle;
- (c) an entity that:
  - (i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in at least one of the financial products mentioned in paragraphs 764A(1)(a), (b) and (j) of that Act; or
  - (ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Australian financial services licence for dealings in at least one of those financial products;

and carries on a \*business of dealing in securities, but not predominantly for the purposes of dealing in securities with, or on behalf of, the entity's \*associates;

Note 1: Paragraphs 764A(1)(a), (b) and (j) of the *Corporations Act 2001* deal respectively with securities, managed investment products and government debentures, stocks and bonds.

Note 2: Paragraph 911A(2)(h) of that Act exempts financial services provided to wholesale clients by a person who is regulated by an overseas regulatory authority if the provision of the service is covered by an exemption from the Australian Securities and Investments Commission (ASIC).

Note 3: Paragraph 911A(2)(l) of that Act empowers ASIC to exempt financial services.

(d) an entity that:

(i) is a financial services licensee within the meaning of the *Corporations Act 2001* whose licence covers dealings in derivatives within the meaning of that Act; or

(ii) under paragraph 911A(2)(h) or (l) of the *Corporations Act 2001*, is exempt from the requirement to hold an Australian financial services licence for dealings in such derivatives;

and carries on a business of dealing in such derivatives, but not predominantly for the purposes of dealing in such derivatives with, or on behalf of, the entity's associates.

***financial institution*** has the meaning given by section 202A of the *Income Tax Assessment Act 1936*.

***financial investment*** includes the following:

(a) a \*share in a company;

(b) an interest in a managed investment scheme (within the meaning of the *Corporations Act 2001*);

(c) a \*forestry interest in a \*forestry managed investment scheme;

(d) a right or option in respect of an investment referred to in paragraph (a), (b) or (c);

(e) an investment of a like nature to any of those referred to in paragraphs (a) to (d).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***financial year*** means a period of 12 months beginning on 1 July.

***financing arrangement*** has the meaning given by section 974-130.

***financing cost*** has the meaning given by section 26-80.

***firearms surrender arrangements*** means:

- (a) an \*Australian law; or
- (b) administrative arrangements of a State or Territory;

implementing the agreement arising from the meeting of the Police Ministers held on 10 May 1996 concerning the surrender of prohibited firearms.

***first continuity period*** has the meaning given by section 165-120.

***first use time*** has the meaning given by section 41-30.

***fixed entitlement***: an entity has a ***fixed entitlement*** to a share of the income or capital of a trust if the entity has a fixed entitlement to that share within the meaning of Division 272 in Schedule 2F to the *Income Tax Assessment Act 1936*.

***fixed trust***: a trust is a ***fixed trust*** if entities have \*fixed entitlements to all of the income and capital of the trust.

***flexible care*** has the same meaning as in the *Aged Care Act 1997*.

***flows indirectly***:

- (a) subsections 207-50(2), (3) and (4) set out the circumstances in which a \*franked distribution flows indirectly to an entity; and
- (b) subsection 207-50(5) sets out the circumstances in which a franked distribution flows indirectly through an entity; and
- (c) section 208-175 sets out the circumstances in which a \*distribution \*franked with an exempting credit flows indirectly to an entity; and
- (d) section 220-405 sets out the circumstances in which a supplementary dividend (as defined in section OB1 of the *Income Tax Act 1994* of New Zealand) flows indirectly to an entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) subsections 380-25(2), (3) and (4) set out the circumstances in which \*NRAS rent flows indirectly to an entity; and
- (f) subsection 380-25(5) sets out the circumstances in which NRAS rent flows indirectly through an entity.

**FMD provider** (short for farm management deposit provider) has the meaning given by subsection 393-20(3).

**Foreign Affairs Minister** means the Minister administering section 1 of the *International Development Association Act 1960*.

**foreign bank** means an \*ADI that is a \*foreign entity.

**foreign controlled Australian company** has the meaning given by section 820-785.

**foreign controlled Australian entity** has the meaning given by section 820-780.

**foreign controlled Australian partnership** has the meaning given by section 820-795.

**foreign controlled Australian trust** has the meaning given by section 820-790.

**foreign currency** means a currency other than Australian currency.

**foreign currency hedge** has the meaning given by subsection 230-350(2).

**foreign entity** means an entity that is not an \*Australian entity.

**foreign exchange retranslation election** has the meaning given by subsections 230-255(1) and (3).

**foreign general insurance company** means a company that is a foreign resident, and whose sole or principal business is \*insurance business.

**foreign government agency** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) an authority of the government of part of a foreign country.

*foreign hybrid* has the meaning given by section 830-5.

*foreign hybrid company* has the meaning given by section 830-15.

*foreign hybrid limited partnership* has the meaning given by section 830-10.

*foreign hybrid net capital loss amount* has the meaning given by section 830-55.

*foreign hybrid revenue loss amount* has the meaning given by paragraph 830-45(1)(a).

*foreign hybrid tax provisions* means:

- (a) the *Income Tax Assessment Act 1936* (other than Division 5A of Part III); and
- (b) this Act (other than Subdivision 830-A and 830-B); and
- (c) an Act that imposes any tax payable under the *Income Tax Assessment Act 1936* or this Act; and
- (d) the *Income Tax Rates Act 1986*; and
- (e) the *Taxation Administration Act 1953*, so far as it relates to an Act covered by paragraph (a), (b) or (c); and
- (f) any other Act, so far as it relates to an Act covered by paragraph (a), (b), (c), (d) or (e); and
- (g) regulations under an Act covered by any of the preceding paragraphs.

*foreign income tax* has the meaning given by section 770-15.

*foreign law* means a law of a foreign country.

Note: *Foreign country* is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*.

*foreign life insurance company* means a company that is a foreign resident, and whose sole or principal business is life insurance.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***foreign resident*** means a person who is not a resident of Australia for the purposes of the *Income Tax Assessment Act 1936*.

Note: ***Foreign resident*** is not asterisked in this Act.

***foreign resident life insurance policy*** means a \*life insurance policy that:

- (a) was issued by a company in the course of \*carrying on a \*business at or through the \*permanent establishment of the company in a foreign country; and
- (b) is held by an entity that is neither an \*associate of the company nor a Part X Australian resident (within the meaning of Part X of the *Income Tax Assessment Act 1936*).

***foreign revenue claim*** has the meaning given by section 263-10 in Schedule 1 to the *Taxation Administration Act 1953*.

***foreign superannuation fund***:

- (a) a \*superannuation fund is a ***foreign superannuation fund*** at a time if the fund is not an \*Australian superannuation fund at that time; and
- (b) a superannuation fund is a ***foreign superannuation fund*** for an income year if the fund is not an Australian superannuation fund for the income year.

***foreign trust for CGT purposes*** means a trust that is not a \*resident trust for CGT purposes.

***foreign venture capital fund of funds*** has the meaning given by subsections 118-420(4) and (5).

***forestry interest*** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(3).

***forestry managed investment scheme*** has the meaning given by subsection 394-15(1).

***forestry manager*** of a \*forestry managed investment scheme has the meaning given by subsection 394-15(2).

***forestry road*** has the meaning given by subsection section 43-72.

***forex cost base*** has the meaning given by section 775-85.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**forex entitlement base** has the meaning given by section 775-90.

**forex realisation event** means any of the forex realisation events described in Division 775.

**forex realisation gain**: for each \*forex realisation event a **forex realisation gain** is worked out in the way described in the event.

**forex realisation loss**: for each \*forex realisation event a **forex realisation loss** is worked out in the way described in the event.

**forgive** a debt has the meaning given by sections 245-35, 245-36 and 245-37.

Note: Subdivisions 245-C to 245-G (about forgiveness of commercial debts) apply to certain arrangements as if the arrangements were forgiveness of debts: see section 245-45.

**forgiveness income year**, in relation to a debt that is \*forgiven, means the income year in which the debt is forgiven.

**form approved by Innovation Australia** has the same meaning as in section 33-5 of the *Venture Capital Act 2002*.

**former exempting entity** has the meaning given by section 208-50.

**fourth element expenditure** has the meaning given by section 104-185.

**frankable distribution** has the meaning given by section 202-40.

**frankable with a venture capital credit** has the meaning given by section 210-50.

**franked distribution**: a \*distribution is franked if an entity \*franks it in accordance with section 202-5.

**franked part** of a \*distribution has the meaning given by section 976-1.

**franking account** means an account that arises under section 205-10.

Note 1: Section 205-15 sets out when a credit arises in that account.

Note 2: Section 205-30 sets out when a debit arises in that account.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***franking account balance*** has the meaning given by section 214-30.

***franking assessment*** has the meaning given by subsection 214-60(1) and affected by section 214-100.

***franking credit*** has the meaning given by section 205-15.

***franking debit*** has the meaning given by section 205-30.

***franking deficit*** has the meaning given by subsection 205-40(2).

***franking deficit tax*** means tax imposed under the *New Business Tax System (Franking Deficit Tax) Act 2002*.

Note: That Act imposes tax where it is payable under section 205-45 of this Act.

***franking entity*** has the meaning given by section 202-15.

***franking percentage*** has the meaning given by section 203-35.

***franking period*** has the meaning given by sections 203-40 and 203-45.

***franking return*** means a return required under Subdivision 214-A.

***franking surplus*** has the meaning given by subsection 205-40(1).

***franking tax*** has the meaning given by section 214-40.

***franks with an exempting credit*** has the meaning given by section 208-60.

***frank with a venture capital credit*** has the meaning given by section 210-30.

***friendly society*** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a \*State law or a \*Territory law; or
- (c) a body that is permitted, by a \*State law or a \*Territory law, to assume or use the expression ***friendly society***; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a \*State law or a \*Territory law.

**friendly society dispensary** means an approved pharmacist (within the meaning of Part VII of the *National Health Act 1953*) that is:

- (a) a \*friendly society; or  
(b) a body carrying on \*business for the benefit of members of a \*friendly society.

**fringe benefit** means:

- (a) a fringe benefit as defined by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*; and  
(b) a benefit that would be a fringe benefit (as defined by subsection 136(1) of that Act) if paragraphs (d) and (e) of the definition of **employer** in that subsection of that Act were omitted.

**fringe benefits taxable amount** has the meaning given by section 5B of the *Fringe Benefits Tax Assessment Act 1986*.

**fringe benefits tax law** means a provision of an Act or regulations under which the extent of liability for tax imposed by the *Fringe Benefits Tax Act 1986* is worked out.

**FS assessment debt** means an FS assessment debt under:

- (a) subsection 19AB(2) of the *Social Security Act 1991*; or  
(b) the *Student Assistance Act 1973* as in force at a time on or after 1 July 1998.

**FTB amount** for an income year means an amount of family tax benefit (within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*) to which an individual is entitled in respect of the income year.

**fuel tax credit** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***fuel tax law*** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

***fuel tax return period*** has the meaning given by section 61-20 of the *Fuel Tax Act 2006*.

***full year amounts*** has the meaning given by section 165-60.

***full year car deduction*** has the meaning given by section 28-45.

***full year deductions*** has the meaning given by subsections 165-55(5) and (6).

***fund payment*** has the meaning given by 12-405 in Schedule 1 to the *Taxation Administration Act 1953*.

***fund-raising event*** has the meaning given by section 40-165 of the *A New Tax System (Goods and Services Tax) Act 1999*, as modified by the omission of subparagraph 40-165(1)(b)(i) of that Act.

***funeral policy*** means a \*life insurance policy issued by a \*friendly society for the sole purpose of providing benefits to pay for the funeral of the insured person.

***gainfully employed*** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

***gaining entity*** for an \*indirect value shift has the meaning given by section 727-150.

***GDP-adjusted notional tax*** has the meaning given by section 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

***GDP amount*** for a \*quarter has the meaning given by section 45-405 in Schedule 1 to the *Taxation Administration Act 1953*.

***general deduction*** has the meaning given by section 8-1.

***general insurance company*** means a body corporate that carries on \*insurance business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**general insurance policy** means a policy of insurance that is not a \*life insurance policy or an \*annuity instrument.

**general interest charge** means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

**general partner** means a partner of a \*limited partnership whose liability in relation to the partnership is not limited.

**general small business pool** has the meaning given by section 328-185.

**genuine redundancy payment** has the meaning given by section 83-175.

**global GST amount** has the meaning given by section 195-1 of the \*GST Act.

**global method:**

- (a) of working out whether a company has an unrealised net loss at a particular time, has the meaning given by section 165-115E; and
- (b) of working out whether a company has an adjusted unrealised loss at a particular time, has the meaning given by section 165-115U.

**goes for at least 4 hours**, in relation to a \*seminar, has the meaning given by subsection 32-65(2).

**government entity** has the meaning given by section 41 of the *New Tax System (Australian Business Number) Act 1999*.

**Government FHSA contribution** has the meaning given by the *First Home Saver Accounts Act 2008*.

**greater benefit from franking credits** has a meaning affected by subsections 204-30(7) and (8).

**greater benefits:**

- (a) under an \*indirect value shift, has the meaning given by subsection 727-150(3); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) under a \*presumed indirect value shift, has the meaning given by subsection 727-855(1).

**gross averaging amount** has the meaning given by section 392-70.

**gross forgiven amount** has the meaning given by section 245-75.

**gross vehicle mass** of a vehicle means:

- (a) the road weight specified by the manufacturer of the vehicle as the maximum design weight capacity of the vehicle; or
- (b) in the absence of such a specification, the sum of:
  - (i) the weight of the vehicle; and
  - (ii) the weight of the maximum load for which the vehicle was designed (including the weight of the driver and a full tank of fuel, if applicable).

**group heading** has the meaning given by section 950-100.

**GST** has the meaning given by section 195-1 of the \*GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**GST-free** has the meaning given by section 195-1 of the \*GST Act.

**GST group** has the meaning given by section 195-1 of the \*GST Act.

**GST inclusive market value** has the meaning given by section 195-1 of the \*GST Act.

**GST joint venture** has the meaning given by section 51-5 of the \*GST Act.

**GST law** has the meaning given by section 195-1 of the \*GST Act.

**GST return** has the same meaning as in section 195-1 of the \*GST Act.

**GST turnover** has the meaning given by section 195-1 of the \*GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**guaranteed residual value** for an asset that is put to a tax preferred use has the meaning given by subsection 250-85(3).

**guarantee period**, for an annuity provided under a \*structured settlement or a \*structured order, has the meaning given by subsection 54-35(2).

**Guide** has the meaning given by section 950-150.

**harm prevention charity** has the meaning given by section 30-288.

**head company**:

- (a) in relation to a \*consolidated group or \*consolidatable group—has the meaning given by section 703-15; and
- (b) of a \*MEC group—has the meaning given by section 719-75.

