



# Income Tax Assessment Act 1997

No. 38, 1997

## Compilation No. 171

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This compilation is in 11 volumes

- Volume 1: sections 1-1 to 36-55
- Volume 2: sections 40-1 to 55-10
- Volume 3: sections 58-1 to 122-205
- Volume 4: sections 124-1 to 152-430
- Volume 5: sections 164-1 to 220-800
- Volume 6: sections 230-1 to 312-15**
- Volume 7: sections 315-1 to 420-70
- Volume 8: sections 615-1 to 727-910
- Volume 9: sections 768-1 to 995-1
- Volume 10: Endnotes 1 to 3
- Volume 11: Endnote 4

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 25, 2017. Amendments made by Act No. 94, 2017 have not commenced but are noted in the endnotes.**

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 1 September 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 3—Specialist liability rules**

### **Part 3-10—Financial transactions**

#### **Division 230—Taxation of financial arrangements**

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##### **Guide to Division 230**

###### **230-1 What this Division is about**

This Division is about the tax treatment of gains and losses from your financial arrangements.

You recognise the gains and losses, as appropriate, over the life of a financial arrangement and ignore distinctions between income and capital unless specific rules apply.

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

Section 230-5

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If it is sufficiently certain that you will make a gain or loss, you use a compounding accruals method to recognise the gain or loss. Otherwise you use a realisation method. Instead of either, you may be able to choose to use a fair value or hedging method or to rely on your financial reports. You may also be able to choose to recognise foreign exchange gains and losses using a retranslation method.

**230-5 Scope of this Division**

- (1) You have a financial arrangement if you have one or more cash settleable legal or equitable rights and/or obligations to receive or provide a financial benefit.
- (2) This Division does not apply to all financial arrangements. The main exceptions are if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity or fund, managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
    - (iii) an ADI, securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
    - (iv) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million;and either:
    - (iva) the arrangement is to end not more than 12 months after you start to have it; or
    - (v) the arrangement is not a qualifying security; or
  - (b) the arrangement is a financial arrangement under section 230-50 (equity interests etc.) and neither a fair value election, a hedging financial arrangement election nor an

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

election to rely on financial reports applies to the arrangement.

Note: Section 230-455 provides for the exceptions referred to in paragraph (a).

## **Subdivision 230-A—Core rules**

### **Table of sections**

#### **Objects**

230-10 Objects of this Division

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- 230-20 Gain or loss to be taken into account only once under this Act
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- 230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income
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#### **Method to be applied to take account of gain or loss**

230-40 Methods for taking gain or loss into account

#### **Financial arrangement concept**

- 230-45 Financial arrangement
- 230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)
- 230-55 Rights, obligations and arrangements (grouping and disaggregation rules)

#### **General rules**

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- 230-80 Consistency in working out gains or losses (integrity measure)
- 230-85 Rights and obligations include contingent 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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Section 230-10

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## Objects

### 230-10 Objects of this Division

The objects of this Division are:

- (a) to minimise the extent to which the tax treatment of gains and losses from your \*financial arrangements distorts, by providing inappropriate impediments and stimulation, your trading, financing and investment decisions and your risk taking and risk management; and
- (b) to do so by aligning more closely the tax and commercial recognition of gains and losses from your financial arrangements in the following ways:
  - (i) by allocating the gains and losses to income years throughout the life of your financial arrangements on a reasonable basis;
  - (ii) by generally recognising gains and losses on revenue rather than capital account; and
- (c) to appropriately take account of, and minimise, your compliance costs.

## Tax treatment of gains and losses from financial arrangements

### 230-15 Gains are assessable and losses deductible

#### *Gains*

- (1) Your assessable income includes a gain you make from a \*financial arrangement.

Note: This Division does not apply to gains that are subject to exceptions under Subdivision 230-H.

#### *Losses*

- (2) You can deduct a loss you make from a \*financial arrangement, but only to the extent that:

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

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- (a) you make it in gaining or producing your assessable income;  
or
- (b) you necessarily make it in carrying on a \*business for the purpose of gaining or producing your assessable income.

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (3) You can also deduct a loss you make from a \*financial arrangement if:

- (a) you are an \*Australian entity; and
- (b) you make the loss in deriving income from a foreign source; and
- (c) the income is \*non-assessable non-exempt income under section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*; and
- (d) the loss is, in whole or in part, a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

You can deduct the loss only to the extent to which it is a cost in relation to a \*debt interest you issue that is covered by paragraph 820-40(1)(a).

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (4) If the \*financial arrangement is a \*debt interest, the loss is not prevented from being deductible for an income year under subsection (2) merely because of either or both of the following:
- (a) one or more of the \*financial benefits that are taken into account in working out the amount of the loss are \*contingent on aspects of the economic performance (whether past, current or future) of:
    - (i) you or a part of your activities; or
    - (ii) a \*connected entity of yours or a part of the activities of a connected entity of yours;
  - (b) one or more of the financial benefits that are taken into account in working out the amount of the loss secure a

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

Section 230-15

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permanent or enduring benefit for you or a connected entity of yours.

- (4A) A \*dividend on a \*debt interest is a loss you can deduct to the extent to which it would have been a deductible loss under subsection (2) if:
- (a) the payment of the amount of the dividend were the incurring of a liability to pay the same amount as interest; and
  - (b) that interest were incurred in respect of the finance raised by you and in respect of which the dividend was paid or provided; and
  - (c) the debt interest retained its character as a debt interest for the purposes of subsection (4).
- (5) Subject to subsection (6), subsection (4) does not apply to the loss to the extent to which the annually compounded internal rate of return on the \*debt interest exceeds the \*benchmark rate of return for the debt interest increased by 150 basis points.
- (6) If:
- (a) regulations made for the purposes of subsection 25-85(6) provide that a specified number of basis points is to apply for the purposes of applying subsection 25-85(5) in particular circumstances; and
  - (b) those circumstances exist in relation to the \*debt interest; subsection (5) applies as if the reference in that subsection to 150 basis points were a reference to the number of basis points specified in the regulations.

*Division does not affect foreign residence rules*

- (7) Nothing in this Division affects the operation of the provisions of Division 6 that provide for the significance of foreign residence for the assessability of ordinary and statutory income.

Note 1: Gains that you make under this Division may be ordinary or statutory income for the purposes of Division 6.

Note 2: For the effect of a change of residence during an income year, see sections 230-485 and 230-490.

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

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**230-20 Gain or loss to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to the following:
  - (a) a gain that is included in your assessable income for an income year under this Division;
  - (b) a loss that is allowable as a deduction to you for an income year under this Division;
  - (c) a gain or a loss that is dealt with in accordance with subsection 230-310(4) in relation to an income year.

*Purpose of this section*

- (2) The purpose of this section is to ensure that your gains and losses, and \*financial benefits, to which this section applies are taken into account only once under this Act in working out your taxable income.

*Gain or loss to be taken into account only once*

- (3) A gain or loss to which this section applies is not to be (to any extent):
  - (a) included in your assessable income; or
  - (b) allowable as a deduction to you; or
  - (c) dealt with in accordance with subsection 230-310(4);again under this Division for the same or any other income year.
- (4) A gain or loss to which this section applies is not to be (to any extent):
  - (a) included in your assessable income; or
  - (b) allowable as a deduction to you;under any provisions of this Act outside this Division for the same or any other income year.

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

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Section 230-25

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*Section does not give rise to exempt income*

- (5) A gain is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

**230-25 Associated financial benefits to be taken into account only once under this Act**

*Application of section*

- (1) This section applies to a \*financial benefit whose amount or value is taken into account in working out whether you make, or the amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or (c) applies.

*Associated financial benefit to be taken into account only once*

- (2) A \*financial benefit to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
  - (b) allowable as a deduction to you;
- under any provision of this Act outside this Division for the same or any other income year.

*Exception for certain bad debts*

- (3) If:
- (a) a \*financial benefit has been included in your assessable income under a provision of this Act outside this Division; and
  - (b) a bad debt deduction would have been allowed under section 25-35 in relation to the financial benefit;
- subsection (2) does not prevent that bad debt deduction from being allowed under section 25-35 in relation to the financial benefit as if the debt were still outstanding.

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

*Section does not give rise to exempt income*

- (4) A \*financial benefit is not to be treated as \*exempt income merely because it is not included in your assessable income under this section.

**230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income**

- (1) Despite section 230-15, a gain that you make from a \*financial arrangement:
- (a) to the extent that it reflects an amount that would be treated, or would reasonably be expected to be treated, as \*exempt income under a provision of this Act if this Division were disregarded—is exempt income; and
  - (b) to the extent that it reflects an amount that would be treated or would reasonably be expected to be treated, as \*non-assessable non-exempt income under a provision of this Act if this Division were disregarded—is not assessable income and is not exempt income.
- (2) Despite section 230-15, a gain that you make from a \*financial arrangement:
- (a) to the extent that, if it had been a loss, you would have made it in gaining or producing \*exempt income—is exempt income; and
  - (b) to the extent to which, if it had been a loss, you would have made it in gaining or producing \*non-assessable non-exempt income—is not assessable income and is not exempt income.
- (3) A loss you make from a \*financial arrangement is *not* allowable as a deduction to you under any provision of this Act (other than subsection 230-15(3)) to the extent that you make it in gaining or producing your:
- (a) \*exempt income; or
  - (b) \*non-assessable non-exempt income.