**head entity** of a demerger group has the meaning given by section 125-65.

**Health Department** means the Department that:

- (a) deals with matters arising under section 1 of the *National Health Act 1953*; and
- (b) is administered by the Health Minister.

**Health Minister** means the Minister administering section 1 of the *National Health Act 1953*.

**Health Secretary** means the Secretary of the Health Department.

**HECS-HELP benefit** has the same meaning as in the *Higher Education Support Act 2003*.

**hedged item** has the meaning given by subsections 230-335(10) and (11).

**hedging financial arrangement** has the meaning given by subsections 230-335(1) to (9) and sections 230-340 and 230-345.

**hedging financial arrangement election** has the meaning given by section 230-315.

**held**: see **hold**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Heritage Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Australian Heritage Council Act 2003*; and
- (b) is administered by the \*Heritage Minister.

**Heritage Minister** means the Minister administering section 1 of the *Australian Heritage Council Act 2003*.

**Heritage Secretary** means the Secretary of the \*Heritage Department.

**HIH company** has the meaning given by section 322-5.

**HIH Trust** has the meaning given by section 322-5.

**hire purchase agreement** means:

- (a) a contract for the hire of goods where:
  - (i) the hirer has the right, obligation or contingent obligation to buy the goods; and
  - (ii) the charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods; and
  - (iii) title in the goods does not pass to the hirer until the option referred to in subparagraph (a)(i) is exercised; or
- (b) an agreement for the purchase of goods by instalments where title in the goods does not pass until the final instalment is paid.

Note: An example of a contingent obligation is a put option.

**hold:**

- (a) **hold** a car for the purposes of Division 28 has the meaning given by section 28-90; and
- (b) **hold** a \*depreciating asset has the meaning given by section 40-40.

**horse opening value** has the meaning given by subsection 70-65(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**horse reduction amount** has the meaning given by subsection 70-65(2).

**horticultural plant** has the meaning given by section 40-520.

**horticulture** has the meaning given by section 40-535.

**hotel building** has the meaning given by section 43-95.

**housing and welfare** means:

- (a) residential accommodation; or
- (b) health, education, recreation or similar facilities, or facilities for meals; or
- (c) works carried out directly in connection with such accommodation or facilities, including works for providing water, light, power, access or communications.

**Housing Department** means the Department that:

- (a) deals with matters arising under section 1 of the *National Rental Affordability Scheme Act 2008*; and
- (b) is administered by the \*Housing Minister.

**Housing Minister** means the Minister administering section 1 of the *National Rental Affordability Scheme Act 2008*.

**Housing Secretary** means the Secretary of the \*Housing Department.

**hypothetical tax position** has the meaning given by section 45-615 in Schedule 1 to the *Taxation Administration Act 1953*.

**immediate annuity** means an \*annuity that is presently payable.

**Immigration Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Migration Act 1958*; and
- (b) is administered by the Immigration Minister.

**Immigration Minister** means the Minister administering section 1 of the *Migration Act 1958*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***Immigration Secretary*** means the Secretary of the Immigration Department.

***import*** has the meaning given by section 195-1 of the \*GST Act.

***improvement threshold*** has the meaning given by section 108-85.

***imputation benefit*** has the meaning given by subsection 204-30(6).

***imputation system*** means the rules in Part 3-6.

***in a position to affect rights*** has the meaning given by section 975-150.

***incapacitated entity*** has the meaning given by section 195-1 of the \*GST Act.

***incentive amount*** has the meaning given by section 61-220.

***incidental costs*** has the meaning given by section 110-35.

***incidental forestry scheme receipts*** has the meaning given by subsection 394-30(4).

***income bond*** means a \*life insurance policy issued by a \*friendly society under which bonuses are regularly distributed.

***income company*** has the meaning given by section 170-10.

***income for surcharge purposes***, for a person and an income year, means the sum of the following:

- (a) the person's taxable income for the income year (disregarding subsection 271-105(1) of Schedule 2F to the *Income Tax Assessment Act 1936*);
- (b) the person's \*reportable fringe benefits total (if any) for the income year;
- (c) the person's \*reportable superannuation contributions for the income year;
- (d) the person's \*total net investment loss for the income year; less the amount mentioned in subsection 301-20(3) for the person for the income year if the person is entitled to a tax offset under subsection 301-20(2) for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**income tax** means income tax imposed by any of these:

- (a) the *Income Tax Act 1986*;
- (b) the *Income Tax (Diverted Income) Act 1981*;
- (c) the *Income Tax (Former Complying Superannuation Funds) Act 1994*;
- (d) the *Income Tax (Former Non-resident Superannuation Funds) Act 1994*;
- (e) the *Income Tax (Fund Contributions) Act 1989*.

**income tax law** means a provision of an Act or regulations under which is worked out the extent of liability for:

- (a) \*tax; or
- (b) Medicare levy; or
- (c) \*franking tax; or
- (d) \*withholding tax; or
- (e) \*mining withholding tax.

**income tax return** means a return under section 161, 162 or 163 of the *Income Tax Assessment Act 1936*.

**income year**: the basic meaning is given by subsections 4-10(2) and 9-5(2). Some provisions refer to a particular income year. (They may describe it in different ways: for example, as the income year ending on 30 June 1998, or the 1997-98 income year.) For an entity that adopts an accounting period in place of the particular income year, the reference includes:

- (a) the adopted accounting period; or
- (b) if the adopted accounting period ends under section 18A of the *Income Tax Assessment Act 1936*:
  - (i) in relation to the commencing of the income year—the adopted accounting period (as ending under that section); or
  - (ii) in relation to the ending of the income year—the accounting period ending under that section on the day on which the adopted accounting period would (but for that section) have ended.

Note 1: The Commissioner can allow you to adopt an accounting period ending on a day other than 30 June. See section 18 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: An accounting period ends, and a new accounting period starts, when a partnership becomes, or ceases to be, a VCLP, an ESVCLP, an AFOF or a VCMP. See section 18A of the *Income Tax Assessment Act 1936*.

***in connection with***: an economic benefit is \*provided ***in connection with*** a \*scheme if at least one of the tests in section 727-160 is satisfied.

***increase time*** for a \*direct value shift has the meaning given by section 725-155.

***increasing adjustment*** has the meaning given by section 195-1 of the \*GST Act.

***independent candidate*** has the meaning given by section 30-244.

***independent member*** has the meaning given by section 30-245.

***indexation factor***:

- (a) for an amount mentioned in a provision listed at items 8 to 12 in section 960-265—***indexation factor*** has the meaning given by section 960-285; or
- (b) for an amount mentioned in a provision listed at another item in section 960-265—***indexation factor*** has the meaning given by section 960-275.

***index number***:

- (a) for an amount mentioned in a provision listed at items 8 to 12 in section 960-265—***index number*** has the meaning given by section 960-285; or
- (b) for an amount mentioned in a provision listed at another item in section 960-265—***index number*** has the meaning given by section 960-280.

***indirect Australian real property interest*** has the meaning given by section 855-25.

***indirect equity interests***: an entity has ***indirect equity interests*** in a company if it has \*shares or other interests in entities interposed between the entity and the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***indirect equity or loan interest*** has the meaning given by section 727-525.

***indirectly***: entities have the right to receive \*dividends or capital of a company ***indirectly*** for their own benefit if they would receive the dividends or capital for their own benefit if:

- (a) the company were to pay or distribute the dividends or capital; and
- (b) the dividends or capital were then successively paid or distributed by each entity interposed between the company and those entities.

An \*ultimate owner ***indirectly*** has a beneficial interest in a \*CGT asset of an entity, or in \*ordinary income that may be \*derived from a \*CGT asset of an entity, as described in section 149-15.

***indirect participation interest*** has the meaning given by section 960-185.

***indirect primary equity interest*** has the meaning given by section 727-220.

***indirect roll-over replacement*** has the meaning given by section 723-110.

***indirect small business participation percentage*** has the meaning given by section 152-75.

***indirect tax*** means any of the following:

- (a) \*GST;
- (b) \*wine tax;
- (c) \*luxury car tax.

***indirect tax document*** means a document that:

- (a) was obtained by you in the course of:
  - (i) your appointment or employment by the Commonwealth; or
  - (ii) the performance of services by you for the Commonwealth; or
  - (iii) the exercise of powers, or the performance of functions, by you under a delegation by the Commissioner; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) was made or given under, or for the purposes of, an \*indirect tax law.

Example: A GST return is a document made for the purposes of an indirect tax law.

***indirect tax information*** means information that:

- (a) was obtained by you in the course of:
- (i) your appointment or employment by the Commonwealth; or
  - (ii) the performance of services by you for the Commonwealth; or
  - (iii) the exercise of powers, or the performance of functions, by you under a delegation by the Commissioner; and
- (b) was disclosed or obtained under an \*indirect tax law; and
- (c) relates to the affairs of an entity other than you.

***indirect tax law*** means any of the following:

- (a) the \*GST law;
- (b) the \*wine tax law;
- (c) the \*luxury car tax law;
- (d) the \*fuel tax law.

***indirect tax or excise ruling*** means a \*public ruling or a \*private ruling, to the extent that the ruling relates to:

- (a) an \*indirect tax law (other than the \*fuel tax law); or
- (b) an \*excise law.

***indirect value shift*** has the meaning given by Subdivision 727-B.

***indirect voting percentage*** in a company has the meaning given by section 768-555.

***individual*** means a natural person.

***individual asset method***:

- (a) of working out whether a company has an unrealised net loss at a particular time, has the meaning given by section 165-115E; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) of working out whether a company has an adjusted unrealised loss at a particular time, has the meaning given by section 165-115U.

***individual superannuation guarantee shortfall*** has the meaning given by section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

***industrial activities*** has the meaning given by section 43-150.

***industrial instrument*** means:

- (a) an \*Australian law; or
- (b) an award, order, determination or industrial agreement in force under an \*Australian law.

***Industry Department*** means the Department that:

- (a) deals with matters arising under section 1 of the *Industry Research and Development Act 1986*; and
- (b) is administered by the \*Industry Minister.

***Industry Minister*** means the Minister administering section 1 of the *Industry Research and Development Act 1986*.

***Industry Secretary*** means the Secretary of the \*Industry Department.

***information exchange country*** has the meaning given by section 12-385 in Schedule 1 to the *Taxation Administration Act 1953*.

***in-house dining facility*** has the meaning given by section 32-55.

***in-house software*** is computer software, or a \*right to use computer software, that you acquire, develop or have another entity develop:

- (a) that is mainly for you to use in performing the functions for which the software was developed; and
- (b) for which you cannot deduct amounts under a provision of this Act outside Divisions 40 and 328.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**initial head company instalment rate**, for a \*head company of a \*consolidated group, or a \*provisional head company of a \*MEC group, is an \*instalment rate worked out on the basis of:

- (a) for a group that comes into existence in an income year under section 703-50 or 719-50—the first \*base assessment of a company as the head company of that group for which the \*base year is that income year; and
- (b) for a group (the **later group**) for which either of the following conditions is satisfied:
  - (i) the later group is \*created from a group (the **first group**) that comes into existence under section 703-50 or 719-50;
  - (ii) starting from the first group, consolidated groups or MEC groups are successively created, ending in the creation of the later group;

the first base assessment of a company as the head company of the first group, the later group or any other group covered by subparagraph (ii), for which the base year is the income year in which the first group comes into existence.

Note: For example, subparagraph (b)(ii) covers a consolidated group that is created from a MEC group, which was in turn created from a consolidated group that came into existence under section 703-50.

**initial participant** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(5).

**injected amount** has the meaning given by sections 175-10, 175-20 and 175-85.

**injured person**:

- (a) in relation to a \*structured settlement, has the meaning given by subparagraph 54-10(1)(a)(i); and
- (b) in relation to a \*structured order, has the meaning given by subparagraph 54-10(1A)(a)(i).

**Innovation Australia** means the board established by section 6 of the *Industry Research and Development Act 1986*.

**input tax credit** has the meaning given by section 195-1 of the \*GST Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**input taxed** has the meaning given by section 195-1 of the \*GST Act.

**installed ready for use** means installed ready for use and held in reserve.

**instalment group** has the meaning given by section 45-145 in Schedule 1 to the *Taxation Administration Act 1953*.

**instalment income** has the meaning given by sections 45-120, 45-260, 45-280, 45-285, 45-286 and 45-465 in Schedule 1 to the *Taxation Administration Act 1953*.

**instalment of petroleum resource rent tax** is an instalment of tax payable under Division 2 of Part VIII of the *Petroleum Resource Rent Tax Assessment Act 1987*.

**instalment quarter** has the meaning given by section 45-60 in Schedule 1 to the *Taxation Administration Act 1953*.

**insurance business** has the same meaning as in the *Insurance Act 1973*.

**intellectual property**: an item of **intellectual property** consists of the rights (including equitable rights) that an entity has under a \*Commonwealth law as:

- (a) the patentee, or a licensee, of a patent; or
  - (b) the owner, or a licensee, of a registered design; or
  - (c) the owner, or a licensee, of a copyright;
- or of equivalent rights under a \*foreign law.

**interest that will or may convert into another interest** has the meaning given by section 974-165.

**intermediate controller** has the meaning given by subsection 727-530(2).

**invalidity segment**, of an \*employment termination payment, has the meaning given by section 82-150.

**investment body** for a \*Part VA investment has the meaning given by section 202D of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**investment commitment time** has the meaning given by section 41-25.

**investment registration requirement:**

- (a) in relation to a \*VCLP—has the meaning given by subsection 9-1(2) of the *Venture Capital Act 2002*; and
- (ab) in relation to an \*ESVCLP—has the meaning given by subsection 9-3(2) of the *Venture Capital Act 2002*; and
- (b) in relation to an \*AFOF—has the meaning given by subsection 9-5(2) of the *Venture Capital Act 2002*.

**investor** for a \*Part VA investment has the meaning given by section 202D of the *Income Tax Assessment Act 1936*.

**invoice** means a document notifying an obligation to make a payment.

**inward investing entity (ADI)** has the meaning given by sections 820-395 and 820-609.

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

**inward investing entity (non-ADI)** has the meaning given by sections 820-185, 820-583, 820-609 and 820-610.

**inward investment vehicle (financial)** has the meaning given by sections 820-185, 820-583, 820-609 and 820-610.

Note: Section 820-430 allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

**inward investment vehicle (general)** has the meaning given by sections 820-185 and 820-583.

**inward investor (financial)** has the meaning given by section 820-185.

Note: Section 820-430 allows an inward investor (financial) to be treated as an inward investing entity (ADI) in certain cases.