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

Section 230-35

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**230-35 Treatment of gains and losses of private or domestic nature**

*Borrowings etc. used for private or domestic purpose*

- (1) Subsections (2) and (3) apply if:
  - (a) a \*borrowing is made by you, or credit is provided to you, under a \*financial arrangement; and
  - (b) you use some or all of the funds borrowed or the credit provided for a private or domestic purpose.
- (2) This Division does not apply to a gain you make from the arrangement to the extent that you use the funds raised or the credit provided for a private or domestic purpose.
- (3) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

*Derivative financial arrangement held for private or domestic purpose*

- (4) Subsections (5) and (6) apply if:
  - (a) you are an individual; and
  - (b) you make a gain or loss from a \*derivative financial arrangement; and
  - (c) the arrangement is held, wholly or in part, for a private or domestic purpose.
- (5) This Division does not apply to a gain you make from the arrangement to the extent that the arrangement is held or used for a private or domestic purpose.
- (6) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that the arrangement is held or used for a private or domestic purpose.

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

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## Method to be applied to take account of gain or loss

### 230-40 Methods for taking gain or loss into account

#### *Methods available*

- (1) The methods that can be applied to take account of a gain or loss you make from a \*financial arrangement are:
  - (a) the accruals and realisation methods provided for in Subdivision 230-B; or
  - (b) the fair value method provided for in Subdivision 230-C; or
  - (c) the foreign exchange retranslation method provided for in Subdivision 230-D; or
  - (d) the hedging financial arrangement method provided for in Subdivision 230-E; or
  - (e) the method of relying on your financial reports provided for in Subdivision 230-F; or
  - (f) a balancing adjustment provided for in Subdivision 230-G.

Note: The methods referred to in paragraphs (b) to (e) only apply if you make an election under the relevant Subdivision and you must meet certain requirements before you can make such an election.

- (2) A gain or loss is not taken into account under any of the methods referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to which it is taken into account under the method referred to in paragraph (1)(f) (balancing adjustment).
- (3) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

Note: The hedging financial arrangement method may take some account of the gain or loss by reference to the balancing adjustment method (see subsection 230-300(5)).

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

Section 230-40

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*Elections override accruals and realisation methods*

- (4) Subdivision 230-B (accruals and realisation method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) to the extent that Subdivision 230-C (fair value method) applies to the gain or loss; or
- Note: See subsection (5) of this section and subsection 230-230(4).
- (b) to the extent that Subdivision 230-D (foreign exchange retranslation method) applies to the gain or loss; or
  - (c) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (d) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement; or
  - (e) if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

*Priorities among election methods*

- (5) Subdivision 230-C (fair value method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (b) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (6) Subdivision 230-D (foreign exchange retranslation method) does not apply to a gain or loss you make from a \*financial arrangement:
- (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
  - (b) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
  - (c) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (7) Subdivision 230-F (method of relying on financial reports) does not apply to a gain or loss you make from a \*financial arrangement

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

to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

## Financial arrangement concept

### 230-45 Financial arrangement

- (1) You have a **financial arrangement** if you have, under an \*arrangement:
- (a) a \*cash settlable legal or equitable right to receive a \*financial benefit; or
  - (b) a cash settlable legal or equitable obligation to provide a financial benefit; or
  - (c) a combination of one or more such rights and/or one or more such obligations;

unless:

- (d) you also have under the arrangement one or more legal or equitable rights to receive something and/or one or more legal or equitable obligations to provide something; and
- (e) for one or more of the rights and/or obligations covered by paragraph (d):
  - (i) the thing that you have the right to receive, or the obligation to provide, is not a financial benefit; or
  - (ii) the right or obligation is not cash settlable; and
- (f) the one or more rights and/or obligations covered by paragraph (e) are not insignificant in comparison with the right, obligation or combination covered by paragraph (a), (b) or (c).

The right, obligation or combination covered by paragraph (a), (b) or (c) constitutes the financial arrangement.

Note 1: Whether your rights and/or obligations under an arrangement constitute a financial arrangement can change over time depending on changes either to the terms of the arrangement or external circumstances (such as particular rights or obligations under the arrangement being satisfied by the parties). For example, a contract may provide for the transfer of a boat in 6 months time and payment of the contract price at the end of 2 years. Until the boat is delivered,

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

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there is no financial arrangement because of the operation of paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a financial arrangement because those paragraphs are no longer applicable.

Note 2: The operative provisions of this Division do not apply to all financial arrangements, and only apply partially to some: see the exceptions in Subdivision 230-H.

Note 3: There are some rules in this Division that tell you what happens if an arrangement ceases to be a financial arrangement (see Subdivision 230-G and section 230-505).

- (2) A right you have to receive, or an obligation you have to provide, a \*financial benefit is **cash settlable** if, and only if:
- (a) the benefit is money or a \*money equivalent; or
  - (b) in the case of a right—you intend to satisfy or settle it by receiving money or a money equivalent or by starting to have, or ceasing to have, another \*financial arrangement; or
  - (c) in the case of an obligation—you intend to satisfy or settle it by providing money or a money equivalent or by starting to have, or ceasing to have, another financial arrangement; or
  - (d) you have a practice of satisfying or settling similar rights or obligations as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way); or
  - (e) you deal with the right or obligation, or with similar rights or obligations, in order to generate a profit from short-term fluctuations in price, from a dealer's margin, or from both; or
  - (f) none of paragraphs (a) to (e) applies but you satisfy subsection (3); or
  - (g) you are able to settle the right or obligation as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way) and you do not have, as your sole or dominant purpose for entering into the arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the financial benefit as part of your expected purchase, sale or usage requirements.

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



A reference in paragraph (b) or (c) to a financial arrangement does not include a reference to something that is a financial arrangement under section 230-50.

Note: Examples of dealing of the kind covered by paragraph (e) are:

- (a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short-term basis or on a frequent and short-term basis; and
  - (b) acquiring the right or obligation, or similar rights or obligations, and managing the resulting risk by entering into offsetting arrangements that provide a profit margin.
- (3) You satisfy this subsection if:
- (a) the \*financial benefit is readily convertible into money or a \*money equivalent; and
  - (b) there is a market for the financial benefit that has a high degree of liquidity; and
  - (c) subsection (4) or (5) is satisfied.
- (4) This subsection is satisfied if, for the recipient of the \*financial benefit, the amount of the money or \*money equivalent referred to in paragraph (3)(a) is not subject to a substantial risk of substantial decrease in value.
- (5) This subsection is satisfied if your purpose, or one of your purposes, for entering into the arrangement under which you are to receive or provide the \*financial benefit, is to receive or deliver the financial benefit:
- (a) to raise or provide finance; or
  - (b) if paragraph (a) does not apply—so that it may be converted or liquidated into money or a money equivalent (other than as part of your expected purchase, sale or usage requirements).

### **230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)**

- (1) You also have a *financial arrangement* if you have an \*equity interest. The equity interest constitutes the financial arrangement.

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

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- (2) You also have a **financial arrangement** if:
- (a) you have, under an \*arrangement:
    - (i) a legal or equitable right to receive something that is a financial arrangement under this section; or
    - (ii) a legal or equitable obligation to provide something that is a financial arrangement under this section; or
    - (iii) a combination of one or more such rights and/or obligations; and
  - (b) the right, obligation or combination does not constitute, or form part of, a financial arrangement under subsection 230-45(1).

The right, obligation or combination referred to in paragraph (a) constitutes the financial arrangement.

Note 1: Paragraph 230-40(4)(e) prevents the accruals method or the realisation method being applied to something that is a financial arrangement under this section.

Note 2: Subsection 230-270(1) prevents the retranslation method being applied to something that is a financial arrangement under this section.

Note 3: Subsection 230-330(1) prevents the hedging method being applied to something that is a financial arrangement under this section.

**230-55 Rights, obligations and arrangements (grouping and disaggregation rules)**

*Single right or obligation or multiple rights or obligations?*

- (1) If you have a right to receive 2 or more \*financial benefits, you are taken, for the purposes of this Division, to have a separate right to receive each of those financial benefits.
- (2) If you have an obligation to provide 2 or more \*financial benefits, you are taken, for the purposes of this Division, to have a separate obligation to provide each of those financial benefits.
- (3) Subsections (1) and (2) apply for the avoidance of doubt.

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

*Matters relevant to determining what rights and/or obligations constitute particular arrangements*

- (4) For the purposes of this Division, whether a number of rights and/or obligations are themselves an \*arrangement or are 2 or more separate arrangements is a question of fact and degree that you determine having regard to the following:
- (a) the nature of the rights and/or obligations;
  - (b) their terms and conditions (including those relating to any payment or other consideration for them);
  - (c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of one or more of the entities involved);
  - (d) whether they can be dealt with separately or must be dealt with together;
  - (e) normal commercial understandings and practices in relation to them (including whether they are regarded commercially as separate things or as a group or series that forms a whole);
  - (f) the objects of this Division.

In applying this subsection, have regard to the matters referred to in paragraphs (a) to (f) both in relation to the rights and/or obligations separately and in relation to the rights and/or obligations in combination with each other.

Example 1: Your rights and obligations under a typical convertible note, including the right to convert the note into a share or shares, would constitute one arrangement.

Example 2: Your rights and obligations under a typical price-linked or index-linked bond would constitute one arrangement.

Note 1: If you raised funds by means of a contract that you would not have entered into without entering into another contract, and neither contract could be assigned to a third party without the other also being assigned, this would tend to indicate that your rights and obligations under the 2 contracts together constitute one arrangement.

Note 2: If the commercial effect of your individual rights and/or obligations in a group or series cannot be understood without reference to the group or series as a whole, this would tend to indicate that all of your rights

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

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and/or obligations in the group or series together constitute one arrangement.