**inward investor (general)** has the meaning given by section 820-185.

**irrigation water provider** has the meaning given by section 40-515.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**IRU** is an indefeasible \*right to use a telecommunications cable system.

**issued**, in relation to a \*debt interest, has the meaning given by paragraph 974-55(1)(d).

**IVS period** has the meaning given by section 727-150.

**IVS time** has the meaning given by section 727-150.

**joint venture operator** for a \*GST joint venture has the meaning given by section 195-1 of the \*GST Act.

**labour hire notional withheld amount** has the meaning given by section 16-125 in Schedule 1 to the *Taxation Administration Act 1953*.

**landcare operation** has the meaning given by section 40-635.

**land transport facilities borrowings agreement** has the meaning given by section 396-80.

**land transport facility** has the meaning given by section 396-45.

**large withholder** has the meaning given by section 16-95 in Schedule 1 to the *Taxation Administration Act 1953*.

**last retirement day** means:

- (a) if an individual's employment or office would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be); or
- (b) in any other case—the day on which he or she would turn 65.

**laundry expense** has the meaning given by section 900-40.

**law enforcement agency** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**legally responsible** for a child means legally responsible (whether alone or jointly with someone else) for the day-to-day care, welfare and development of the child.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**legal personal representative** means:

- (a) an executor or administrator of an estate of an individual who has died; or
- (b) a trustee of an estate of an individual who is under a legal disability; or
- (c) a person who holds a general power of attorney that was granted by another person.

**legal practitioner** means a person who is enrolled as a barrister, a solicitor or a barrister and solicitor of:

- (a) a federal court; or
- (b) a court of a State or Territory.

**leisure facility** has the meaning given by subsection 26-50(2).

**lesser benefits:**

- (a) under an \*indirect value shift, has the meaning given by paragraph 727-150(3)(a); and
- (b) under a \*presumed indirect value shift, has the meaning given by paragraph 727-855(1)(c).

**LIC capital gain** has the meaning given by section 115-285.

**life benefit termination payment** has the meaning given by subsection 82-130(2).

**life insurance business** means:

- (a) a business to the extent that it consists of issuing \*life insurance policies; and
- (b) any business that relates to a business to which paragraph (a) applies.

**life insurance company** means a company registered under section 21 of the *Life Insurance Act 1995*.

**life insurance policy** has the meaning given to the expression *life policy* in the *Life Insurance Act 1995* but includes:

- (a) a contract made in the course of carrying on business that is \*life insurance business because of a declaration in force under section 12A or 12B of that Act; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) a sinking fund policy within the meaning of that Act.

**life insurance premium** includes consideration received or receivable in respect of the grant of, or the undertaking of liabilities in respect of, an \*annuity or a \*personal injury lump sum.

Note: Certain other amounts are treated as life insurance premiums when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-320.

**limited partner** means a partner of a \*limited partnership whose liability in relation to the partnership is limited.

**limited partnership** means:

- (a) an association of persons (other than a company) carrying on business as partners or in receipt of \*ordinary income or \*statutory income jointly, where the liability of at least one of those persons is limited; or
- (b) an association of persons (other than one referred to in paragraph (a)) with legal personality separate from those persons that was formed solely for the purpose of becoming a \*VCLP, an \*ESVCLP, an \*AFOF or a \*VCMP and to carry on activities that are carried on by a body of that kind.

**limited recourse debt** has the meaning given by section 243-20.

**linked assets and liabilities** has the meaning given by subsection 705-59(2).

**linked group** has the meaning given by section 170-260.

**listed country** has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

**listed investment company** has the meaning given by section 115-290.

**listed public company** means a company \*shares in which (except shares that carry a right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange.

However, a company is *not* a **listed public company** if:

- (a) a person (who is not a company) controls, or is able to control, or up to 20 persons (none of them companies)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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between them control, or are able to control, 75% or more of the voting power in the company (whether directly, or indirectly through one or more interposed entities); or

- (b) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any \*dividends that the company may pay; or
- (c) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any distribution of capital of the company.

**listed widely held trust** has the meaning given by section 272-115 in Schedule 2F to the *Income Tax Assessment Act 1936*.

**live stock** does *not* include animals used as beasts of burden or working beasts in a \*business other than a \*primary production business.

**local governing body** means a local governing body established by or under a \*State law or \*Territory law.

**lodge electronically**: a document is lodged electronically if it is transmitted to the Commissioner in an electronic format approved by the Commissioner.

**long life small business pool** has the meaning given by section 328-185.

**long service leave employment period** has the meaning given by subsection 83-90(4).

**losing entity** for an \*indirect value shift has the meaning given by section 727-150.

**loss company**:

- (a) at a particular time, has the meaning given by section 165-115R or 165-115S; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) in relation to a transfer of a \*tax loss or a \*net capital loss has the meaning given by section 170-10 or 170-110.

**loss denial balance** of a \*loss denial pool of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

**loss denial pool** of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

**loss exposure amount** has the meaning given by section 830-60.

**loss-focussed basis** has the meaning given by section 727-780.

**loss year** has the meaning given by sections 36-10, 165-70 and 175-35.

Note: The meaning of **loss year** in sections 36-10, 165-70 and 175-35 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

**low-cost asset** has the meaning given by section 40-425.

**low rate cap amount** has the meaning given by section 307-345.

**low tax component** has the meaning given by section 295-545.

**low-value asset** has the meaning given by section 40-425.

**LTF interest** has the meaning given by sections 396-30 and 396-35.

**luxury car**: a \*car is a **luxury car** at a time if section 40-230 would reduce its \*cost as a \*depreciating asset if an entity acquired it at that time for its \*market value.

Note 1: Division 242 treats a lease of a luxury car as a notional sale of the car by the lessor to the lessee financed by a notional loan by the lessor to the lessee.

Note 2: Section 242-10 of the *Income Tax (Transitional Provisions) Act 1997* extends this definition to cover reductions of cost under former provisions corresponding to section 40-230.

**luxury car lease payment**, in relation to a \*car to which Division 242 (about luxury car leases) applies, means an amount

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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that the lessee under the lease is required to pay for the rental or hire of the car, but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment for rental or hire on time; or
- (b) a \*termination amount.

***luxury car lease payment period*** means a period for which a \*luxury car lease payment under the lease is allocated or expressed to be payable.

Note: If a luxury car lease payment period for a lease of a luxury car would otherwise be longer than 6 months, subsection 242-35(3) divides the original period into periods of no longer than 6 months.

***luxury car tax*** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

***Luxury Car Tax Act*** means the *A New Tax System (Luxury Car Tax) Act 1999*.

***luxury car tax law*** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

***majority control*** has the meaning given by section 45-145 in Schedule 1 to the *Taxation Administration Act 1953*.

***majority underlying interests*** in a \*CGT asset has the meaning given by section 149-15.

***make***, in relation to a \*film, has the meaning given by section 376-125.

***managed investment scheme*** means an entity, with more than 20 members, that is:

- (a) a managed investment scheme for the purposes of the *Corporations Act 2001*; or
- (b) an entity with a similar status to a managed investment scheme under a \*foreign law relating to corporate regulation.

***managed investment trust*** has the meaning given by section 12-400 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***managed investment trust withholding tax*** means income tax payable under:

- (a) Subdivision 840-M of this Act; or
- (b) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997*.

***market value*** has a meaning affected by Subdivision 960-S.

***maximum allowable debt***:

- (a) for an \*outward investing entity (non-ADI)—has the meaning given by section 820-90 (or that section as applied by section 820-120); and
- (b) for an \*inward investing entity (non-ADI) covered by paragraph 820-185(1)(a) (or 820-225(1)(a))—has the meaning given by section 820-190 (or that section as applied by section 820-225).

***maximum franking credit*** for a distribution has the meaning given by subsection 202-60(2).

***MDO*** has the meaning given by section 5 of the *Medical Indemnity Act 2002*.

***meal allowance*** has the meaning given by section 900-30.

***meal allowance expense*** has the meaning given by section 900-30.

***MEC group*** has the meaning given by section 719-5.

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

***Medicare levy surcharge*** means:

- (a) an amount (other than a nil amount) of Medicare levy (within the meaning of Part VIIB of the *Income Tax Assessment Act 1936*) that is payable by you only because of section 8B, 8C, 8D, 8E, 8F or 8G of the *Medicare Levy Act 1986*; or
- (b) surcharge within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**medium withholder** has the meaning given by section 16-100 in Schedule 1 to the *Taxation Administration Act 1953*.

**member:**

- (a) in relation to a \*GST group—has the meaning given by section 195-1 of the \*GST Act; and
- (b) in relation to a \*consolidated group or \*consolidatable group—has the meaning given by section 703-15; and
- (ba) in relation to a \*MEC group—has the meaning given by section 719-25; and
- (bb) in relation to a \*potential MEC group—has the meaning given by section 719-10; and
- (c) in relation to an entity—has the meaning given by section 960-130; and
- (d) in relation to a \*copyright collecting society, means:
  - (i) any entity that has been admitted as a member under the society's \*constitution; or
  - (ii) any entity that has authorised the society to license the use of his or her copyright material.

**member of the Forces** has the meaning given by section 52-105.

**member of the tax preferred end user group** has the meaning given by paragraph 250-60(4)(a).

**member of the tax preferred sector** has the meaning given by paragraph 250-60(4)(b).

**membership interest** in an entity has the meaning given by section 960-135.

**metering point** on land has the meaning given by section 40-655.

**minerals** has the meaning given by section 40-730.

**minerals treatment** has the meaning given by section 40-875.

**minimum capital amount:**

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-305 (or that section as applied by section 820-330); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-400 (or that section as applied by section 820-420).

**mining building site** has the meaning given by section 40-740.

**mining capital expenditure** has the meaning given by section 40-860.

**mining entitlement** has the meaning given by subsection 124-710(2).

**mining operations** has the meaning given by section 40-730.

**mining payment** has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**mining, quarrying or prospecting information** has the meaning given by section 40-730.

**mining, quarrying or prospecting right** is:

- (a) an authority, licence, permit or right under an \*Australian law to mine, quarry or prospect for minerals, \*petroleum or quarry materials; or
- (b) a lease of land that allows the lessee to mine, quarry or prospect for minerals, petroleum or quarry materials on the land; or
- (c) an interest in such an authority, licence, permit, right or lease; or
- (d) any rights that:
  - (i) are in respect of buildings or other improvements (including anything covered by the definition of **housing and welfare**) that are on the land concerned or are used in connection with operations on it; and
  - (ii) are acquired with such an authority, licence, permit, right, lease or interest.

However, a right in respect of anything covered by the definition of **housing and welfare** in relation to a quarrying site is not a **mining, quarrying or prospecting right**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**mining site rehabilitation** has the meaning given by section 40-735.

**mining withholding tax** means income tax payable under section 128V of the *Income Tax Assessment Act 1936*.

**MIT participation interest** has the meaning given by section 12-404 in Schedule 1 to the *Taxation Administration Act 1953*.

**MLS lump sums** has the meaning given by section 61-590.

**modified market value** of an entity has the meaning given by section 707-325.

**money equivalent** means:

- (a) a right to receive money or something that is a \*money equivalent under this definition; or
- (b) a \*financial arrangement (within the meaning of section 230-45).

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

**more than a 50% stake** has the meaning given by section 165-37.

**more than 50% of the company's capital distributions** has the meaning given by section 165-160.

**more than 50% of the company's dividends** has the meaning given by section 165-155.

**more than 50% of the voting power** has the meaning given by section 165-150.

**motor vehicle** means any motor-powered road vehicle (including a 4 wheel drive vehicle).

**multi-rate trustee** has the meaning given by section 45-455 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**mutual affiliate company** has the meaning given by section 121AC of the *Income Tax Assessment Act 1936*.

**mutual insurance company** has the meaning given by section 121AB of the *Income Tax Assessment Act 1936*.

**National Rental Affordability Scheme** has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

**natural resource** has the meaning given by section 6 of the *Income Tax Assessment Act 1936*.

**natural resource** means minerals or any other non-living resource of the land, sea-bed or sea.

**net amount** has the same meaning as in section 195-1 of the \*GST Act.

**net assessable film income** for an income year is your \*assessable film income for that year reduced by your \*film deductions for that year.

**net asset amount** has the meaning given by section 104-95.

**net capital gain** has the meaning given by sections 102-5 and 165-111.

Note: For income years before 1998-99, **net capital gain** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

**net capital loss** has the meaning given by sections 102-10 and 165-114 and affected by section 701-30.

**net current termination value** of a \*life insurance policy means so much of the \*current termination value of the policy as relates to the part of the policy that is not reinsured under a \*contract of reinsurance.

**net exempt film income** for an income year is your \*exempt film income for that year reduced by:

- (a) any taxes payable in respect of that income in a country or place outside Australia; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) any expenses (not of a capital nature) so far as you incurred them during that year in deriving that income.

**net exempt income** has the meaning given by section 36-20.

**net forgiven amount**, of a debt, has the meaning given by sections 245-85 and 245-90.

**net fuel amount** has the meaning given by section 60-5 of the *Fuel Tax Act 2006*.

**net GST**: Your **net GST** for a \*supply, is:

- (a) the \*GST payable by you on the supply; plus
- (b) the sum of any \*increasing adjustments that you have relating to the supply; minus
- (c) the sum of any \*decreasing adjustments that you have relating to the supply.

**net income**:

- (a) of a partnership—has the same meaning as in Division 5 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) of a trust—has the same meaning as in Division 6 of Part III of that Act.

**net income from working** has the meaning given by section 61-570.

**net input tax credit**: Your **net input tax credit** for an \*acquisition or \*importation is:

- (a) the amount of any \*input tax credit to which you are entitled for the acquisition or \*importation; minus
- (b) the sum of any \*increasing adjustments that you have relating to the acquisition or \*importation; plus
- (c) the sum of any \*decreasing adjustments that you have relating to the acquisition or \*importation.

**net investment component of ordinary life insurance policies** has the meaning given by subsection 713-515(4).

**net overstated amount** has the meaning given by subsection 104-525(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**net premium** for a \*life insurance policy means the amount of the \*life insurance premium for the policy less the part (if any) of that premium that is reinsured under a \*contract of reinsurance.

**net risk component** of a \*life insurance policy means so much of the policy's risk component as:

- (a) is not reinsured under a \*contract of reinsurance; or
- (b) is reinsured under a contract of reinsurance to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

**net small business income** has the meaning given by section 61-525.

**net understated amount** has the meaning given by subsection 104-525(3).

**net value** of an entity means the amount by which the sum of the \*market values of the assets of the entity exceeds the sum of its liabilities.

**net value of the CGT assets** of an entity has the meaning given by section 152-20.

**new investment threshold** has the meaning given by section 41-35.

**non-ADI financial institution** has the meaning given by subsection 128A(1) of the *Income Tax Assessment Act 1936*.

**non-arm's length component** has the meaning given by section 295-545.

**non-arm's length income** has the meaning given by section 295-550.

**non-arm's length limited recourse debt** has the meaning given by subsection 243-20(6).

**non-assessable non-exempt income** has the meaning given by section 6-23.

**non-cash benefit** is property or services in any form except money. If a non-cash benefit is dealt with on behalf of an entity, or is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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provided or dealt with as an entity directs, the benefit is taken to be provided to the entity.

***non-complying approved deposit fund*** means an \*approved deposit fund that is not a \*complying approved deposit fund.

***non-complying superannuation fund*** means a \*superannuation fund that:

- (a) is a fund; and
- (b) is not a \*complying superannuation fund.

***non-compulsory***, in relation to a \*uniform, has the meaning given by subsection 34-15(2).

***non-concessional contributions*** has the meaning given by section 292-90.

***non-concessional contributions cap*** has the meaning given by section 292-85.

***non-debt liabilities***, of an entity and at a particular time, means liabilities that the entity has at that time, other than:

- (a) any \*debt capital of the entity; or
- (b) any \*equity interest in the entity; or
- (c) if the entity is a \*corporate tax entity—a provision for a \*distribution of profit; or
- (ca) if paragraph (c) does not apply—a provision for a distribution to the entity's \*members; or
- (d) any liability of the entity under a securities loan arrangement if, as at that time, the entity:
  - (i) has received amounts for the sale of securities (other than any fees associated with the sale) under the arrangement; and
  - (ii) has not repurchased the securities under the arrangement; or
- (e) a liability of the entity, to the extent that it meets the conditions for being taken into account in working out the \*borrowed securities amount of the entity as at that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**non-entity joint venture** means an arrangement that the Commissioner is satisfied is a contractual arrangement:

- (a) under which 2 or more parties undertake an economic activity that is subject to the joint control of the parties; and
- (b) that is entered into to obtain individual benefits for the parties, in the form of a share of the output of the arrangement rather than joint or collective profits for all the parties.

**non-equity share** means a \*share that is not an \*equity interest in the company.

Note: A share will not be an equity interest if it is characterised as, or forms part of a larger interest that is characterised as, a debt interest under Subdivision 974-B.

**non-fixed trust** means a trust that is not a \*fixed trust.

**non-membership equity interest**: an interest in an entity is a **non-membership equity interest** in the entity at a time to the extent that it is *not* an accounting liability (within the meaning of subsection 705-70(1)) of the entity at that time, if:

- (a) the interest is *not* a \*membership interest in the entity at that time; and
- (b) the interest is *not* a \*debt interest in the entity at that time.

In determining the extent to which the interest is *not* an accounting liability at that time:

- (c) treat each reference in subsection 705-70(1) to the joining entity as instead being a reference to the entity; and
- (d) treat the reference in that subsection to the joining time as instead being a reference to that time.

**non-member spouse** has the same meaning as in Part VIIIB of the *Family Law Act 1975*.

**non-portfolio interest test**: an interest held by an entity in another entity passes the **non-portfolio interest test** in the circumstances set out in section 960-195.

**non-primary production deductions** has the meaning given by subsection 392-85(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***non-primary production shade-out amount*** has the meaning given by subsections 392-90(2) and (3).

***non-profit company*** has the meaning given by section 3 of the *Income Tax Act 1986*.

***non-profit sub-entity*** has the meaning given by section 195-1 of the \*GST Act.

***non-quotation withholding payment*** means a \*withholding payment covered by Subdivision 12-E in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Subdivision 12-E and Division 14 in that Schedule deal with collecting amounts on account of income tax payable by recipients of certain payments or non-cash benefits who have not quoted their tax file number or ABN, as appropriate.

***non-share capital account*** means the account provided for by section 164-10.

***non-share capital return*** has the meaning given by section 974-125.

***non-share equity interest*** in a company means an \*equity interest in the company that is not solely a \*share.

***non-share distribution*** has the meaning given by section 974-115.

***non-share dividend*** has the meaning given by section 974-120.

***no-TFN contributions income*** has the meaning given by section 295-610.

***notional buyer*** has the meaning given by section 240-17.

***notional depreciation*** for a lease period has the meaning given by section 20-120.

***notional employer*** has the meaning given by section 28-185.

***notional interest*** has the meaning given by section 240-60.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***notional loss:***

- (a) of a company—has the meaning given by sections 165-50 and 165-75; and
- (b) of a partnership—has the meaning given by sections 165-80 and 165-85.

***notional net capital gain*** has the meaning given by section 165-108.

***notional net capital loss*** has the meaning given by section 165-108.

***notional net income*** of a partnership has the meaning given by sections 165-80 and 165-85.

***notional seller*** has the meaning given by section 240-17.

***notional tax*** has the meaning given by sections 45-325 and 45-475 in Schedule 1 to the *Taxation Administration Act 1953*.

***notional taxable income*** has the meaning given by sections 165-50 and 165-75.

***notional taxed contributions*** has the meaning given by section 292-170.

***notional written down value*** of a \*depreciating asset has the meaning given by section 58-75.

***NRAS rent*** (short for National Rental Affordability Scheme rent) means rent \*derived from a rental dwelling under the National Rental Affordability Scheme for an income year.

***NRAS year*** has the same meaning as in the *National Rental Affordability Scheme Act 2008*.

***NZ franking choice*** has the meaning given by section 220-35.

***NZ franking company*** has the meaning given by section 220-30.

***NZ resident*** has the meaning given by section 220-20.

***OB activity*** has the meaning given by section 121D of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**occupation specific clothing** has the meaning given by subsection 34-20(1).

**officially quoted price** has the meaning given by subsections 124-784A(6) and (7).

**off-market buy-back** means a purchase that is a buy-back and an off-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936*.

**off-market purchase** has the meaning given by section 159GZZZJ of the *Income Tax Assessment Act 1936*.

**offshore banking unit** has the meaning given by section 128AE of the *Income Tax Assessment Act 1936*.

**on issue:**

- (a) a \*debt interest is **on issue** as provided in paragraph 974-55(1)(e); and
- (b) an \*equity interest in an entity:
  - (i) is **on issue** from when it is issued until it stops being on issue because of subparagraph (ii); and
  - (ii) stops being **on issue** when, for reasons other than the economic performance of the entity (or of a \*connected entity of the entity), there is no longer a reasonable likelihood that a substantial \*financial benefit will be provided in respect of the interest under the \*scheme, or under any of the schemes, that give rise to the interest.

**on-lent amount**, of an entity and at a particular time, means the value, as at that time, of:

- (a) all the assets of the entity that are comprised by \*debt interests issued by other entities; and
- (b) all the assets of the entity that are comprised by leases for the hire of goods that are not covered by paragraph (a) and in relation to which the following subparagraphs are satisfied:
  - (i) each of the leases is for a term of 6 months or more;
  - (ii) the leases are part of the \*business of hiring goods that the entity carries on;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) the entity's business of hiring goods is not carried on predominantly for the purposes of hiring goods to the entity's \*associates; and
  - (c) all the securities that were held by the entity that:
    - (i) have been sold by the entity under a reciprocal purchase agreement (otherwise known as a repurchase agreement), sell-buyback arrangement or securities loan arrangement; but
    - (ii) have not yet been repurchased by the entity under the agreement or arrangement; and
  - (d) if the entity:
    - (i) carries on a \*business of dealing in securities; and
    - (ii) does not carry on that business predominantly for the purposes of dealing in securities with, or on behalf of, the entity's \*associates;
- all \*shares that:
- (iii) the entity holds at that time; and
  - (iv) are listed at that time for quotation in the official list of an \*approved stock exchange; and
  - (v) are not shares in an \*associate entity at that time of the entity.

***on-market buy-back*** means a purchase that is a buy-back and an on-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936*.

***opening adjustable value*** of a \*depreciating asset has the meaning given by section 40-85.

***opening pool balance*** has the meaning given by section 328-195.

***oral ruling*** has the meaning given by section 360-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***ordinary capital gain*** has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

***ordinary class*** for a taxable income of a \*life insurance company has the meaning given by section 320-139.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**ordinary class** for a \*tax loss of a \*life insurance company has the meaning given by section 320-143.

**ordinary debt interest** has the meaning given by section 974-140.

**ordinary income** has the meaning given by section 6-5.

**ordinary investment policy** means a \*life insurance policy that is not:

- (a) a \*complying superannuation/FHSA life insurance policy; or
- (b) an \*exempt life insurance policy; or
- (c) a policy that provides for \*participating benefits or \*discretionary benefits; or
- (d) a policy (other than a \*funeral policy) under which amounts are to be paid only on the death or disability of a person.

**ordinary payment** is defined as set out in this table:

<b>Ordinary payment</b>		
<b>Item</b>	<b>Ordinary payment, in relation to this kind of a payment:</b>	<b>has the meaning given by:</b>
1	Payment under the ABSTUDY scheme	subsection 52-131(8)
2	Payment under the <i>Military Rehabilitation and Compensation Act 2004</i>	subsection 52-114(3)
3	Social security payment	subsection 52-10(3)
4	Veterans' affairs payment	subsection 52-65(4)

**original excess contributions tax assessment day** has the meaning given by section 292-305.

**original franking assessment day** has the meaning given by subsection 214-95(2).

**outstanding**, within the context of \*franking returns, has the meaning given by subsection 214-45(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***outstanding claims*** at the end of an income year (the ***current income year***) under \*general insurance policies means claims under the policies that:

- (a) the \*general insurance company concerned is liable to pay; and
- (b) arose from insured events that occurred in the current income year or an earlier income year; and
- (c) were not paid in full before the end of the current income year.

***outstanding foreign hybrid net capital loss amount*** has the meaning given by section 830-70.

***outstanding foreign hybrid revenue loss amount*** has the meaning given by section 830-65.

***outstanding tax-related liability*** of an entity at a particular time means a \*tax-related liability of the entity:

- (a) that has arisen at or before that time (whether or not it is due and payable at that time); and
- (b) an amount of which has not been paid before that time.

***outward investing entity (ADI)*** has the meaning given by sections 820-300, 820-583 and 820-609.

Note: Section 820-430:

- allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases; and
- allows an inward investment vehicle (financial) to be treated as an outward investing entity (ADI) in certain cases.

***outward investing entity (non-ADI)*** has the meaning given by sections 820-85, 820-583, 820-609 and 820-610.

***outward investor (financial)*** has the meaning given by sections 820-85, 820-583, 820-609 and 820-610.

Note: Section 820-430 allows an outward investor (financial) to be treated as an outward investing entity (ADI) in certain cases.

***outward investor (general)*** has the meaning given by sections 820-85 and 820-583.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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**over-franking tax** means tax imposed under the *New Business Tax System (Over-franking Tax) Act 2002*.

Note: The Act imposes tax where it is payable under section 203-50 of this Act.

**overseas fund** has the meaning given by section 74 of the *Life Insurance Act 1995*.

**overseas permanent establishment**, of an entity, means a \*permanent establishment of the entity that is in a country other than Australia.

**owner** of a \*farm management deposit has the meaning given by subsection 393-25(1).

**ownership interest**: an *ownership interest*:

- (a) in land or a \*dwelling—has the meaning given by section 118-130; and
- (b) in a company or trust—has the meaning given by section 125-60.

**ownership period** of a \*dwelling has the meaning given by section 118-125.

**ownership test period** has the meaning given by sections 165-12, 165-37 and 165-123.

**ownership test time** has the meaning given by section 166-145.

**paid-up share capital** of a company means the amount standing to the credit of the company's \*share capital account reduced by the amount (if any) that represents amounts unpaid on shares.

**parent**: an individual is the *parent* of anyone who is the individual's \*child.

**parental leave pay** has the meaning given by the *Paid Parental Leave Act 2010*.

**part** of the \*spectrum specified in a \*spectrum licence has the meaning given by section 5 of the *Radiocommunications Act 1992*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***partial interest*** in a \*corporate tax entity has the meaning given by subsection 208-25(3).

***participant:***

- (a) ***participant***, in relation to a \*GST joint venture, has the meaning given by section 195-1 of the \*GST Act; and
- (a) ***participant*** in a \*forestry managed investment scheme has the meaning given by subsection 394-15(4).

***participating benefit*** has the meaning given by section 15 of the *Life Insurance Act 1995*.

***participating PDF*** has the meaning given by section 210-40.

***partnership*** means:

- (a) an association of persons (other than a company or a \*limited partnership) carrying on business as partners or in receipt of \*ordinary income or \*statutory income jointly; or
- (b) a limited partnership.

Note 1: Division 830 treats foreign hybrid companies as partnerships.

Note 2: A reference to a partnership does not include a reference to a corporate limited partnership: see section 94K of the *Income Tax Assessment Act 1936*.

***partnership cost setting interest***, in a partnership, has the meaning given by section 713-210.

***partnership loss*** has the same meaning as in Division 5 of Part III of the *Income Tax Assessment Act 1936*.

***part of a distribution that is franked with an exempting credit*** has the meaning given by section 976-10.

***part of a distribution that is franked with a venture capital credit*** has the meaning given by section 976-15.

***Part VA investment*** means an investment of a kind mentioned in section 202D of the *Income Tax Assessment Act 1936*.

***passes:*** a \*CGT asset ***passes*** to a beneficiary in an individual's estate in the way described in section 128-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**PAYG instalment** means an instalment payable under Division 45 in Schedule 1 to the *Taxation Administration Act 1953*.

**PAYG instalment period** means:

- (a) for a \*quarterly payer—an \*instalment quarter in relation to which a \*PAYG instalment is paid; and
- (b) for an \*annual payer—an income year in relation to which a PAYG instalment is paid.

**PAYG instalment variation credit** means a credit under section 45-215 or 45-420 in Schedule 1 to the *Taxation Administration Act 1953*.

**PAYG payment period** means:

- (a) for a \*personal services entity that is a \*small withholder—any \*quarter; or
- (b) for any other personal services entity—any month.

**PAYG withholding branch** has the meaning given by section 16-142 in Schedule 1 to the *Taxation Administration Act 1953*.

**payment**, of a \*carried interest, includes the meanings given in subsection 104-255(7).

**payment split** means a payment split under Part VIIIB of the *Family Law Act 1975*.

**payment summary** has the meaning given by section 16-170 in Schedule 1 to the *Taxation Administration Act 1953*.

**pays a PAYG instalment** has the meaning given by subsection 205-20(1).

**pays income tax** has the meaning given by subsection 205-20(3).

**PDF** (pooled development fund) means a company that is a PDF within the meaning of the *Pooled Development Funds Act 1992*.