**General rules**

**230-60 When financial benefit provided or received under financial arrangement**

*Financial benefit provided under financial arrangement*

- (1) You are taken, for the purposes of this Division, to have (or to have had) an obligation to provide a \*financial benefit under a \*financial arrangement if:
- (a) you have (or had) an obligation to provide the financial benefit in relation to the arrangement; and
  - (b) the financial benefit would not otherwise be treated as one that you have (or had) an obligation to provide under the arrangement; and
  - (c) the financial benefit plays an integral role in determining:
    - (i) whether you make a gain or loss from the arrangement; or
    - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity to which you provide the financial benefit is not a party to the arrangement.

Note: This means that the financial benefits you provide to acquire the financial arrangement (whether to the issuer, a previous holder or a third party) are taken to be financial benefits you provide under the arrangement. The financial benefits you provide may include, for example, fees paid or the forgoing of rights to receive a financial benefit.

*Financial benefit received under financial arrangement*

- (2) You are taken, for the purposes of this Division, to have (or to have had) a right to receive a \*financial benefit under a \*financial arrangement if:
- (a) you have (or had) a right to receive the financial benefit in relation to the arrangement; and

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

- (b) the financial benefit would not otherwise be treated as one that you have (or had) a right to receive under the arrangement; and
- (c) the financial benefit plays an integral role in determining:
  - (i) whether you make a gain or loss from the arrangement; or
  - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity that provides the financial benefit is not a party to the arrangement.

Note: The financial benefits you receive may include, for example, the waiving of an obligation you have to provide a financial benefit.

### **230-65 Amount of financial benefit relating to more than one financial arrangement etc.**

- (1) This section applies if:
  - (a) a \*financial benefit plays the integral role mentioned in paragraph 230-60(1)(c) or (2)(c) in relation to a \*financial arrangement; and
  - (b) either or both of the following apply:
    - (i) the financial benefit plays that role in relation to one or more other financial arrangements;
    - (ii) the financial benefit is provided or received for one or more other things that are not financial arrangements.
- (2) For the purposes of this Division, determine the amount of the \*financial benefit that plays that role in relation to a particular \*financial arrangement by apportioning the actual amount of the financial benefit, on a reasonable basis, between:
  - (a) that financial arrangement; and
  - (b) each other financial arrangement (if any) in relation to which the benefit plays that role; and
  - (c) each other thing (if any) mentioned in subparagraph (1)(b)(ii).

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

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**230-70 Apportionment when financial benefit received or right ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
  - (a) you receive a particular \*financial benefit under a \*financial arrangement; or
  - (b) one of your rights under a financial arrangement ceases.The gain or loss is to be calculated in nominal (and not \*present value) terms.
- (2) You must have regard to the extent to which the \*financial benefits that you have provided, or are to provide or might provide, under the \*financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or right referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
  - (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

Note: Generally, no financial benefit you have provided, or are to provide or might provide, under a financial arrangement is reasonably attributable to an amount you receive that is in the nature of interest.

**230-75 Apportionment when financial benefit provided or obligation ceases**

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:

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

- (a) you provide a particular \*financial benefit under the \*financial arrangement; or
  - (b) one of your obligations under a financial arrangement ceases. The gain or loss is to be calculated in nominal (and not \*present value) terms.
- (2) You must have regard to the extent to which the \*financial benefits that you have received, or are to receive or might receive, under the \*financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or obligation referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

Note: Generally, no financial benefit you have received, or are to receive or might receive, under a financial arrangement is reasonably attributable to an amount you provide that is in the nature of interest.

### **230-80 Consistency in working out gains or losses (integrity measure)**

#### *Object of section*

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

#### *Consistent treatment for particular financial arrangement*

- (2) If:
- (a) this Division provides that a particular method applies to gains or losses you have from a \*financial arrangement; and

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

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(b) that method allows you to choose the particular manner in which you apply that method;  
you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

- (3) If:
- (a) this Division provides that a particular method applies to gains or losses you have from 2 or more \*financial arrangements; and
  - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.
- (4) Subsection (3) does not require you to use that same manner consistently for:
- (a) a \*financial arrangement that you start to have on or after the time a \*Commonwealth law that amends the method is made; and
  - (b) a financial arrangement that you start to have before that time;
- if:
- (c) the Commonwealth law allows you to choose to apply the method in a particular manner (being a manner in which you are not, apart from the Commonwealth law, allowed to apply the method); and
  - (d) the inconsistency is entirely due to you choosing to apply the method in that manner to the financial arrangement mentioned in paragraph (a).

**230-85 Rights and obligations include contingent rights and obligations**

To avoid doubt:

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



- (a) a right is treated as a right for the purposes of this Division even if it is subject to a contingency; and
- (b) an obligation is treated as an obligation for the purposes of this Division even if it is subject to a contingency.

## **Subdivision 230-B—The accruals/realisation methods**

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

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**Guide to Subdivision 230-B**

**230-90 What this Subdivision is about**

This Subdivision applies the accruals method to determine the amount and timing of gains and losses from a financial arrangement if they are sufficiently certain for such accrual to be done.

This Subdivision applies the realisation method to determine the amount and timing of gains and losses if they are not sufficiently certain to be dealt with under the accruals method.

If the accruals method is applied to a gain or loss on the basis of an estimate of a financial benefit and the benefit when received or provided is more or less than the estimate, a balancing adjustment is made to correct for the underestimate or overestimate.

If the accruals method is being applied to gains and losses from the arrangement and there is a material change to the arrangement, or the circumstances in which it operates, a reassessment is made of whether the accruals method or the realisation method should apply to gains and losses from the arrangement.

A change in circumstances may also cause a re-estimation of gains and losses that the accruals method is being applied to.

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

## Objects of Subdivision

### 230-95 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from \*financial arrangements by allocating them to appropriate periods of time; and
- (b) to reduce compliance costs by reflecting commercial accounting concepts where appropriate; and
- (c) to minimise tax deferral.

## When accruals method or realisation method applies

### 230-100 When accruals method or realisation method applies

*When accruals method applies and when realisation method applies*

- (1) This section tells you when to apply the accruals method and when to apply the realisation method if this Subdivision applies to gains and losses from a \*financial arrangement.

*Accruals method—sufficiently certain overall gain or loss at start time*

- (2) The accruals method provided for in this Subdivision applies to a gain or loss you have from a \*financial arrangement if:
  - (a) the gain or loss is an overall gain or loss from the arrangement; and
  - (b) the gain or loss is sufficiently certain at the time when you start to have the arrangement; and
  - (c) you choose to apply the accruals method to the gain or loss, or subsection (4) applies to the gain or loss.

Note: Subsection 230-105(1) tells you when you have a sufficiently certain overall gain or loss.

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

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*Accruals method—sufficiently certain particular gain or loss*

- (3) The accruals method provided for in this Subdivision also applies to a gain or loss you have from a \*financial arrangement if:
- (a) the gain or loss arises from a \*financial benefit that you are to receive or are to provide under the arrangement; and
  - (b) the gain or loss:
    - (i) is sufficiently certain before or at the time when you start to have the arrangement and before you are to receive or provide the benefit; or
    - (ii) becomes sufficiently certain after the time when you start to have the arrangement and before you are to receive or provide the benefit; and
  - (c) the benefit has not already been taken into account in applying:
    - (i) the accruals method provided for in this Subdivision; or
    - (ii) the realisation method provided for in this Subdivision; to another gain or loss from the arrangement.

This subsection has effect subject to subsection (4).

Note: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

*Accruals method—particular gain or loss becomes sufficiently certain*

- (3A) The accruals method provided for in this Subdivision also applies to a gain or loss you have from a \*financial arrangement if:
- (a) the gain or loss arises from a \*financial benefit that you are to receive or are to provide under the arrangement; and
  - (b) the gain or loss becomes sufficiently certain at the time you receive or provide the benefit; and
  - (c) at least part of the period over which the gain or loss would be spread under that method (assuming that method applied) occurs after the time you receive or provide the benefit.

This subsection has effect subject to subsection (4).

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

Note 1: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

Note 2: For the period over which the gain or loss would be spread, see subsections 230-130(3) to (5).

*Accruals method—particular gain or loss from qualifying security*

- (4) Subsection (3) or (3A) does not apply to a gain or loss that you have from a \*financial arrangement if:
- (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).

*Realisation method—gain or loss not sufficiently certain*

- (5) The realisation method provided for in this Subdivision applies to a gain or loss that you have from a \*financial arrangement if the accruals method provided for in this Subdivision does not apply to that gain or loss.

Note: Section 230-180 tells you how to apply the realisation method to the gain or loss.

### **230-105 Sufficiently certain overall gain or loss**

- (1) You have a sufficiently certain overall gain or loss from a \*financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

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

**Section 230-110**

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Note: Sections 230-70 and 230-75 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
- (a) assume that you will continue to have the \*financial arrangement for the rest of its life; and
  - (b) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

**230-110 Sufficiently certain gain or loss from particular event**

- (1) You have a sufficiently certain gain or loss from a \*financial arrangement at a particular time if it is sufficiently certain at that time that you make, or will make, a gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount;
- when one of the following occurs:
- (c) you receive a particular \*financial benefit under the arrangement or one of your rights under the arrangement ceases;
  - (d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

- (2) In applying subsection (1) to work out whether you have a sufficiently certain gain or loss at a particular time:
- (a) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive

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

under the arrangement may reduce the amount of the gain or loss, and the extent to which such a financial benefit is, for the purposes of subsection 230-70(2) or 230-75(2), reasonably attributable to the benefit, right or obligation mentioned in paragraph (1)(c) or (d) of this section at the time mentioned in subsection (1); and

- (b) disregard any financial benefit that has already been taken into account, under subsection 230-105(1), in working out, at the time when you started to have the arrangement, the amount of a sufficiently certain overall gain or loss from the \*financial arrangement to which the accruals method applies; and
- (c) disregard any financial benefit (or that part of any financial benefit) that has already been taken into account in working out the amount of a sufficiently certain gain or loss from the \*financial arrangement under subsection (1).