**pension age** has the meaning given by sections 52-65 and 52-105.

**performing artist** has the meaning given by subsections 405-25(2) and (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



***period of the loan*** has the meaning given by subsection 25-25(5).

***permanent establishment*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***permitted entity value*** has the meaning given by section 118-440.

***permitted loan*** has the same meaning as in section 9-10 of the *Venture Capital Act 2002*.

***person*** includes a company.

***personal injury annuity*** has the meaning given by section 54-5.

***personal injury lump sum*** has the meaning given by section 54-5.

***personal services business*** has the meanings given by subsection 87-15(1) and section 87-55.

***personal services business determination*** means a determination under section 87-60 or 87-65.

***personal services business test*** has the meaning given by subsection 87-15(2).

***personal services entity*** has the meaning given by subsection 86-15(2).

***personal services income*** has the meaning given by section 84-5.

***personal services payment remitter*** has the meaning given by section 13-15 in Schedule 1 to the *Taxation Administration Act 1953*.

***personal use asset*** has the meaning given by section 108-20.

***petroleum*** has the meaning given by section 40-730.

***petroleum resource rent tax*** means tax imposed by the *Petroleum Resource Rent Tax Act 1987*, as assessed under the *Petroleum Resource Rent Tax Assessment Act 1987*.

***plant*** has the meaning given by section 45-40.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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***policy owners' retained profits*** for \*life insurance policies means Australian policy owners' retained profits, or overseas policy owners' retained profits, as defined by section 61 of the *Life Insurance Act 1995*, in relation to the statutory fund (within the meaning of section 29 of that Act) to which the business of issuing the policies relates.

***policy termination value***, in relation to a \*life insurance policy at a particular time, means the amount that is, within the meaning of prudential standards made under section 230A of the *Life Insurance Act 1995*, the termination value of that policy at that time.

***pool of construction expenditure*** has the meaning given by section 43-85.

***pooled development fund*** means a \*PDF.

***pooled interest*** in an \*eligible tier-1 company that is a member of a \*MEC group has the meaning given by section 719-560.

***pooled superannuation trust*** means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

***position to affect rights*** has the meaning given by section 975-150.

***post-17/8/93 period*** has the meaning given by subsection 83-90(3).

***post-CGT asset*** means a \*CGT asset that is not a \*pre-CGT asset.

***post-choice NZ franking company*** has the meaning given by section 220-300.

***post, digital and visual effects production*** for a \*film has the meaning given by section 376-35.

***potential MEC group*** has the meaning given by section 719-10.

***pre-16/8/78 period*** has the meaning given by subsection 83-90(1).

***pre-18/8/93 period*** has the meaning given by subsection 83-90(2).

***pre-CGT asset*** has the meaning given by section 149-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***pre-CGT proportion*** has the meaning given by section 705-125.

***precious metal*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***precluded asset*** has the meaning given by subsection 122-25(3).

***predominant economic interest*** in an asset has the meaning given by sections 250-110 to 250-140.

***predominantly-services indirect value shift*** has the meaning given by section 727-725.

***pre-existing audited book value*** of a \*depreciating asset has the meaning given by section 58-85.

***pre-July 83 segment***, of an \*employment termination payment, has the meaning given by section 82-155.

***pre-owned*** has the meaning given by subsection 118-428(2).

***pre-school course*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***prescribed dual resident*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***prescribed excluded STB*** means an \*excluded STB that is prescribed by the regulations for the purposes of Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

***present value*** of a \*financial benefit has a meaning affected by section 250-100.

***preservation age*** has the meaning given by Part 6 of the Superannuation Industry (Supervision) Regulations 1994.

***pre-shift gain*** has the meaning given by section 725-210.

***pre-shift loss*** has the meaning given by section 725-210.

***presumed indirect value shift*** has the meaning given by section 727-855.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 995-1

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***previous recoupment law*** has the meaning given by section 20-55.

***primary course*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***primary entitlement*** to a \*tax offset under Subdivision 61-I has the meaning given by subsections 61-355(2) and 61-440(2).

***primary equity interest*** in an entity has the meaning given by section 727-520.

***primary interest*** in an entity has the meaning given by section 727-520.

***primary loan interest*** in an entity has the meaning given by section 727-520.

***primary production business***: you carry on a ***primary production business*** if you carry on a \*business of:

- (a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
- (b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
- (c) manufacturing dairy produce from raw material that you produced; or
- (d) conducting operations relating directly to taking or catching fish, turtles, dugong, bêche-de-mer, crustaceans or aquatic molluscs; or
- (e) conducting operations relating directly to taking or culturing pearls or pearl shell; or
- (f) planting or tending trees in a plantation or forest that are intended to be felled; or
- (g) felling trees in a plantation or forest; or
- (h) transporting trees, or parts of trees, that you felled in a plantation or forest to the place:
  - (i) where they are first to be milled or processed; or
  - (ii) from which they are to be transported to the place where they are first to be milled or processed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***primary production deductions*** has the meaning given by subsection 392-80(3).

***prime cost method*** has the meaning given by section 40-75.

***principal beneficiary*** of a special disability trust has the meaning given by section 1209M of the *Social Security Act 1991*.

***principal class of shares*** in a company means:

- (a) those ordinary or common shares of the company that represent the majority of the voting power and value of the company; or
- (b) if no single class of ordinary or common shares represents the majority of the voting power and value of the company—those classes of ordinary or common shares that represent the majority of the voting power and value of the company.

***private ancillary fund*** has the meaning given by section 426-105 in Schedule 1 to the *Taxation Administration Act 1953*.

***private ancillary fund guidelines*** has the meaning given by section 426-110 in Schedule 1 to the *Taxation Administration Act 1953*.

***private company*** means a company that is not a \*public company for the income year.

***private ruling*** has the meaning given by section 359-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***private use***, of a \*car, has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

***privatised asset*** has the meaning given by section 58-5.

***proceeds of crime order*** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

***proceeds of the disposal or death*** has the meaning given by subsection 385-100(2).

***proceeds of the sale of 2 wool clips*** has the meaning given by subsection 385-135(3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 995-1

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***processed minerals*** has the meaning given by section 40-875.

***production associate*** has the meaning given by subsection 405-25(4).

***production expenditure*** has the meaning given by Subdivision 376-C.

***product ruling*** means a public ruling under the *Taxation Administration Act 1953* that states that it is a product ruling.

***professional arts business*** has the meaning given by section 35-10.

***professional year 1*** has the meaning given by subsection 405-50(3).

***professional year 2*** has the meaning given by subsection 405-50(4).

***professional year 3*** has the meaning given by subsection 405-50(4).

***professional year 4*** has the meaning given by subsection 405-50(4).

***profit*** on the disposal of a leased \*car has the meaning given by section 20-115.

***project amount*** has the meaning given by section 40-840.

***project life*** has the meaning given by section 40-845.

***Project Wickenby officer*** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

***Project Wickenby taskforce agency*** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

***Project Wickenby taskforce supporting agency*** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***promoter*** has the meaning given by section 290-60 in Schedule 1 to the *Taxation Administration Act 1953*.

***prospecting entitlement*** has the meaning given by subsection 124-710(1).

***prospective gaining entity*** for a \*scheme has the meaning given by section 727-860.

***prospective losing entity*** for a \*scheme has the meaning given by section 727-850.

***protected information*** has the meaning given by section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*.

***protective clothing*** has the meaning given by subsection 34-20(2).

***provide*** a \*fringe benefit or economic benefit includes allow, confer, give, grant or perform the benefit.

Note: This is based on the definition of ***provide*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

***provided in relation to a tax preferred use of an asset***, in relation to a \*financial benefit, has a meaning affected by section 250-85.

***provides medical indemnity cover*** has the meaning given by section 5 of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*.

***provisional head company*** of a \*MEC group means the company that holds an appointment in force under section 719-60 as the provisional head company of the group.

***prudential capital deduction***, for an entity and at a particular time, means the total amounts that must be deducted in calculating the following in accordance with the \*prudential standards as in force at that time:

- (a) the eligible tier 1 capital of the entity at that time (within the meaning of those standards);
- (b) the sum of the eligible tier 1 and tier 2 capital of the entity at that time (within the meaning of those standards).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***prudential standards*** means the prudential standards determined by \*APRA and in force under section 11AF of the *Banking Act 1959*.

***public company*** means a company that is a public company (as defined by section 103A of the *Income Tax Assessment Act 1936*) for the income year.

***publicly traded unit trust*** has the meaning given by section 149-50.

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

***public ruling*** has the meaning given by section 358-5 in Schedule 1 to the *Taxation Administration Act 1953*.

***public sector superannuation scheme*** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

***public trading trust*** has the meaning given by section 102R of the *Income Tax Assessment Act 1936*.

***purpose of producing assessable income***: something is done for the ***purpose of producing assessable income*** if it is done:

- (a) for the purpose of gaining or producing assessable income; or
- (b) in carrying on a \*business for the purpose of gaining or producing assessable income.

Note: Section 32-15 (about using property in providing entertainment) treats use of property as not being for the purpose of producing assessable income.

***purposes of the Project Wickenby taskforce*** has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

***put to a tax preferred use***, in relation to an asset, has the meaning given by section 250-60.

***qualifying Australian production expenditure*** has the meaning given by Subdivision 376-C.

***qualifying forex account*** means an account that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) is denominated in a particular \*foreign currency; and
- (c) either:
  - (i) has the primary purpose of facilitating transactions; or
  - (ii) is a credit card account.

**qualifying investor** has the meaning given by section 43-220.

**qualifying security** has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

**qualifying SME investment** means an \*SME investment that is made in accordance with Division 1 of Part 4 of the *Pooled Development Funds Act 1997*.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

**quarterly instalment component** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer** means an entity that is liable to pay \*PAYG instalments and is not an \*annual payer.

**quarterly payer who pays 2 instalments annually on the basis of GDP-adjusted notional tax** has the meaning given by section 45-134 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays 4 instalments annually on the basis of GDP-adjusted notional tax** has the meaning given by section 45-132 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays on the basis of GDP-adjusted notional tax** has the meaning given by section 45-130 in Schedule 1 to the *Taxation Administration Act 1953*.

**quarterly payer who pays on the basis of instalment income** has the meaning given by section 45-125 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***quasi-ownership right*** over land means:

- (a) a lease of the land; or
- (b) an easement in connection with the land; or
- (c) any other right, power or privilege over the land, or in connection with the land.

***quote***:

- (a) ***quote*** an entity's \*ABN means quote in a form and manner approved by the Commissioner;
- (b) ***quote*** a \*tax file number in connection with a \*Part VA investment: you ***quote*** your tax file number in connection with the investment if you are taken, for the purposes of Part VA of the *Income Tax Assessment Act 1936*, to have quoted the number in connection with the investment;
- (c) ***quote*** a tax file number to a trustee: the beneficiary of a trust ***quotes*** the beneficiary's tax file number to the trustee of the trust if:
  - (i) Division 4B of Part VA of the *Income Tax Assessment Act 1936* applies to the trustee and to the beneficiary; and
  - (ii) the beneficiary is taken, for the purposes of that Part, to have quoted the beneficiary's tax file number to the trustee.

***quoted (for superannuation purposes)*** has the meaning given by section 295-615.

***RBA*** has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

***RBA surplus*** has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

***realisation event*** has the meaning given by sections 977-5, 977-20 and 977-55.

***realisation-time method*** means the method (for determining the effect of \*indirect value shifts) for which Subdivision 727-G provides.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***realised for income tax purposes:***

- (a) a gain is ***realised for income tax purposes*** as provided in sections 977-15, 977-35, 977-40 and 977-55; and
- (b) a loss is ***realised for income tax purposes*** as provided in sections 977-10, 977-25, 977-30 and 977-55.

***reasonably arguable*** has the meaning given by section 284-15 in Schedule 1 to the *Taxation Administration Act 1953*.

***receives a refund of income tax*** has the meaning given by section 205-35.

***recognised company accounts***, for a period, of a company that is a foreign resident means:

- (a) accounts that are prepared in relation to the company for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or
- (b) if there are no such accounts for the period—accounts that:
  - (i) are prepared in relation to the company for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the company.

***recognised consolidated accounts***, for a period, of 2 or more companies that are foreign residents means:

- (a) consolidated accounts that are prepared in relation to those companies for the period in accordance with standards covered by subsection 820-960(1C) or (1D); or
- (b) if there are no such accounts for the period—consolidated accounts that:
  - (i) are prepared in relation to those companies for the period in accordance with commercially accepted accounting principles; and
  - (ii) give a true and fair view of the financial position of the companies on a consolidated basis.

***recognised new investment amount*** has the meaning given by section 41-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**recognised tax adviser** means:

- (a) a \*registered tax agent or BAS agent; or
- (b) a legal practitioner.

**recoupment** has the meaning given by section 20-25.

**recreation** includes amusement, sport or similar leisure-time pursuits.

**recreational club** has the meaning given by subsection 26-45(2).

**redeemable shares** means:

- (a) \*shares that are liable to be redeemed; or
- (b) shares that, at the option of the company that issued them, are liable to be redeemed.

**reduce a franking assessment** has the meaning given by subsection 214-125(2).

**reduced beneficiary's share** of a trust's net income for an income year has the meaning given by section 45-483 in Schedule 1 to the *Taxation Administration Act 1953*.

**reduced cost base** of a \*CGT asset has the meaning given by Subdivision 110-B.

**reduced net asset amount** has the meaning given by section 104-100.

**reduced no beneficiary's share** of a trust's net income for an income year has the meaning given by section 45-483 in Schedule 1 to the *Taxation Administration Act 1953*.

**reduction amount** has the meaning given by subsections 385-120(2) and (3).

**registered scheme** has the same meaning as in the *Corporations Act 2001*.

**registered tax agent** has the meaning given by subsection 90-1(1) of the *Tax Agent Services Act 2009*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**registered tax agent or BAS agent** has the same meaning as in the *Tax Agent Services Act 2009*.

**registration requirements of an AFOF** has the meaning given by subsection 9-5(1) of the *Venture Capital Act 2002*.

**registration requirements of an ESVCLP** has the meaning given by subsection 9-3(1) of the *Venture Capital Act 2002*.

**registration requirements of a VCLP** has the meaning given by subsection 9-1(1) of the *Venture Capital Act 2002*.

**related entity** has the meaning given by subsections 26-35(2) and (3).

**related facility** in relation to a \*land transport facility has the meaning given by section 396-45.

**related scheme** has the meaning given by section 974-155.

**relative** of a person means:

- (a) the person's \*spouse; or
- (b) the \*parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or \*adopted child of that person, or of that person's spouse; or
- (c) the spouse of a person referred to in paragraph (b).