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of a gain or loss.

### **230-115 Sufficiently certain financial benefits**

- (1) In deciding for the purposes of this Subdivision whether it is sufficiently certain at a particular time that you make, or will make, a gain or loss from a \*financial arrangement:
  - (a) have regard only to:
    - (i) \*financial benefits that you are sufficiently certain to receive; and
    - (ii) financial benefits that you are sufficiently certain to provide; and
  - (b) have regard to those financial benefits only to the extent that the amount or value of the benefits is, at that time, fixed or determinable with reasonable accuracy.

Note: The particular time may be the time at which you start to have the arrangement.

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

Section 230-115

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- (2) A \*financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:
- (a) it is reasonably expected that you will receive or provide the financial benefit (assuming that you will continue to have the \*financial arrangement for the rest of its life); and
  - (b) at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy.
- (3) In applying subsection (2) to the \*financial benefit:
- (a) you must have regard to:
    - (i) the terms and conditions of the \*financial arrangement; and
    - (ii) accepted pricing and valuation techniques; and
    - (iii) the economic or commercial substance and effect of the arrangement; and
    - (iv) the contingencies that attach to the other financial benefits that are to be provided or received under the arrangement; and
  - (b) you must treat the financial benefit as if it were not contingent if it is appropriate to do so having regard to the contingencies that attach to the other financial benefits that are to be received or provided under the arrangement.
- (4) In applying paragraph (2)(b) at a particular time (the *reference time*) to a \*financial benefit that depends on a variable that is based on:
- (a) an interest rate; or
  - (b) a rate that solely or primarily reflects the time value of money; or
  - (c) a rate that solely or primarily reflects a consumer price index; or
  - (d) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;
- you must assume that that variable will continue to have the value it has at the reference time.

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



- (5) Despite subsection (4), in applying paragraph (2)(b) at a particular time to a \*financial benefit that depends on a rate of change to a variable that is based on:
- (a) a rate that solely or primarily reflects a consumer price index;  
or
  - (b) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;
- you must assume that the rate of change to that variable will continue to be the rate of change that is current at that time.
- (6) If subsection (4) or (5) applies to a gain or loss and you are determining the amount of the gain or loss at a particular time, you must also assume that that variable will continue to have the value that it has at that time.
- (7) Subsections (4) and (5) do not limit paragraph (2)(b).
- (8) If all of the \*financial benefits provided and received under the \*financial arrangement are denominated in a particular \*foreign currency, those financial benefits are not to be translated into:
- (a) your \*applicable functional currency; or
  - (b) if you do not have an applicable functional currency—  
Australian currency;
- for the purposes of applying subsection (2) to the arrangement.
- (9) To avoid doubt:
- (a) a \*financial benefit that you have already provided at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to provide;  
and
  - (b) a financial benefit that you have already received at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to receive.

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

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Section 230-120

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**230-120 Financial arrangements with notional principal**

- (1) This section applies to a \*financial arrangement that you have if, in substance or effect, and having regard to the pricing, terms and conditions of the arrangement:
- (a) the arrangement consists of these things:
    - (i) a leg, the \*financial benefits to be provided or received in respect of which are calculated by reference to, or are reasonably related to, a notional principal;
    - (ii) another leg, the financial benefits to be provided or received in respect of which also are calculated by reference to, or are reasonably related to, a notional principal;
    - (iii) if the arrangement includes one or more other things—those things; and
  - (b) when you start to have the arrangement, the value of the notional principal in relation to one leg is equal to the value of the notional principal in relation to the other leg; and
  - (c) all or part of the notional principal in relation to each leg is provided or received at a time, regardless of whether that time is different in relation to each leg.

Example: A swap contract.

- (2) To avoid doubt, the \*financial benefits mentioned in subparagraphs (1)(a)(i) and (ii), and the notional principal in relation to each leg, need not actually be provided or received.
- (3) In applying this Subdivision to the \*financial arrangement:
- (a) work out the \*financial benefits from the arrangement as follows:
    - (i) work out the financial benefits from each thing of which the arrangement consists separately from the financial benefits from each other thing of which the arrangement consists;
    - (ii) ensure that results under subparagraph (i) are consistent with the timing and amount of financial benefits to be

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

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- actually provided or received under the arrangement;  
and
- (b) work out your gains and losses from the arrangement as follows:
- (i) work out the gains and losses from each thing of which the arrangement consists separately from the gains and losses from each other thing of which the arrangement consists;
  - (ii) treat the gains and losses mentioned in subparagraph (i) for all of those things as your gains and losses from the arrangement; and
- (c) in working out a gain or loss from a thing for the purposes of subparagraph (b)(i), and, if the accruals method applies to the gain or loss, how it is to be spread and allocated:
- (i) if the thing is a leg—take into account the amount of the notional principal at a time and in a manner that properly reflects the way in which the financial benefits in respect of that leg are calculated; and
  - (ii) if the thing is *not* a leg—take into account an amount relevant to the thing at a time and in a manner that properly reflects the way in which the financial benefits in respect of that thing are calculated.

## The accruals method

### 230-125 Overview of the accruals method

If the accruals method applies to a gain or loss you have from a <sup>\*</sup>financial arrangement:

- (a) you use section 230-130 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 230-135 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and
- (c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 230-170 to work

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

Section 230-130

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out how to allocate that part of the gain or loss allocated between those 2 income years.

**230-130 Applying accruals method to work out period over which gain or loss is to be spread**

*Period over which overall gain or loss is to be spread*

- (1) If you have a sufficiently certain overall gain or loss from a \*financial arrangement under subsection 230-105(1), the period over which the gain or loss is to be spread is the period that:
- (a) starts when you start to have the arrangement; and
  - (b) ends when you will cease to have the arrangement.
- In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

*Period over which particular gain or loss is to be spread*

- (3) If you have a sufficiently certain gain or loss from a \*financial arrangement under subsection 230-110(1), the period over which the gain or loss is to be spread is the period to which the gain or loss relates. Have regard to the pricing, terms and conditions of the arrangement in working out the period to which the gain or loss relates. This subsection has effect subject to subsections (4) and (5).
- (4) The start of the period over which a gain or loss to which subsection (3) applies is to be spread must:
- (a) not start earlier than the time when you start to have the \*financial arrangement; and
  - (b) other than in the case of a gain or loss to which subsection 230-100(3A) or subsection (4A) of this section applies—not start earlier than the start of the income year during which it becomes sufficiently certain that you will make the gain or loss.
- (4A) This subsection applies to a gain or loss to which subsection (3) applies, if:

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

- (a) there is an impairment (within the meaning of the \*accounting principles) of:
  - (i) the \*financial arrangement; or
  - (ii) a financial asset or financial liability that forms part of the arrangement; and
- (b) because of the impairment, you make a reassessment under section 230-185 in relation to the arrangement; and
- (c) you determine on the reassessment that the gain or loss is not sufficiently certain (whether or not the gain or loss was sufficiently certain before the reassessment); and
- (d) there is a reversal of the impairment loss (within the meaning of the accounting principles) that resulted from the impairment; and
- (e) because of the reversal, you make a reassessment under section 230-185 in relation to the arrangement; and
- (f) you determine on the reassessment that the gain or loss has become sufficiently certain.

Note: For the income years to which the gain or loss is allocated, see section 230-170.

- (5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must not end later than the time when you will cease to have the \*financial arrangement.

### **230-135 How gain or loss is spread**

#### *How to spread gain or loss*

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

#### *Compounding accruals or approximation*

- (2) The gain or loss is to be spread using:
  - (a) compounding accruals; or
  - (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the

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

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Section 230-135

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length of the period over which the gain or loss is to be spread).

- (3) The following subsections of this section clarify the way in which the gain or loss is to be spread in accordance with paragraph (2)(a).

*Intervals to which parts of gain or loss allocated*

- (4) The intervals to which parts of the gain or loss are allocated must:
- (a) not exceed 12 months; and
  - (b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

*Fixing of amount and rate for interval*

- (5) For each interval:
- (a) determine a rate of return; and
  - (b) determine an amount to which you apply the rate of return.
- (6) For the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return for an interval, have regard to:
- (a) the amount or value; and
  - (b) the timing;

of \*financial benefits that are to be taken into account in working out the amount of the gain or loss, and were provided or received by you during the interval.

- (6A) However, if there is only one \*financial benefit that is to be taken into account in working out the amount of the gain or loss, then, for the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return, have regard to a notional principal:
- (a) by reference to which the financial benefit is calculated; or
  - (b) which is reasonably related to the financial benefit.

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

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*Assumption of continuing to hold arrangement for rest of its life*

- (7) The gain or loss is to be spread assuming that you will continue to have the \*financial arrangement for the rest of its life.

*Regard to be had to financial benefits provided or received in interval*

- (8) In allocating the gain or loss to intervals, have regard to the \*financial benefits to be provided or received in each of those intervals.

**230-140 Method of spreading gain or loss—effective interest method**

- (1) This section clarifies that the method mentioned in subsection (2) of spreading gains and losses is a method covered by paragraph 230-135(2)(b) (methods approximating compounding accruals).
- (2) The method is the effective interest method mentioned in \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this subsection).
- (3) However, this section applies to a particular \*financial arrangement you have only if:
- (a) in a case where there is a discount or premium under the arrangement—when you start to have the arrangement, the annually compounded rate of return applicable to the discount or premium does not exceed 1%; and
  - (b) when you start to have the arrangement, neither the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) nor the expected life of the arrangement exceeds:
    - (i) unless subparagraph (ii) applies—30 years; or
    - (ii) if the regulations prescribe a different period for the purposes of this subparagraph—that period; and
  - (c) each \*financial benefit that you have an obligation to provide or a right to receive under the arrangement, and that gives

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

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rise to a gain or loss from the arrangement (other than a gain or loss that is attributable to any discount or premium):

- (i) relates to a period not exceeding 12 months; and
- (ii) is to be provided or received in the period to which it relates; and

Note: Different financial benefits may relate to different periods.