Note: Section 960-255 may be relevant to determining relationships for the purposes of paragraph (b) of the definition of **relative**.

**relevant interest** has the same meaning as in the *Corporations Act 2001*.

**religious practitioner** means:

- (a) a minister of religion; or
- (b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion; or
- (c) a full-time member of a religious order; or
- (d) a student at a college conducted solely for training persons to become members of religious orders.

**remaining effective life** of a \*depreciating asset has the meaning given by section 40-75.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**replacement-asset roll-over:** a *replacement-asset roll-over* allows you to defer the making of a \*capital gain or a \*capital loss from one \*CGT event until a later CGT event happens where your ownership of one CGT asset ends and you \*acquire another one. The *replacement-asset roll-overs* are listed in section 112-115.

**reportable employer superannuation contribution** has the meaning given by section 16-182 in Schedule 1 to the *Taxation Administration Act 1953*.

**reportable fringe benefits amount** for an income year in respect of an employee's employment by an employer has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986* (as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

**reportable fringe benefits total** has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986*.

**reportable superannuation contributions**, for an individual and an income year, means the sum of:

- (a) the individual's \*reportable employer superannuation contributions (if any) for the income year; and
- (b) the individual's deductions (if any) under Subdivision 290-C for the income year.

**representative** of an \*incapacitated entity has the meaning given by section 195-1 of the \*GST Act.

**representative member** for a \*GST group has the meaning given by section 195-1 of the \*GST Act.

**required to be registered** has the meaning given by the \*GST Act.

**resale royalty** means resale royalty under the *Resale Royalty Right for Visual Artists Act 2009*.

**resale royalty collecting society** means the collecting society, within the meaning given by the *Resale Royalty Right for Visual Artists Act 2009*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**resale royalty right** has the meaning given by the *Resale Royalty Right for Visual Artists Act 2009*.

**research and development activities** has the meaning given by section 73B of the *Income Tax Assessment Act 1936*.

**residency requirement:**

- (a) for an entity making a \*distribution—has the meaning given by section 202-20 (as affected by section 220-100, if relevant); and
- (b) for an income year that is one in which, or in relation to which, an event specified in a table in one of the following sections occurs:
  - (i) section 205-15 (general table of \*franking credits);
  - (ii) section 205-30 (general table of \*franking debits);
  - (iii) section 208-115 (table of \*exempting credits);
  - (iv) section 208-120 (table of \*exempting debits);
  - (v) section 208-130 (table of franking credits that arise because of an entity's status as a \*former exempting entity or \*exempting entity);
  - (vi) section 208-145 (table of franking debits that arise because of an entity's status as a former exempting entity or exempting entity);or an income year that is described in section 205-70 or 220-205—has the meaning given by section 205-25; and
- (c) for an entity receiving a distribution—has the meaning given by section 207-75; and
- (d) for the purposes of determining whether an entity is an exempt institution that is eligible for a refund at the time a \*franked distribution is made—has the meaning given by section 207-117.

**residential care** has the same meaning as in the *Aged Care Act 1997*.

**residential premises** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**resident investment vehicle** has the meaning given by section 118-510.

**resident trust for CGT purposes:** a trust is a **resident trust for CGT purposes** for an income year if, at any time during the income year:

- (a) for a trust that is not a unit trust, a trustee is an Australian resident or the central management and control of the trust is in Australia; or
- (b) for a unit trust, one of the requirements in column 2 and one of the requirements in column 3 of this table are satisfied.

<b>Requirements for unit trust</b>		
<b>Item</b>	<b>One of these requirements is satisfied</b>	<b>And also one of these</b>
1	Any property of the trust is situated in Australia	The central management and control of the trust is in Australia
2	The trust carries on a *business in Australia	Australian residents held more than 50% of the beneficial interests in the income or property of the trust

**resident unit trust:**

- (a) for a \*corporate unit trust—has the meaning given by section 102H of the *Income Tax Assessment Act 1936*; and
- (b) for a \*public trading trust—has the meaning given by section 102Q of the *Income Tax Assessment Act 1936*.

**residual unrealised net loss** for a \*changeover time has the meaning given by section 165-115BB.

**responsible entity**, of a \*registered scheme, has the same meaning as in the *Corporations Act 2001*.

**retail fuel** means taxable fuel, within the meaning of the *Fuel Tax Act 2006*, that is sold by retail.

**retained cost base asset** has the meaning given by subsections 705-25(5), 713-515(1) and 713-705(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**retention period** has the meaning given by sections 28-150, 900-25, 900-75 and 900-90.

**retirement village** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**retirement village residence contract** has the meaning given by paragraph 230-475(4)(a).

**retirement village services contract** has the meaning given by paragraph 230-475(4)(b).

**return** on a \*debt interest or \*equity interest does not include a return of an amount invested in the interest.

**revenue asset** has the meaning given by section 977-50.

**reviewable fuel tax decision** has the meaning given by subsection 112-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable GST decision** has the meaning given by subsection 110-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable GST transitional decision** has the meaning given by subsection 110-50(3) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable indirect tax decision** has the meaning given by subsection 105-40(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**reviewable wine tax decision** has the meaning given by subsection 111-50(2) in Schedule 1 to the *Taxation Administration Act 1953*.

**revive**: a \*170-D deferred loss **revives** as mentioned in section 715-310.

**right to use** includes the right to possess.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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***risk component:***

- (a) the ***risk component*** of a premium for a \*life insurance policy has the meaning given by subsection 26-85(2); and
- (b) the ***risk component*** of a claim paid under a life insurance policy has the meaning given by section 320-80.

***risk-weighted assets***, of an entity and at a particular time, means the sum of the entity's risk exposures that the entity has at that time, as is determined in accordance with:

- (a) if the entity is an \*Australian entity that is not a \*foreign controlled Australian entity—the \*prudential standards; or
- (b) in any other case—either of the following:
  - (i) the prudential standards;
  - (ii) the prudential standards determined by the prudential regulator in the country of which the entity, or the \*foreign bank that has \*TC control interests of at least 40% in the entity, is a resident.

***roll-over superannuation benefit*** has the meaning given by section 306-10.

***royalty*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

***RSA*** has the meaning given by the *Retirement Savings Accounts Act 1997*.

***RSA component*** has the meaning given by section 295-555.

***RSA payment*** has the meaning given by section 307-5.

***RSA provider*** has the same meaning as in the *Retirement Savings Accounts Act 1997*.

***rural land irrigation water provider*** has the meaning given by section 40-630.

***safe harbour capital amount:***

- (a) for an \*outward investing entity (ADI)—has the meaning given by section 820-310; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for an \*inward investing entity (ADI)—has the meaning given by section 820-405 or 820-615.

***safe harbour debt amount:***

- (a) for an \*outward investor (general)—has the meaning given by section 820-95; and
- (b) for an \*outward investor (financial)—has the meaning given by section 820-100; and
- (c) for an \*inward investment vehicle (general)—has the meaning given by section 820-195; and
- (d) for an \*inward investment vehicle (financial)—has the meaning given by section 820-200; and
- (e) for an \*inward investor (general)—has the meaning given by section 820-205; and
- (f) for an \*inward investor (financial)—has the meaning given by section 820-210.

***same-asset roll-over:*** a *same asset roll-over* allows you to disregard a \*capital gain or \*capital loss you make from:

- (a) \*disposing of a \*CGT asset to another entity; or
- (b) entering into an agreement with another entity that constitutes CGT event B1; or
- (c) creating a CGT asset in another entity.

The *same-asset roll-overs* are listed in section 112-150.

***same business test*** has the meaning given by Subdivision 165-E.

***same business test period*** has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 165-126, 165-129, 165-132, 166-5, 166-20, 166-40, 707-125, 707-135, 715-50, 715-55, 715-60, 715-70, 715-95, 715-355 and 715-360, and affected by section 707-400.

***scheme*** means:

- (a) any \*arrangement; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Note: The Commissioner may determine that, for the purposes of the debt and equity interest rules in Division 974, what would otherwise be a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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single scheme is to be treated as 2 or more separate schemes, and that the schemes are not related: see section 974-150.

***scheme benefit*** has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

***scheme period*** for a \*direct value shift has the meaning given by section 725-55.

***scheme shortfall amount*** has the meaning given by section 284-150 in Schedule 1 to the *Taxation Administration Act 1953*.

***scholarship plan*** means a \*life insurance policy that:

- (a) is issued by a \*friendly society for the sole purpose of providing benefits to help in the education of nominated beneficiaries; and
- (b) is not being used, and has never been used, as security for borrowing or raising money; and
- (c) if it is issued on or after 1 January 2003—contains a provision prohibiting use of the policy as security for borrowing or raising money.

***secondary course*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

***secondary equity interest*** has the meaning given by section 727-520.

***secondary interest*** has the meaning given by section 727-520.

***secondary loan interest*** has the meaning given by section 727-520.

***second continuity period*** has the meaning given by section 165-120.

***section 124ZZB SME assessable income*** for a \*PDF for an income year is the assessable income allocated to the PDF's SME assessable income for the income year under section 124ZZB of the *Income Tax Assessment Act 1936*.

***securitisation vehicle*** has the meaning given by section 820-942.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*securitised asset* has the meaning given by section 820-942.

*segregated current pension assets* has the meaning given by section 295-385.

*segregated exempt assets* of a \*life insurance company means assets from time to time segregated by the company under Subdivision 320-H, whether segregated at the time of the initial segregation or included at a later time.

*segregated non-current assets* has the meaning given by section 295-395.

*self assessment* means an assessment:

- (a) for the making of which the Commissioner wholly accepts statements of the taxpayer; or
- (b) that, under section 166A of the *Income Tax Assessment Act 1936* or a provision of another law, is taken to have been made by the Commissioner.

*self-assessment entity* means a full self-assessment taxpayer (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*).

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

*seminar* has the meaning given by subsection 32-65(1).

*Senior Executive Service office* means a position occupied by an SES employee or acting SES employee.

*serious offence* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

*service period* has the meaning given by section 307-400.

*share*:

- (a) in a company means a share in the capital of the company, and includes stock; and
- (b) of an \*exempting credit has the meaning given by section 208-180; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) of a \*franked distribution has the meaning given by section 207-55; and
- (d) of a \*franking credit has the meaning given by section 207-57; and
- (e) of \*NRAS rent has the meaning given by section 380-30.

*share capital account* has the meaning given by section 975-300.

*shareholders' ratio* for an income year of a \*life insurance company has the meaning given by section 219-50.

*shareholders' share* of the income tax liability of a \*life insurance company for an income year has the meaning given by section 219-50.

*shareholding interest* has the meaning given by section 175-95.

*shift proceeds* has the meaning given by sections 140-55 and 140-90.

*shortfall amount* has the meaning give by section 284-80 in Schedule 1 to the *Taxation Administration Act 1953*.

*shortfall interest charge* means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

*short-term hire agreement*: a *short-term hire agreement* is an agreement for the intermittent hire of an asset on an hourly, daily, weekly or monthly basis. However, an agreement for the hire of an asset is not a *short-term hire agreement* if, having regard to any other agreements for the hire of the same asset to the same entity or an \*associate of that entity, there is a substantial continuity of hiring so that the agreements together are for longer than a short-term basis.

*sickness policy* means a \*life insurance policy issued by a \*friendly society for the sole purpose of providing:

- (a) benefits in respect of a sickness of the insured person; or
- (b) benefits covered by paragraph (a) and benefits to pay for the funeral of the insured person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**significant individual** has the meaning given by section 152-55.

**significant stake** has the meaning given by section 124-783.

**significant stakeholder** has the meaning given by section 124-783.

**single-rate trustee** has the meaning given by section 45-450 in Schedule 1 to the *Taxation Administration Act 1953*.

**SIS dependant** means a dependant within the meaning of the *Superannuation Industry (Supervision) Act 1993*.

**small business entity** has the meaning given by section 328-110.

**small business entity turnover** has the meaning given by section 61-525.

**small business participation percentage** has the meaning given by section 152-65.

**small superannuation account** means an account within the meaning of the *Small Superannuation Accounts Act 1995*.

**small superannuation account payment** has the meaning given by section 307-5.

**small superannuation fund** means a \*complying superannuation fund with 4 or fewer members.

**small withholder** has the meaning given by section 16-105 in Schedule 1 to the *Taxation Administration Act 1953*.

**SME income component** has the same meaning as in section 124ZU of the *Income Tax Assessment Act 1936*.

**SME investment** has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

**sort** of loss has the meaning given by section 701-1.

**special accrual amount** means an amount that is included in assessable income, or an amount that can be deducted from assessable income, under any of the following:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) Division 230 (about taxation of financial arrangements), other than Subdivision 230-B;
- (b) Subdivision 230-A if:
  - (i) the accruals method provided for in Subdivision 230-B is applied to take account of the gain or loss concerned; and
  - (ii) all the \*financial benefits provided and received under the \*financial arrangement concerned are denominated in a particular \*foreign currency;
- (c) Division 240 (about arrangements treated as a sale and loan);
- (d) Division 242 (about luxury car leases);
- (da) Subdivision 250-E of this Act if all the financial benefits provided and received under the financial arrangement concerned are denominated in a particular foreign currency;
- (e) Division 16D of Part III of the *Income Tax Assessment Act 1936* (about certain arrangements relating to the use of property);
- (f) Division 16E of Part III of the *Income Tax Assessment Act 1936* (about accruals assessability in respect of certain security payments).

**special company** means:

- (a) a \*mutual affiliate company; or
- (b) a \*mutual insurance company; or
- (c) a trade union registered under an \*Australian law; or
- (d) a \*sporting club; or
- (e) a company that is prescribed by the regulations.

**special conversion event**, in relation to a \*potential MEC group, has the meaning given by section 719-40.

**special disability trust** has the meaning given by section 1209L of the *Social Security Act 1991*.

**specialist credit card institution** has the meaning given by section 820-588.

**special professional** has the meaning given by subsection 405-25(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**specific deduction** has the meaning given by section 8-5.

**specified roll-over amount** of a \*life insurance company means so much of an amount paid to the company as constitutes the \*element untaxed in the fund of a \*superannuation benefit that is a \*roll-over superannuation benefit because of subparagraph 306-10(d)(ii).

**spectrum** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**spectrum licence** has the meaning given by section 5 of the *Radiocommunications Act 1992*.

**splittable payment** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**sporting club** means a society, association or club that:

- (a) is established for the encouragement of sport or a game; and
- (b) is *not* carried on for profit to its members.