- (d) you prepare a financial report for the year in which you start to have the arrangement; and
  - (e) that financial report is:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (f) all gains and losses from the arrangement to which the accrual method applies are spread in a way that is consistent with that financial report.
- (4) For the purposes of paragraph (3)(a), assume that you will continue to have the arrangement for the rest of its expected life.

**230-145 Application of effective interest method where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and

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



- (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) For the purposes of paragraph 230-140(3)(d), treat yourself as having prepared a financial report for the income year in which you start to have the arrangement.
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with paragraph 230-140(3)(f) (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with paragraph 230-140(3)(f) (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
    - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement 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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- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.

**230-150 Election for portfolio treatment of fees**

- (1) You may make an election for an income year under this section if:
- (a) you prepare a financial report for the income year in accordance with:
    - (i) the \*accounting principles; or
    - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing principles; or
    - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.
- (2) An election under this section is irrevocable.

**230-155 Election for portfolio treatment of fees where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:

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

- (i) prepared in accordance with paragraph 230-150(1)(a);  
and
  - (ii) audited in accordance with paragraph 230-150(1)(b);  
and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-150(1).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
  - (e) next:
    - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
    - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
    - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the

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

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gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.

**230-160 Portfolio treatment of fees**

- (1) This section applies in relation to a \*financial arrangement if:
- (a) you have made an election under section 230-150 in an income year; and
  - (b) you start to have the financial arrangement in that income year or a later income year; and
  - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from fees in respect of the \*financial arrangement; and
  - (e) the fees play an integral role in determining the amount of the gain or loss; and
  - (f) the net amount of the fees is *not* expected to be significant relative to an overall gain or loss from the arrangement.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
- (a) to the extent that it arises from the fees, treat it as a gain or loss from the \*financial arrangement (the *fees gain or loss*) to which subsection 230-130(3) applies;
  - (b) to the extent that it does not arise from the fees, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-165(2) (premium/discount gain or loss).

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

*Determination of period for fees gain or loss*

- (3) The period over which the fees gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
- (a) the basis on which you determine the period accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the basis on which you determine the period is set and recorded before any fees in respect of the \*financial arrangement fall due; and
  - (c) the period can be justified objectively; and
  - (d) the period is reasonable in the circumstances.

*Spreading the fees gain or loss*

- (4) The method by which the fees gain or loss is to be spread is the method that you determine, if:
- (a) the basis on which you determine the method accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the method is determined before any fees in respect of the \*financial arrangement fall due; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

**230-165 Portfolio treatment of premiums and discounts for acquiring portfolio**

- (1) This section applies in relation to a \*financial arrangement if:
- (a) you have made an election under section 230-150 in an income year; and

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

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- (b) you start to have the financial arrangement in that income year or a later income year; and
  - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  - (d) a gain or loss to which subsection 230-130(3) applies arises in part from a premium or discount in starting to have the portfolio; and
  - (e) the gain or loss is *not* expected to be significant relative to the amount of the gain or loss on the portfolio.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
- (a) to the extent that it arises from the premium or discount, treat it as a gain or loss from the <sup>\*</sup>financial arrangement (the ***premium/discount gain or loss***) to which subsection 230-130(3) applies;
  - (b) to the extent that it does not arise from the premium or discount, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-160(2) (portfolio fees gain or loss).

*Determination of period for premium/discount gain or loss*

- (3) The period over which the premium/discount gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
- (a) the basis on which you determine the period accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the basis on which you determine the period is set and recorded before you start to have the <sup>\*</sup>financial arrangement; and
  - (c) the period can be justified objectively; and
  - (d) the period is reasonable in the circumstances.

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

*Spreading the premium/discount gain or loss*

- (4) The method by which the premium/discount gain or loss is to be spread is the method that you determine, if:
  - (a) the basis on which you determine the method accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
  - (b) the method is determined before you start to have the \*financial arrangement; and
  - (c) the method can be justified objectively; and
  - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

**230-170 Allocating gain or loss to income years**

- (1) You are taken, for the purposes of section 230-15, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
  - (a) that part of the gain or loss is allocated to an interval under section 230-135; and
  - (b) that interval falls wholly within that income year.
- (2) If:
  - (a) a part of a gain or loss is allocated to an interval under section 230-135; and
  - (b) that interval straddles 2 income years;you are taken, for purposes of section 230-15, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (2A) Subsections (1) and (2) do not apply to a part of a gain or loss if:
  - (a) subsection 230-100(3A) or 230-130(4A) applies to the gain or loss; and
  - (b) that part of the gain or loss is allocated to an interval under section 230-135; and

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

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- (c) that interval ends before or during the income year during which the gain or loss becomes sufficiently certain (as mentioned in paragraph 230-100(3A)(b) or 230-130(4A)(f), whichever is applicable).

Instead, you are taken, for the purposes of section 230-15, to make, for that income year, a gain or loss equal to that part of that gain or loss.

(3) If:

- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
- (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
- (c) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group;

an income year of the group is taken, for the purposes of applying this section to the group and the arrangement, to end at the leaving time.

**230-172 Applying accruals method to loss resulting from impairment**

(1) This section applies if:

- (a) there is an impairment (within the meaning of the \*accounting principles) of:
  - (i) a \*financial arrangement; or
  - (ii) a financial asset or financial liability that forms part of a financial arrangement; and
- (b) you make a loss from the financial arrangement as a result of the impairment; and
- (c) the accruals method applies to the loss.

(2) You cannot deduct a loss you make for an income year under section 230-15, to the extent that the loss results from the impairment (including as affected by any later reversal of the

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



impairment loss (within the meaning of the \*accounting principles) that resulted from the impairment).

- (3) Disregard subsection (2) for the purposes of paragraph (c) of step 1 of the method statement in subsection 230-445(1).

### **230-175 Running balancing adjustments**

#### *Overestimate of financial benefit to be received*

- (1) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain, at a particular time, to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you receive the benefit (or the time comes for you to receive the benefit), the amount you receive (or are to receive) is nil or is less than the amount estimated.

The amount of the loss is equal to the difference between the amount estimated and the amount you receive (or are to receive). You are taken to have made the loss for the income year in which you receive the benefit (or in which the time comes for you to receive the benefit).

- (1A) Subsection (1) does not apply to the extent that the difference results from:
- (a) an impairment (within the meaning of the \*accounting principles) of:
    - (i) the \*financial arrangement; or
    - (ii) a financial asset or financial liability that forms part of the arrangement; or
  - (b) you writing off, as a bad debt, a right to a \*financial benefit (or a part of a financial benefit).

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

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*Underestimate of financial benefit to be received*

- (2) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to receive a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you receive the benefit, or the time comes for you to receive the benefit, the amount you receive, or are to receive, is more than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you receive or are to receive. You are taken to have made that gain in the income year in which you receive the benefit or in which the time comes for you to receive the benefit.

- (2A) Subsection (2) does not apply to the extent that the difference results from the reversal of an impairment loss (within the meaning of the \*accounting principles) that resulted from an impairment (within the meaning of the accounting principles) of:
- (a) the \*financial arrangement; or
  - (b) a financial asset or financial liability that forms part of the arrangement.

*Overestimate of financial benefit to be provided*

- (3) You are taken for the purposes of this Division to make a gain from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you provide, or are to provide, is nil or is less than the amount estimated.

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

The amount of the gain is equal to the difference between the amount estimated and the amount you provide or are to provide. You are taken to have made that gain in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

*Underestimate of financial benefit to be provided*

- (4) You are taken for the purposes of this Division to make a loss from a \*financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a \*financial benefit of, or of at least, a particular amount under the arrangement; and
  - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you are to provide is more than the estimated amount referred to in paragraph (a).

The amount of the loss is equal to the difference between the amount estimated and the amount you are to provide. You are taken to have made that loss in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

## **Realisation method**

### **230-180 Realisation method**

- (1) If a gain or loss is to be taken into account using the realisation method, you are taken, for the purposes of section 230-15, to make the gain or loss for the income year in which the gain or loss occurs.

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of the gain or loss.

- (2) For the purposes of subsection (1), a gain or loss from a \*financial arrangement is taken to occur at:

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

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- (a) if the last of the \*financial benefits, rights and obligations taken into account in determining the amount of the gain or loss is a financial benefit—the time the financial benefit:
    - (i) is provided; or
    - (ii) if the financial benefit is not provided at the time when it is due to be provided under the arrangement and it is reasonable to expect that the financial benefit will be provided—is due to be provided; or
  - (b) if the last of the financial benefits, rights and obligations taken into account in determining the amount of the gain or loss is a right to receive a financial benefit or an obligation to provide a financial benefit—the time:
    - (i) if the right or obligation ceases before the financial benefit is provided—the right or obligation ceases; or
    - (ii) otherwise—the financial benefit is provided.
- This subsection has effect subject to subsection (3).
- (3) For the purposes of subsection (1), you make a loss from a \*financial arrangement from writing off, as a bad debt, a right to a \*financial benefit (or a part of a financial benefit) if:
    - (a) the financial benefit was taken into account in working out the amount of a gain from the arrangement and the gain has been included in your assessable income under this Division; or
    - (b) the right is one in respect of money that you lent in the ordinary course of your \*business of lending money; or
    - (c) the right is one that you bought in the ordinary course of your business of lending money.
  - (4) The loss referred to in subsection (3) occurs when you write off the right to the \*financial benefit (or the part of the financial benefit) as a bad debt.
  - (5) The amount of the loss referred to in subsection (3) is:
    - (a) if paragraph (3)(a) applies—so much of the gain referred to in that paragraph as is reasonably attributable to the \*financial benefit (or the part of the financial benefit); or

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

- (b) if paragraph (3)(b) applies—the amount of the financial benefit (or the part of the financial benefit); or
  - (c) if paragraph (3)(c) applies—the amount of the financial benefit (or the part of the financial benefit) but only up to the value of the financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the loss referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

## Reassessment and re-estimation

### 230-185 Reassessment

- (1) You must make a fresh assessment of which gains and losses from a \*financial arrangement the accruals method should apply to, and which gains and losses from that arrangement the realisation method should apply to, if:
- (a) the accruals method, or the realisation method, provided for in this Subdivision applies to gains and losses from the arrangement; and
  - (b) there is a material change to:
    - (i) the terms and conditions of the arrangement; or
    - (ii) circumstances that affect the arrangement.
- (2) Without limiting subsection (1), the following changes are material changes to the terms and conditions of, or circumstances that affect, the \*financial arrangement:
- (a) a change to the terms or conditions of the arrangement in a way that alters the essential nature of the arrangement (for example, by altering it from a \*debt interest to an \*equity interest or from an equity interest to a debt interest);

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

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- (b) a change to the terms or conditions of the arrangement in a way that materially affects the contingencies on which significant obligations and rights under the arrangement are dependent (for example, by introducing such a contingency or removing such a contingency);
- (c) a change in circumstances that makes something that:
  - (i) materially affects significant obligations and rights under the arrangement; and
  - (ii) was previously dependent on a contingency; no longer dependent on a contingency (because, for example, only one of a number of previously possible contingencies is realised);
- (d) a change to:
  - (i) the terms on which credit is to be provided to an entity that is not a party to the arrangement; or
  - (ii) the credit rating of an entity that is not a party to the arrangement;if a significant obligation or right under the arrangement is dependent on that credit being provided or that rating being maintained;
- (e) if the arrangement is, or includes, a financial asset or financial liability and you prepare your financial reports in accordance with:
  - (i) the \*accounting principles; or
  - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that apply to the preparation of the financial report under a foreign law;a change to the terms or conditions of, or circumstances that affect, the arrangement that are sufficient for the financial asset or financial liability to be treated as impaired for the purposes of those principles or standards.

- (3) You do not need to make a reassessment under this section merely because of a change in the fair value of the \*financial arrangement.

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

## 230-190 Re-estimation

### *When re-estimation necessary*

- (1) You re-estimate a gain or loss from a \*financial arrangement under subsection (5) if:
  - (a) the accruals method applies to the gain or loss; and
  - (b) circumstances arise that materially affect:
    - (i) the amount or value; or
    - (ii) the timing;of \*financial benefits that were taken into account in working out the amount of the gain or loss; and
  - (c) the circumstances do not give rise to a re-estimation under section 230-200.
- (2) You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (1)(b), if subsection (1) applies.
- (3) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
  - (a) a material change in market conditions that are relevant to the amount or value of the \*financial benefits to be received or provided under the \*financial arrangement;
  - (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimates is not insignificant;
  - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt;
  - (d) you have made a reassessment under section 230-185 in relation to gains or losses under the arrangement and you have determined on the reassessment under that section that the accruals method should continue to apply to those gains or losses.

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

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- (3A) You also re-estimate a gain or loss from a \*financial arrangement under subsection (5) if:
- (a) the gain or loss is spread using the method referred to in paragraph 230-135(2)(b) in accordance with section 230-140 (effective interest method); and
  - (b) you recalculate the effective interest rate in accordance with that method; and
  - (c) the terms and conditions of the arrangement provide for reset dates to occur no more than 12 months apart; and
  - (d) the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) is more than 12 months.
- (3B) You must re-estimate the gain or loss at the relevant reset date if subsection (3A) applies.
- (4) You do not re-estimate the gain or loss from a \*financial arrangement under subsection (5) merely because of a change in the credit rating, or the creditworthiness, of a party or parties to the arrangement.

*Nature of re-estimation*

- (5) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss; and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (6) You may make the fresh allocation of the gain or loss under subsection (5) on these bases:
- (a) if you satisfy subsection (7) in relation to the \*financial arrangement—by maintaining the rate of return being used

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



and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;

- (b) in any case—by adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

The object to be achieved by both bases is to allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

Note: The amount referred to in paragraph (b) is the amount to which the previous rate of return was being applied immediately before the re-estimation.

- (7) You satisfy this subsection in relation to a \*financial arrangement if every re-estimation you make under subsection (5) in relation to a gain or loss from the arrangement is made in accordance with:
- (a) financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b) (regardless of whether Subdivision 230-F (reliance on financial reports method) is to apply to a particular financial arrangement); and
  - (b) \*accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this paragraph).

### **230-192 Re-estimation—impairments and reversals**

- (1) This section applies if the re-estimation mentioned in section 230-190 arises because of:
- (a) an impairment (within the meaning of the \*accounting principles) of:
    - (i) the \*financial arrangement; or
    - (ii) a financial asset or financial liability that forms part of the arrangement; or
  - (b) a reversal of an impairment loss (within the meaning of the accounting principles) that resulted from such an impairment.

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

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- (2) Despite paragraph 230-190(6)(a), you must make the fresh allocation in accordance with paragraph 230-190(6)(b).

*Losses non-deductible*

- (3) You cannot deduct a loss you make for an income year under section 230-15, to the extent that the loss results from:
- (a) the impairment (including as affected by any later reversal of the impairment loss that resulted from the impairment); or
  - (b) the operation of subsection (7).
- (4) Disregard subsection (3) for the purposes of paragraph (c) of step 1 of the method statement in subsection 230-445(1).

*Reversals*

- (5) Subsections (7) and (8) apply to the part of the gain or loss that is to be reallocated in accordance with paragraph 230-190(6)(b), if:
- (a) the fresh determination under paragraph 230-190(5)(a) that arose because of the reversal resulted in that part being a gain; and
  - (b) there are losses that:
    - (i) resulted from the impairment; and
    - (ii) you could have deducted apart from subsection 230-172(2) or subsection (3) of this section.
- (6) Paragraph (5)(b) does not apply to a loss to the extent that:
- (a) the loss reflects the amount of a loss you make under paragraph 230-195(1)(b) or (c); and
  - (b) the loss you make under paragraph 230-195(1)(b) or (c) relates to you writing off, as a bad debt, a right to receive a \*financial benefit (or a part of a financial benefit).
- (7) Treat the fresh determination as having resulted in that part being a loss, if the total of the losses mentioned in paragraph (5)(b) of this section exceeds the amount of the gain mentioned in paragraph (5)(a). The amount of the loss is equal to the amount of the excess.

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

- (8) Otherwise, reduce the amount of that gain by the total of those losses.

**230-195 Balancing adjustment if rate of return maintained on re-estimation**

- (1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-190(6)(a), you must make the following balancing adjustment:
- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the \*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
  - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease.
- (2) Subsection (3) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit (or a part of a financial benefit); and
  - (b) the right:
    - (i) is not one in respect of money that you lent in the ordinary course of your \*business of lending money; and
    - (ii) is not one that you bought in the ordinary course of your business of lending money.

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

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- (3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the \*financial arrangement as:
- (a) has been assessed under this Division; and
  - (b) is reasonably attributable to the \*financial benefit (or the part of the financial benefit).
- (4) Subsection (5) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit; and
  - (b) the right is one that you bought in the ordinary course of your \*business of lending money.
- (5) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed the value of the \*financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the balancing adjustment referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

**230-200 Re-estimation if balancing adjustment on partial disposal**

*Re-estimation if balancing adjustment on partial disposal*

- (1) You also re-estimate a gain or loss from a \*financial arrangement under subsection (2) if:
- (a) the accruals method applies to the gain or loss; 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 balancing adjustment is made in relation to the arrangement under Subdivision 230-G because you transfer to another entity:
- (i) a proportionate share of all of your rights and/or obligations under the arrangement; or
  - (ii) a right or obligation that you have under the arrangement to a specifically identified \*financial benefit; or
  - (iii) a proportionate share of a right or obligation that you have under the arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

*Nature of re-estimation*

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss disregarding:
    - (i) \*financial benefits; and
    - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and

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

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adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is to allow you to bring the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

**Subdivision 230-C—Fair value method**

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**230-205 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from \*financial arrangements with the accounting treatment that applies where assets and liabilities are classified or designated as at fair value through profit or loss; and
- (b) to facilitate efficient price-making; and
- (c) to achieve the above objects without allowing you to obtain an inappropriate tax benefit.

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

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## 230-210 Fair value election

### *Election*

- (1) You may make a **fair value election** under this section if you are eligible under subsection (2) to make the election for the income year in which you make the election.

### *Eligibility to make fair value election for an income year*

- (2) You are eligible to make a **fair value election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting principles; or
    - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
  - (b) the financial report is audited in accordance with:
    - (i) the \*auditing principles; or
    - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

### *Election irrevocable*

- (3) A \*fair value election is irrevocable.

Note: The election may cease to have effect, or cease to apply to a particular financial arrangement, under section 230-240.