**sporting competition** has the meaning given by subsection 405-25(7).

**sportsperson** has the meaning given by subsection 405-25(6).

**spouse** of an individual includes:

- (a) another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a \*State law or \*Territory law prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; and
- (b) another individual who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

**spread entity**, in relation to a \*consolidated group or \*MEC group, means a \*member of the group that is not a \*stick entity in relation to the group.

**spreading period** for an amount has the meaning given by sections 716-15, 716-25, 716-70 and 716-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Those sections deal with assessable income and deductions spread over several periods of membership or non-membership of a consolidated group or MEC group.

***standard component:***

- (a) in respect of an \*RSA provider—has the meaning given by section 295-555; or
- (b) in respect of an \*FHSA provider that is not an RSA provider—has the meaning given by section 345-15.

***stapled entity*** has the meaning given by section 124-1045.

***starting day*** has the meaning given by section 149-60.

***starting instalment quarter*** has the meaning given by subsection 45-125(2) in Schedule 1 to the *Taxation Administration Act 1953*.

***start time*** of a \*depreciating asset has the meaning given by section 40-60.

***State insurer*** means a body that carries on State insurance (within the meaning of paragraph 51(xiv) of the Constitution).

***State law*** means a law of a State.

***statutory accounting period*** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

***statutory demand*** has the same meaning as in the *Corporations Act 2001*.

***statutory income*** has the meaning given by section 6-10.

***statutory licence*** has the meaning given by section 124-140.

***stick entity:***

- (a) in relation to a \*consolidated group—means a \*member of the group that is:
  - (i) the \*head company of the group; or
  - (ii) a chosen transitional entity (within the meaning of Division 701 of the *Income Tax (Transitional Provisions) Act 1997*); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) a transitional foreign-held subsidiary (within the meaning of Division 701C of the *Income Tax (Transitional Provisions) Act 1997*); or
- (b) in relation to a \*MEC group—means a member of the group that is:
  - (i) the head company of the group; or
  - (ii) a chosen transitional entity (within the meaning of Division 701 of the *Income Tax (Transitional Provisions) Act 1997*); or
  - (iii) a transitional foreign-held subsidiary (within the meaning of Division 701C of the *Income Tax (Transitional Provisions) Act 1997*); or
  - (iv) an \*eligible tier-1 company.

**stratum unit** has the meaning given by section 124-190.

**structured order** has the meaning given by section 54-10.

**structured settlement** has the meaning given by section 54-10.

**Subdivision 230-G assessable gain** from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a gain you make from the arrangement for the purposes of Division 230.

**Subdivision 230-G loss** from a \*financial arrangement means an amount that is taken, as a balancing adjustment under Subdivision 230-G, to be a loss you make from the arrangement for the purposes of Division 230.

**subject to deemed loan treatment**, in relation to a \*financial benefit, has the meaning given by section 250-160.

**subject to foreign tax** has the meaning given to the expression “subject to tax” by Part X of the *Income Tax Assessment Act 1936*.

**subordinated debt interest** means a \*debt interest issued to:

- (a) an unsecured creditor; or
- (b) a secured creditor who, in the event of the liquidation of the entity issuing the interest, can only make a claim regarding that interest after the claims of other secured creditors

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

regarding other debt interests issued by that entity have been met.

**subsidiary:** the question whether a company is a *subsidiary* of another company is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Corporations Act 2001*.

Note: The expression **100% subsidiary** has the meaning given by section 975-505.

**subsidiary member:**

- (a) of a \*consolidated group or a \*consolidatable group—has the meaning given by section 703-15; and
- (b) of a \*MEC group—has the meaning given by section 719-25.

**substantial continuity of ownership** has the meaning given by section 166-145.

**substantial shareholding:** see *part of a substantial shareholding*.

**successor fund**, in relation to a transfer of a \*superannuation interest of a member of a \*superannuation fund, or a holder of an \*RSA, (the **original fund**) means a superannuation fund or RSA that satisfies the following conditions:

- (a) the fund or RSA confers on the member or holder equivalent rights to the rights that the member or holder had under the original fund in respect of the interest;
- (b) before the transfer, the \*superannuation provider of the fund or RSA has agreed with the superannuation provider of the original fund that the fund or RSA will confer on the member or holder equivalent rights to the rights that the member or holder had under the original fund in respect of the interest.

**superannuation annuity** has the meaning given by the regulations.

**superannuation annuity payment** has the meaning given by section 307-5.

**superannuation benefit** has the meaning given by section 307-5.

Note: Sections 307-10 and 307-15 affect the meaning of **superannuation benefit**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***superannuation co-contribution benefit payment*** has the meaning given by section 307-5.

***superannuation death benefit*** has the meaning given by section 307-5.

***superannuation fund*** has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

***superannuation fund for foreign residents*** has the meaning given by section 118-520.

***superannuation fund payment*** has the meaning given by section 307-5.

***superannuation guarantee payment*** has the meaning given by section 307-5.

***superannuation income stream*** has the meaning given by section 307-70.

***superannuation income stream benefit*** has the meaning given by section 307-70.

***superannuation interest*** means:

- (a) an interest in a \*superannuation fund; or
- (b) an interest in an \*approved deposit fund; or
- (c) an \*RSA; or
- (d) an interest in a \*superannuation annuity.

Note: The meaning of ***superannuation interest*** may be affected by regulations made for the purposes of section 307-200.

***superannuation lump sum*** has the meaning given by section 307-65.

***superannuation member benefit*** has the meaning given by section 307-5.

***superannuation plan*** means:

- (a) a \*superannuation fund; or
- (b) an \*approved deposit fund; or
- (c) an \*RSA.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**superannuation provider**, in relation to a \*superannuation plan, means:

- (a) for a \*superannuation fund—the trustee of the fund; or
- (b) for an \*approved deposit fund—the trustee of the fund; or
- (c) for an \*RSA—the \*RSA provider.

**supplementary amount** of a payment is defined as set out in this table:

<b>Supplementary amount of a payment</b>		
<b>Item</b>	<b>Supplementary amount of this kind of payment:</b>	<b>has the meaning given by:</b>
1	Commonwealth education or training payment	section 52-140
2	Exceptional circumstances relief payment, or payment of farm help income support	section 53-15
2A	Payment under the ABSTUDY scheme	section 52-132
3	Payment made because of the <i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	section 52-105
4	Social security payment	section 52-15
5	Veterans' affairs payment	section 52-70

**supply** has the meaning given by section 9-10 of the \*GST Act.

**tainted**: for when a company's \*share capital account is **tainted**, see subsections 197-50(1) and (2).

**tainting amount** has the meaning given by subsection 197-50(3).

**takeover bid** means a takeover bid under Chapter 6 of the *Corporations Act 2001*, or under a \*foreign law relating to corporate regulation.

**taskforce officer** of a prescribed taskforce has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**tax** means:

- (a) income tax imposed by the *Income Tax Act 1986*, as assessed under this Act; or
- (b) income tax imposed as such by any other Act, as assessed under this Act.

**taxable Australian property** has the meaning given by section 855-15.

**taxable Australian real property** has the meaning given by section 855-20.

**taxable component:**

- (a) the **taxable component** of an \*employment termination payment has the meaning given by section 82-145; and
- (b) the **taxable component** of a \*superannuation benefit has the meaning given by section 307-120; and
- (c) the **taxable component** of a \*superannuation interest has the meaning given by section 307-215.

**taxable fuel** has the meaning given by section 110-5 of the *Fuel Tax Act 2006*.

**taxable importation** has the meaning given by section 195-1 of the \*GST Act.

**taxable importation of a luxury car** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**taxable income** has the meaning given by section 4-15.

Note: For a list of cases where taxable income is worked out in a special way, see subsection 4-15(2).

**taxable non-primary production income** has the meaning given by subsection 392-85(1).

**taxable primary production income** has the meaning given by subsection 392-80(1).

**taxable professional income** has the meaning given by subsection 405-45(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**taxable purpose** has the meaning given by section 40-25.

**taxable purpose proportion** has the meaning given by section 328-205.

**taxable supply** has the meaning given by section 195-1 of the \*GST Act.

**taxable supply of a luxury car** has the meaning given by section 27-1 of the \*Luxury Car Tax Act.

**tax accounting period** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

**tax affairs** means affairs relating to \*tax.

**taxation law** means:

- (a) an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or
- (b) legislative instruments made under such an Act (including such a part of an Act); or
- (c) the *Tax Agent Services Act 2009* or regulations made under that Act.

**taxation officer** has the meaning given by section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax audit** means an examination by the Commissioner of an entity's financial affairs for the purposes of a \*taxation law.

**tax benefit** has the meaning given by section 45-605 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax cost** has the meaning given by section 830-100.

**tax cost is set** has the meaning given by section 701-55 or 830-90.

**tax cost setting amount** has the meaning given by section 701-60 or 830-95.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**tax debt** has the same meaning as in section 8AAZA of the *Taxation Administration Act 1953*.

**tax detriment** has the meaning given by section 45-624 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax-exempt bonus share** has the meaning given by subsections 204-25(4) and (5).

**tax-exempt foreign resident** has the meaning given by subsection 118-420(3).

**tax exempt vendor** has the meaning given by section 58-5.

**tax exploitation scheme** has the meaning given by section 290-65 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax file number** means a tax file number as defined in section 202A of the *Income Tax Assessment Act 1936*.

**tax-free amount** of a payment is defined as set out in this table:

<b>Tax-free amount of a payment</b>		
	<b>Tax-free amount of this kind of payment:</b>	<b>has the meaning given by:</b>
1	Social security payment	sections 52-20, 52-25, 52-30 and 52-35
2	Payment under the ABSTUDY scheme	sections 52-133 and 52-134

**tax free component:**

- (a) the **tax free component** of an \*employment termination payment has the meaning given by section 82-140; and
- (b) the **tax free component** of a \*superannuation benefit has the meaning given by section 307-120; and
- (c) the **tax free component** of a \*superannuation interest has the meaning given by section 307-210.

**taxing event generating a gain** has the meaning given by sections 725-245 and 725-335.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**tax invoice** has the meaning given by section 195-1 of the \*GST Act.

**tax loss** means:

- (a) a tax loss worked out under section 36-10, 165-70, 175-35 or 701-30 of this Act; or

Note 1: The meaning of **tax loss** in section 36-10 is affected by section 268-60 of Schedule 2F to the *Income Tax Assessment Act 1936*.

Note 2: The meaning of **tax loss** in sections 36-10, 165-70, 175-35 and 701-30 is modified by section 36-55 for a corporate tax entity that has an amount of excess franking offsets.

Note 3: A life insurance company can have a tax loss of the complying superannuation/FHSA class and/or a tax loss of the ordinary class for the purposes of working out its income tax for an income year: see Subdivision 320-D.

- (b) a tax loss as defined by section 36-105 (Tax losses for 1989-90 to 1996-97 income years) of the *Income Tax (Transitional Provisions) Act 1997*; or
- (c) a tax loss as defined by section 36-110 (Tax losses for 1957-58 to 1988-89 income years) of the *Income Tax (Transitional Provisions) Act 1997*; or
- (d) a tax loss determined under section 24 of the *International Tax Agreements Act 1953* (about relief from double taxation where profits are adjusted).

**tax offset** has the meaning given by section 4-10.

**tax period** has the meaning given by section 195-1 of the \*GST Act.

**tax position** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**tax preferred end user** has the meaning given by section 250-55.

**tax preferred entity** means:

- (a) an \*exempt entity; or
- (b) an \*exempt Australian government agency; or
- (c) an \*associated government entity of an exempt Australian government agency; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) a \*prescribed excluded STB; or
- (e) an \*exempt foreign government agency.

**tax preferred use** of an asset has the meaning given by sections 250-60(1) and (2).

**tax profit on the disposal or death** has the meaning given by subsection 385-105(3).

**tax-related liability** has the meaning given by section 255-1 in Schedule 1 to the *Taxation Administration Act 1953*.

**TC control interest** has the meaning given by section 820-815 (which is affected by sections 820-820 to 820-835).

**TC control tracing interest** has the meaning given by section 820-875.

**TC direct control interest:**

- (a) for a company—has the meaning given by section 820-855; and
- (b) for a trust—has the meaning given by section 820-860; and
- (c) for a partnership—has the meaning given by section 820-865.

**TC indirect control interest** has the meaning given by section 820-870.

**telecommunications site access right** means a right (except an \*IRU) of a carrier (as defined in the *Telecommunications Act 1997*):

- (a) to share a facility (as defined in section 7 of that Act); or
- (b) to install such a facility at a particular location or on a particular structure; or
- (c) to enter or cross premises for the purposes of installing or maintaining such a facility that is on the premises, or is at a location, or on a structure, that is accessible by way of the premises.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**telephone signature** of an entity is a unique identification of the entity that can be given by telephone and that is approved by the Commissioner.

**temporary resident**: you are a **temporary resident** if:

- (a) you hold a temporary visa granted under the *Migration Act 1958*; and
- (b) you are not an Australian resident within the meaning of the *Social Security Act 1991*; and
- (c) your \*spouse is not an Australian resident within the meaning of the *Social Security Act 1991*.

However, you are not a **temporary resident** if you have been an Australian resident (within the meaning of this Act), and any of paragraphs (a), (b) and (c) are not satisfied, at any time after the commencement of this definition.

Note: The tests in paragraphs (b) and (c) are applied to ensure that holders of temporary visas who nonetheless have a significant connection with Australia are not treated as temporary residents for the purposes of this Act.

**terminal medical condition** has the meaning given by the regulations.

**terminating value** has the meaning given by sections 705-30, 711-30 and 713-575.

**termination amount** means an amount payable because an \*arrangement in relation to property ends and includes:

- (a) if, at the end of the arrangement, one party to the arrangement acquires the property from the other party—an amount payable for the acquisition; or
- (b) if, at the end of the arrangement, the property is lost or destroyed—any amounts paid to the owner of the property as a result of the loss or destruction; or
- (c) otherwise—the \*market value of the property at the end of the arrangement.

**termination value** has the meaning given by section 40-300.

**Territory law** means a law of a Territory.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**tertiary course** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

**test day** has the meaning given by section 149-55.

**test period** has the meaning given by sections 165-165, 166-5, 166-20, 166-40 and 166-80.

**test time** for the purposes of applying the \*same business test has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 165-115B, 165-115BA, 165-126, 165-129, 166-5, 166-20, 166-40, 166-80, 707-125, 707-135, 709-215, 715-50, 715-55, 715-60, 715-70, 715-90, 715-95, 715-355 and 715-360.

**TFN declaration** means a declaration made for the purposes of section 202C of the *Income Tax Assessment Act 1936* on or after 1 July 2000.

**TFN withholding tax** means tax payable in accordance with section 14-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: The tax is imposed by the *Income Tax (Deferred Interest Securities) (Tax File Number Withholding Tax) Act 1991*.

**TFN withholding tax (ESS)** means tax payable in accordance with section 14-155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: ESS is short for employee share scheme.

**this Act** includes:

- (a) the *Income Tax Assessment Act 1936*; and
- (b) Part IVC of the *Taxation Administration Act 1953*, so far as that Part relates to:
  - (i) this Act or the *Income Tax Assessment Act 1936*; or
  - (ii) Schedule 1 to the *Taxation Administration Act 1953*;  
and
- (c) Schedule 1 to the *Taxation Administration Act 1953*;  
except in Division 950 (Rules for interpreting this Act).

Note: Subsection (2) of this section prevents definitions in the *Income Tax Assessment Act 1997* from affecting the interpretation of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***tier-1 company*** has the meaning given by section 719-20.

***tier 1 prudential capital deduction***, for an entity and at a particular time, means the amounts that must be deducted in the calculation of the eligible tier 1 capital (within the meaning of the \*prudential standards) of the entity at that time in accordance with the prudential standards as in force at that time.

***timber mill building*** has the meaning given by section 43-72.

***timber operation*** has the meaning given by section 43-72.

***top company*** has the meaning given by section 719-20.

***total debt amount*** has the meaning given by sections 820-100, 820-200 and 820-210.

***total film expenditure*** has the meaning given by section 376-170.

***total forestry scheme deductions*** has the meaning given by subsection 394-30(3).

***total net forgiven amount*** has the meaning given by subsection 245-105(1).

***total net investment loss*** of an individual for an income year means the sum of:

- (a) the amount (if any) by which the individual's deductions for the income year that are attributable to \*financial investments exceed the individual's gross income for that year from those investments; and
- (b) the amount (if any) by which the individual's deductions for the income year that are attributable to rental property exceed the individual's gross income for that year from rental property.

***total participation interest*** has the meaning given by section 960-180.

***total voting percentage*** in a company has the meaning given by section 768-560.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**tracing rule** means a rule in one of the following sections:

- (a) section 166-225;
- (b) section 166-230;
- (c) section 166-240;
- (d) section 166-245;
- (e) section 166-255;
- (f) section 166-260.

**trading** in \*shares in a \*listed public company, or in units in a unit trust, has the meaning given by section 960-220.

**trading stock** has the meaning given by section 70-10, as modified by sections 124ZO and 124ZQ of the *Income Tax Assessment Act 1936*.

**trading stock loss** has the meaning given by subsection 165-115A(1B).

**traditional security** has the meaning given by section 26BB of the *Income Tax Assessment Act 1936*.

**transferor trust** has the meaning given by section 960-75.

**transfer value** of an asset means the amount that could be expected to be received from the disposal of the asset in an open market after deducting any costs expected to be incurred in respect of the disposal.

**transition entity** has the meaning given by section 58-5.

**transition time** has the meaning given by section 58-5.

**transition year** has the meaning given by section 58-5.

**transport capital expenditure** has the meaning given by section 40-865.

**Transport Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Nation Building Program (National Land Transport) Act 2009*; and
- (b) is administered by the \*Transport Minister.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**transport expense** has the meaning given by section 900-220.

**transport facility** has the meaning given by section 40-870.

**Transport Minister** means the Minister administering section 1 of the *Nation Building Program (National Land Transport) Act 2009*.

**transport payment** has the meaning given by section 900-220.

**Transport Secretary** means the Secretary of the \*Transport Department.

**travel allowance** has the meaning given by section 900-30.

**travel allowance expense** has the meaning given by section 900-30.

**travel between workplaces** has the meaning given by section 25-100.

**travel expense** has the meaning given by section 900-95.

**trial year** has the meaning given by section 707-120.

**trustee:**

- (a) of a \*superannuation fund, an \*approved deposit fund or a \*pooled superannuation trust—means:
  - (i) if there is a trustee (within the ordinary meaning of that expression) of the fund or trust—the trustee; or
  - (ii) in any other case—the person who manages the fund or trust; and
- (b) otherwise—has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

**trust restructuring period** has the meaning given by section 124-860.

**trust share amount** has the meaning given by subsection 207-120(4).

**trust voting interest** has the meaning given by section 124-781.

**ultimate controller** has the meaning given by section 727-350.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



**ultimate holding company** of a \*wholly-owned group has the meaning given by section 124-780.

**ultimate owner** has the meaning given by section 149-15.

**ultimate stake** of a particular percentage has the meaning given by sections 727-405, 727-410 and 727-415.

**unclaimed money payment** has the meaning given by section 307-5.

**unconditionally registered**: a \*VCLP, \*ESVCLP or \*AFOF is unconditionally registered if:

- (a) its registration under the *Venture Capital Act 2002* is not based, or is no longer based, on its conditional registration under section 13-5 of that Act; or
- (b) it is taken to be unconditionally registered under subsection 13-10(2) of that Act.

**undeducted construction expenditure** has the meaning given by section 43-235 and 43-240.

**undeducted pre-existing audited book value** of a \*depreciating asset has the meaning given by section 58-80.

**under-assessment**, in the context of a \*franking assessment, has the meaning given by subsection 214-115(2).

**under common ownership**: 2 companies are **under common ownership** if, and only if:

- (a) they are members of the same \*wholly-owned group; or
- (b) after tracing the direct and indirect ownership of the \*shares in each of the companies (through any interposed companies and trusts) to the individuals who ultimately hold it, that ownership is held by the same individuals in the same proportions.

In doing the tracing, ignore \*shares whose \*dividends can reasonably be regarded as being equivalent to the payment of interest on a loan having regard to:

- (c) how the dividends are calculated; and
- (d) the conditions applying to the payment of the dividends; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(e) any other relevant matters.

***unexpended tax cost setting amount*** has the meaning given by section 716-405.

***unfrankable*** has the meaning given by section 202-45.

***unfranked part*** of a \*distribution has the meaning given by section 976-5.

***uniform*** has the meaning given by subsection 34-15(1).

***unitary tax*** has the meaning given by section 770-15.

***United Medical Protection Limited support payment*** has the meaning given by section 25-105.

***unlisted country*** has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

***unrecouped FMD deduction*** (short for unrecouped farm management deposit deduction) has the meaning given by subsections 393-10(2) and 393-55(6) and (7).

***untainting tax*** has the meaning given by subsection 197-60(2).

***untaxable Commonwealth entity*** means an untaxable Commonwealth entity as defined by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

***untaxed plan cap amount*** has the meaning given in section 307-350.

***unused annual leave payment*** has the meaning given by section 83-10.

***unused long service leave payment*** has the meaning given by section 83-75.

***unused tax profit on the disposal or death*** has the meaning given by subsection 385-110(3).

***up interest*** has the meaning given by section 725-155.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**utilise** a loss has the meaning given by section 707-110.

**valuation days**, in relation to the calculation of the average value of a matter for an entity under Division 820, means the particular days at which the value of that matter is measured under Subdivision 820-G for the purposes of that calculation.

**Valuation Standard** means any prudential standard made under section 230A of the *Life Insurance Act 1995* that:

- (a) provides for a valuation of the policy liabilities mentioned in subsection 114(2) of the *Life Insurance Act 1995*; and
- (b) is in force under that Act.

**valuation time** for a \*life insurance company has the meaning given by sections 320-175 and 320-230.

Note: This definition is affected by section 713-525.

**value**:

- (a) the **value** of the liabilities of a \*life insurance company under the \*risk components of \*life insurance policies means the value worked out under section 320-85; and
- (b) the **value** of an item of \*trading stock has the meaning given by Subdivision 70-C.
- (d) the **value** of a \*superannuation interest has the meaning given by section 307-205.

**variation credit component** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**variation GIC component** has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

**VBIF** (short for value of business in force) has the meaning given by section 820-310.

**VCPL** means a \*venture capital limited partnership.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**VCMP** means a venture capital management partnership within the meaning of subsection 94D(3) of the *Income Tax Assessment Act 1936*.

**venture capital credit** has the meaning given by section 210-105.

**venture capital debit** has the meaning given by section 210-120.

**venture capital deficit** has the meaning given by section 210-130.

**venture capital deficit tax** means tax imposed under the *New Business Tax System (Venture Capital Deficit Tax) Act 2003*.

**venture capital entity** has the meaning given by section 118-515.

**venture capital equity** has the meaning given by section 118-525.

**venture capital limited partnership** has the meaning given by subsection 118-405(2).

**venture capital sub-account** means a sub-account that arises under section 210-100.

**venture capital sub-account balance** has the meaning given by section 214-35.

**venture capital surplus** has the meaning given by section 210-130.

**visiting force** has the meaning given by section 5 of the *Defence (Visiting Forces) Act 1963*.

**voting share** in a company means:

- (a) if the company is a body corporate—a voting share as defined by section 9 of the *Corporations Act 2001*; and
- (b) otherwise—a share that would be a voting share as defined by that section if the company were a body corporate.

**voting stake** has the meaning given by section 166-235.

**Water Department** means the Department that:

- (a) deals with matters arising under section 1 of the *Water Act 2007*; and
- (b) is administered by the \*Water Minister.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**water entitlement** has the meaning given by section 124-1105.

**water facility** has the meaning given by section 40-520.

**Water Minister** means the Minister administering section 1 of the *Water Act 2007*.

**whole of life policy** has the meaning given by section 295-480.

**wholly-owned group** has the meaning given by section 975-500.

**wholly-owned subsidiary** of an entity has the meaning given by section 703-30.

**widely held company** means:

- (a) a company, \*shares in which (except shares that carry a right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange; or
- (b) a company with more than 50 members, other than a company where at least one of the following conditions is met during an income year:
  - (i) no more than 20 persons held, or had the right to acquire or become the holders of, shares representing at least 75% of the value of the shares in the company (other than shares that only carry a right to a fixed rate of dividend);
  - (ii) at least 75% of the voting power in the company was capable of being exercised by no more than 20 persons;
  - (iii) at least 75% of the amount of any dividend paid by the company during the year was paid to no more than 20 persons;
  - (iv) if no dividend was paid by the company during the year—the Commissioner is of the opinion that, if a dividend had been paid by the company during the year, at least 75% of the amount of the dividend would have been paid to no more than 20 persons.

**wine tax** has the meaning given by section 33-1 of the \*Wine Tax Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**wine taxable dealing** means a taxable dealing (within the meaning of section 33-1 of the \*Wine Tax Act).

**Wine Tax Act** means the *A New Tax System (Wine Equalisation Tax) Act 1999*.

**wine tax credit** has the meaning given by section 33-1 of the \*Wine Tax Act.

**wine tax law** has the meaning given by section 33-1 of the \*Wine Tax Act.

**withholder** means a \*large withholder, a \*medium withholder or a \*small withholder.

**withholding payment** means:

- (a) a payment from which an amount must be withheld under Division 12 in Schedule 1 to the *Taxation Administration Act 1953* (even if the amount is not withheld); or
- (b) an \*alienated personal services payment in respect of which Division 13 in that Schedule requires an amount to be paid to the Commissioner; or
- (c) a \*non-cash benefit in respect of which Division 14 in that Schedule requires an amount to be paid to the Commissioner.

Note 1: A withholding payment that consists of a non-cash benefit is made when the benefit is provided. The amount of the withholding payment is taken to be the market value of the benefit at that time.

Note 2: Divisions 12, 13 and 14 in Schedule 1 to the *Taxation Administration Act 1953* deal with collecting amounts on account of income tax payable by the recipient of the payment, alienated personal services payment or non-cash benefit.

**withholding payment** covered by a particular provision in Schedule 1 to the *Taxation Administration Act 1953* means a \*withholding payment consisting of:

- (a) a payment from which an amount must be withheld under that provision (even if the amount is not withheld); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a \*non-cash benefit provided by an entity if that provision would have required the entity to withhold an amount if, instead of providing the benefit, the entity had paid the \*market value of the benefit; or
- (c) a non-cash benefit provided to an entity if that provision would have required the entity to withhold an amount if the benefit had been a payment of an amount equal to the market value of the benefit.

**withholding tax** means income tax payable under:

- (a) section 301-175 (departing Australia superannuation payments); or
- (b) section 306-15 (excess untaxed roll-over amounts); or
- (c) Division 840 (withholding taxes); or
- (d) Subdivision 840-M of the *Income Tax (Transitional Provisions) Act 1997* (managed investment trust amounts); or
- (e) section 128B of the *Income Tax Assessment Act 1936* (dividends, interest and royalties).

**work and income support withholding payments** means work and income support related withholding payments and benefits, within the meaning given by the *Income Tax Assessment Act 1936*.

**workers' compensation law** has the meaning given by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

**work expense** has the meaning given by section 900-30.

**work in progress amount** has the meaning given by section 25-95.

**worldwide capital amount**, for an \*outward investing entity (ADI), has the meaning given by section 820-320.

**worldwide debt**, of an entity and at a particular time, means the total of the following amounts:

- (a) all the \*debt interests issued by the entity:
  - (i) to entities other than any \*Australian controlled foreign entities (the **controlled entities**) of which the entity is an \*Australian controller at that time; and
  - (ii) that are still \*on issue at that time;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) all the debt interests issued by the controlled entities:
  - (i) to entities other than the entity or other controlled entities; and
  - (ii) that are still \*on issue at that time.

**worldwide equity**, of an entity and at a particular time, means the total of the following amounts:

- (a) all the \*equity capital of the entity as at that time, but worked out disregarding \*equity interests in the entity held at that time by \*Australian controlled foreign entities (the **controlled entities**) of which the entity is an \*Australian controller at that time;
- (b) all the equity capital of the controlled entities as at that time, but worked out disregarding equity interests in the controlled entities held at that time by:
  - (i) the entity; or
  - (ii) other controlled entities.

**worldwide gearing debt amount**, for an \*outward investing entity (non-ADI), has the meaning given by section 820-110.

**written down value** of a \*depreciating asset has the meaning given by section 45-40.

**you** has the meaning given by section 4-5.

**your area** has the meaning given by sections 43-115 and 43-120.

**your construction expenditure** has the meaning given by sections 43-115 and 43-120.

**your earning activity** has the meaning given by section 40-755.

**zero-capital amount** has the meaning given by section 820-942.

- (2) So far as a provision of the *Income Tax Assessment Act 1997* gives an expression a particular meaning, the provision:
  - (a) does *not* also have effect for the purposes of the *Income Tax Assessment Act 1936* (the **1936 Act**), except as provided in the 1936 Act; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) does *not* also have effect for the purposes of Part IVC of the *Taxation Administration Act 1953*, except as provided in that Part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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