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

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**230-215 Fair value election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-210(2)(a); and
    - (ii) audited in accordance with paragraph 230-210(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-210(2).
- (3) Work out the gain or loss you make from the \*financial arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-230 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-230 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

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



- (e) next:
  - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  - (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-220 Financial arrangements to which fair value election applies**

- (1) A \*fair value election applies in relation to \*financial arrangements that:
  - (a) are \*Division 230 financial arrangements; and
  - (b) are recognised in financial reports of the kind referred to in paragraph 230-210(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-210(2)(b); and
  - (c) are assets or liabilities that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting principles; or
    - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable

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

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standards for accounting that apply to the preparation of the financial report under a \*foreign law;

to classify, designate or (in whole or in part) otherwise treat, in the financial reports, as at fair value through profit or loss; and

- (d) you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-225.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) 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;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*fair value election is made by:

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

- (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
  - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

### **230-225 Financial arrangements to which election does not apply**

- (1) A \*fair value election does not apply to a \*financial arrangement if:
  - (a) the arrangement is an \*equity interest; and
  - (b) you are the issuer of the equity interest.
- (2) A \*fair value election does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*fair value election does not apply to a \*financial arrangement 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.

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

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Section 230-230

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- (4) A \*fair value election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

**230-230 Applying fair value method to gains and losses**

- (1) You make a gain or loss for an income year from a \*financial arrangement to which a \*fair value election applies if:
- (a) the principles or standards mentioned in paragraph 230-210(2)(a) require you to recognise a gain or loss in profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c); or
  - (b) in the case of an arrangement to which subsection 230-220(2) applies—the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise a gain or loss in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-220(2)(b); or
  - (c) in the case of an arrangement to which subsection 230-220(3) applies—the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise a gain or loss in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that an election under Subdivision 230-E (hedging financial arrangements method) or Subdivision 230-F (method of relying on financial reports) may override a fair value election.

- (1A) The gain or loss you make is the gain or loss the principles or standards require, or would have required, you to recognise in profit or loss as mentioned in subsection (1).
- (2) Subsection (3) applies if:
- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; 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 \*fair value election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (3) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph 230-210(2)(a) would require the group to recognise as at fair value through profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c) if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the financial arrangement after the leaving time were disregarded.

*Subdivision does not apply to extent gains or losses not recognised as at fair value*

- (4) This Subdivision does not apply to a gain or loss you make from the \*financial arrangement, to the extent:
- (a) you are required, as mentioned in paragraph 230-220(1)(c), to otherwise treat as at fair value through profit and loss the assets or liabilities that the financial arrangement is; and
  - (b) the principles or standards referred to in paragraph 230-210(2)(a) do not require you to recognise the gain or loss as at fair value through profit or loss.

Note: See also subsection 230-40(5).

### **230-235 Splitting financial arrangements into 2 financial arrangements**

- (1) If:

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

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**Section 230-240**

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- (a) a \*financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-220(1)(c); and
  - (b) a \*fair value election would apply to the arrangement if it were constituted solely by that asset or liability;
- the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.
- (2) The 2 separate \*financial arrangements are:
    - (a) one consisting of the part referred to in paragraph (1)(a); and
    - (b) one consisting of the remaining part.

**230-240 When election ceases to apply**

- (1) A \*fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-210(2) to make the fair value election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*fair value election at a later time if you become, at that later time, eligible under subsection 230-210(2) to make a fair value election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*fair value election ceases to apply to a particular \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-220(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-220(1)(b) and (c) are satisfied once more in relation to the arrangement).

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

### **230-245 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*fair value election ceases to have effect under subsection 230-240(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make a balancing adjustment under subsection (4) if a \*fair value election ceases to apply to a particular \*financial arrangement under subsection 230-240(3).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.
- (6) In determining, for the purposes of the balancing adjustment under subsection (2) or (4) or for the purposes of subsection (5), the fair value of the \*financial arrangement at a time, disregard any changes in the fair value to the extent that:
  - (a) you are required, as mentioned in paragraph 230-220(1)(c), to otherwise treat the financial arrangement as at fair value through profit and loss; and
  - (b) the principles or standards referred to in paragraph 230-210(2)(a) do not require you to recognise the changes as at fair value through profit or loss.

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

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Section 230-250

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## Subdivision 230-D—Foreign exchange retranslation method

### Table of sections

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230-275	Balancing adjustment for election in relation to qualifying forex accounts
230-280	Applying foreign exchange retranslation method to gains and losses
230-285	When election ceases to apply
230-290	Balancing adjustment if election ceases to apply

### 230-250 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from foreign exchange rate changes with the accounting treatment of profits and losses from such changes; and
- (b) to achieve this without allowing you to obtain an inappropriate tax benefit.

### 230-255 Foreign exchange retranslation election

#### *General election*

- (1) You may make a **foreign exchange retranslation election** under this subsection if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make election*

- (2) You are eligible to make a \*foreign exchange retranslation election for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:

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



- (i) the \*accounting principles; or
  - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
- (b) the financial report is audited in accordance with:
- (i) the \*auditing principles; or
  - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

*Election in relation to qualifying forex accounts*

- (3) You may make a **foreign exchange retranslation election** under this subsection in relation to a \*financial arrangement if:
- (a) the arrangement is a \*qualifying forex account; and
  - (b) you have not made a \*foreign exchange retranslation election under subsection (1) that applies to the account.

You may make the election even if you start to have the arrangement before you make the election.

*Financial arrangements to which election in relation to qualifying forex accounts applies*

- (4) The election under subsection (3) applies to the \*financial arrangement:
- (a) from the time when you start to have the arrangement if the election is made before you start to have the arrangement; or
  - (b) from the start of the income year in which the election is made if you make the election after you start to have the arrangement.

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

Section 230-260

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*Election irrevocable*

- (5) A \*foreign exchange retranslation election is irrevocable.

Note: The election may cease to apply under section 230-285.

**230-260 Foreign exchange retranslation election where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-255(2)(a); and
    - (ii) audited in accordance with paragraph 230-255(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-255(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-280 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

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

- (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-280 (treating the second year as an income year);
- (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
- (e) next:
  - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  - (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

### **230-265 Financial arrangements to which general election applies**

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) applies to each of your \*financial arrangements:
  - (a) that are \*Division 230 financial arrangements; and

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

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Section 230-265

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- (b) that are 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
- (c) in relation to which you are required by:
  - (i) \*accounting standard AASB 121 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); 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, amounts in profit or loss (if any) that are attributable to changes in currency exchange rates; and
- (d) that you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-270.

Note: The election also has consequences under Subdivision 775-F for arrangements that are not Division 230 financial arrangements.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
  - (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) 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;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

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

- (3) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*foreign exchange retranslation election under subsection 230-255(1) is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

### **230-270 Financial arrangements to which general election does not apply**

- (1) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) For the purposes of this Division, a \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or

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

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- (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) A \*foreign exchange retranslation election under subsection 230-255(1) does not apply to a \*financial arrangement 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.
- (4) A \*foreign exchange retranslation election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

**230-275 Balancing adjustment for election in relation to qualifying forex accounts**

- (1) If you make a \*foreign exchange retranslation election under subsection 230-255(3) in relation to a \*financial arrangement after you start to have the arrangement, you must make a balancing adjustment under subsection (2).
- (2) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you ceased to have the arrangement for its fair value at the time when the election started to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably 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.

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## **230-280 Applying foreign exchange retranslation method to gains and losses**

### *General election*

- (1) You make a gain or loss from a \*financial arrangement for an income year if:
- (a) a \*foreign exchange retranslation election under subsection 230-255(1) applies to the arrangement; and
  - (b) any of the following subparagraphs apply:
    - (i) the standard referred to in paragraph 230-265(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year;
    - (ii) if subsection 230-265(2) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b);
    - (iii) if subsection 230-265(3) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss for the year that is attributable to currency exchange rates mentioned in paragraph 230-265(1)(c) if the arrangement had been between 2 separate entities.

The amount of the gain or loss is the amount the standard requires, or would have required, you to recognise.

Note: See subsection 230-40(6).

### *Election in relation to qualifying forex accounts*

- (2) You make a gain or loss from a \*financial arrangement for an income year if:

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

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- (a) a \*foreign exchange retranslation election under subsection 230-255(3) applies to the arrangement; and
- (b) the standard referred to in paragraph 230-265(1)(c):
  - (i) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; or
  - (ii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if that standard applied to the arrangement; or
  - (iii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b); or
  - (iv) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b) and if that standard applied to the arrangement.

The amount of the gain or loss is the amount the standard requires, or would require, you to recognise.

*Subsidiary leaving group*

- (3) Subsection (4) applies if:
  - (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a \*foreign exchange retranslation election under subsection 230-255(1) or (3) applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.

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



- (4) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standard referred to in paragraph 230-265(1)(c) would require the group to recognise in profit or loss in relation to the arrangement for that income year if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

### **230-285 When election ceases to apply**

#### *General election*

- (1) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-255(2) to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.
- (2) Subsection (1) does not prevent you from making a new \*foreign exchange retranslation election at a later time if you become, at that later time, eligible under subsection 230-255(2), to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A \*foreign exchange retranslation election under subsection 230-255(1) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-265(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently reapply to

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

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that arrangement (even if the requirements of paragraphs 230-265(1)(b) and (c) are satisfied once more in relation to the arrangement).

*Election in relation to qualifying forex accounts*

- (5) A \*foreign exchange retranslation election under subsection 230-255(3) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of subsection 230-255(3) during that income year.
- (6) If the election ceases to apply to a particular \*financial arrangement under subsection (5), the election cannot subsequently reapply to that arrangement (even if the requirements of subsection 230-255(3) are satisfied once more in relation to the arrangement).

**230-290 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if a \*foreign exchange retranslation election ceases to have effect under subsection 230-285(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).
- (3) You must make a balancing adjustment under this section if a \*foreign exchange retranslation election ceases to apply to a particular \*financial arrangement under subsection 230-285(3) or (5).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you

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

disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a \*currency exchange rate effect).

- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-E—Hedging financial arrangements method**

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

Section 230-295

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**230-295 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and
- (b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

**230-300 Applying hedging financial arrangement method to gains and losses**

- (1) If you have a \*hedging financial arrangement to which a \*hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-310 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.
- (2) Except where subsection (5) applies, the gain or loss you make from the \*hedging financial arrangement is equal to the overall gain or loss you make from the arrangement.
- (3) The gain or loss you make from the \*hedging financial arrangement is allocated over income years according to the determination referred to in subsection 230-360(1).
  - Note 1: The allocation is capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).
  - Note 2: The determination must be included in the record made under section 230-355.
- (4) If the \*hedging financial arrangement is a \*foreign currency hedge and is a \*debt interest, split a gain or loss you make from the arrangement as follows:
  - (a) to the extent to which the gain or loss represents a \*currency exchange rate effect attributable to the outstanding balance in

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

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relation to the debt interest, treat it as a separate gain or loss to which subsections (1) and (2) apply;

- (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement that is allocated under Subdivision 230-B, 230-F or 230-G.
- (5) If an event listed in the table in subsection 230-305(1) occurs:
- (a) the gain or loss you make from the \*hedging financial arrangement is equal to any gain or loss that you would have made:
    - (i) while the arrangement was hedging the \*hedged item or items; and
    - (ii) on ceasing to have the arrangement;  
if you ceased to have the arrangement for its fair value at the time of the event; and
  - (b) this Division further applies as if, just after the event, you had acquired the arrangement for its fair value at the time of the event.

Despite subsection (3), the gain or loss referred to in paragraph (a) is allocated over income years according to the table.

- (7) Subsection (8) applies if the \*hedging financial arrangement:
- (a) is a \*financial arrangement under section 230-50 (equity interests etc.); and
  - (b) is a \*foreign currency hedge; and
  - (c) is one that you issue.
- (8) Split a gain or loss you make from the arrangement as follows:
- (a) to the extent to which the gain or loss represents a \*currency exchange rate effect, treat it as a separate gain or loss to which subsections (1) and (2) apply;
  - (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement to which this Division does not apply.

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

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- (9) Subsections (10) and (11) apply if:
- (a) a \*head company of a \*consolidated group or \*MEC group has a \*hedging financial arrangement; and
  - (b) a \*hedging financial arrangement election applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time:
    - (i) the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group; and
    - (ii) the head company no longer has the \*hedged item (or all of the hedged items) because the subsidiary member ceased to be a member of the group.
- (10) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that would be allocated to the group in accordance with this section (disregarding subsection (5)) if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the \*financial arrangement after the leaving time were disregarded.
- (11) For the purposes of applying paragraph (5)(a) to the \*head company of the group at the leaving time, disregard item 2 of the table in subsection 230-305(1).

**230-305 Table of events and allocation rules**

- (1) For the purposes of paragraph 230-300(5)(a), the following table lists events and their consequences:

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

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<b>Table of events and allocation rules</b>		
<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-365 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-360(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; or (c) you cease to expect that you will have the hedged item or items	to the income year in which the event occurs.
2A	(a) you cease to have one or more (but not all) of the *hedged items; or (b) you cease to expect that one or more (but not all) of the hedged items will come into existence; or (c) you cease to expect that you will have one or more (but not all) of the hedged items	(a) to the extent to which the gain or loss is reasonably attributable to those one or more hedged items—to the income year in which the event occurs; and (b) to the extent to which the gain or loss is reasonably attributable to the remaining hedged item or items—over income years according to the basis determined under subsection 230-360(1).
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

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

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- (2) For the purposes of item 2A of the table in subsection (1), determine the extent to which the gain or loss is reasonably attributable to a particular \*hedged item having regard to the following:
- (a) the fair value of the hedged item;
  - (b) the length of the period over which you have held the hedged item;
  - (c) commercially accepted valuation principles;
  - (d) any other relevant factors.

**230-310 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item**

- (1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make from a \*hedging financial arrangement with the tax classification of the \*hedged item.
- (2) This section applies if:
- (a) you make a gain or loss from a \*hedging financial arrangement for an income year; and
  - (b) a \*hedging financial arrangement election applies to the arrangement.
- (3) Subject to subsection (4):
- (a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and
  - (b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).
- Note: Section 230-300 tells you how to allocate the gain or loss to an income year or years.
- (4) A gain or loss you make from a \*hedging financial arrangement, to the extent to which it is reasonably attributable to a \*hedged item

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

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referred to in the following table, is dealt with in the way indicated in that item:

<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i> ) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible

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

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<b>Special tax classification for gains and losses</b>			
<b>Item</b>	<b>For a hedged item that is or produces ...</b>	<b>the gain ...</b>	<b>the loss ...</b>
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G	is treated as a * capital gain from a CGT event that is reduced by the same percentage	is treated as a * capital loss from a CGT event that is reduced by the same percentage
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
10	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source

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

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**Special tax classification for gains and losses**

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Item	For a hedged item that is or produces ...	the gain ...	the loss ...
11	a loss or outgoing that is not allowed as a deduction	is treated as *non-assessable non-exempt income	is treated as a loss that is not allowed as a deduction
12	a net investment in a foreign operation (within the meaning of the *accounting principles) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations Act 2001</i> ).	(a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is treated as non-assessable non-exempt income; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain.	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is not deductible; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the loss.

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(5) Subsection (6) applies if:

- (a) a \*hedged item is your net investment in a foreign operation (within the meaning of the \*accounting principles); and
- (b) the foreign operation is carried on through:
  - (i) a company in which you hold \*shares; or
  - (ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*).

(6) The table in subsection (4) has effect as if:

- (a) to the extent that the \*hedging financial arrangement hedges a risk or risks in relation to \*shares you hold in the company—

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

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the reference in that table to the \*hedged item were a reference to your interest in those shares; and

- (b) to the extent that the hedging financial arrangement hedges a risk or risks in relation to another interest you have in the company—the reference in that table to the hedged item were a reference to that interest.

### 230-315 Hedging financial arrangement election

#### *Election*

- (1) You can make a **hedging financial arrangement election** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

#### *Eligibility to make hedging financial arrangement election for an income year*

- (2) You are eligible to make a **hedging financial arrangement election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
- (i) the \*accounting principles; or
  - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that apply to the preparation of the financial report under a foreign law; and
- (b) the financial report is audited in accordance with:
- (i) the \*auditing principles; or
  - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

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

*Election irrevocable*

- (3) The \*hedging financial arrangement election is irrevocable.

Note: The election may cease to apply under section 230-385.

**230-320 Hedging financial arrangement election where differing income and accounting years**

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-315(2)(a); and
    - (ii) audited in accordance with paragraph 230-315(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-315(2).

**230-325 Hedging financial arrangements to which election applies**

A \*hedging financial arrangement election applies to a \*hedging financial arrangement:

- (a) that you start to have in the income year in which you make the election or in a later income year; and
- (b) that is not excluded from the application of the election by section 230-330.

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

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Note: Subject to a determination by the Commissioner, the hedging financial arrangement election does not apply to a financial arrangement you start to have after you fail to comply with the requirements in sections 230-355 and 230-360 and paragraph 230-365(c) in relation to a hedging financial arrangement to which the election does apply: see section 230-385. See also subsection 230-305(1).

**230-330 Hedging financial arrangements to which election does not apply**

- (1) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) Subsection (1) does not apply to a \*hedging financial arrangement if:
  - (a) the hedging financial arrangement is a \*foreign currency hedge; and
  - (b) you issue the hedging financial arrangement.
- (3) A \*hedging financial arrangement election does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (4) A \*hedging financial arrangement election does not apply to a \*financial arrangement 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

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

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- (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (5) A \*hedging financial arrangement election does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

### **230-335 Hedging financial arrangement and hedged item**

#### *Hedging financial arrangement*

- (1) A \*financial arrangement that you have that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a **hedging financial arrangement** if:
  - (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to a \*hedged item or items; and
  - (b) at the time you create, acquire or apply the arrangement, the arrangement satisfies the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument; and
  - (c) the arrangement is recorded as a hedging instrument in:
    - (i) your financial report (including documents and records on which the report is based); or
    - (ii) if the arrangement hedges a risk in relation to \*foreign currency—your financial report or the financial report of a consolidated entity in which you are included (including documents and records on which the report is based);for the income year in which the rights and/or obligations are created, acquired or applied.

Note: For **document** and **record**, see section 2B of the *Acts Interpretation Act 1901*.

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

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- (2) If:
- (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
  - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities;
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.
- (3) A \*financial arrangement that is a \*derivative financial arrangement, or is not a derivative financial arrangement but is a \*foreign currency hedge, is a **hedging financial arrangement** if:
- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to something; and
  - (b) one or more of subsections (4), (5), (6) or (7) is satisfied; and
  - (c) the requirements of paragraphs (1)(b) or (c) are not able to be satisfied:
    - (i) because of the requirements of the principles or standards referred to in paragraph 230-315(2)(a); and
    - (ii) not because of any act or omission on your part to deliberately fail to satisfy those requirements; and
  - (d) in a case in which none of subsections (5), (6) and (7) are satisfied—you satisfy the additional recording requirements of subsection 230-355(5); and
  - (e) in any case—you satisfy the requirements (if any) prescribed by the regulations for the purposes of this paragraph.
- (3A) Disregard paragraph (3)(d) if subsection (4) is satisfied and:
- (a) a \*hedging financial arrangement election applies to the \*financial arrangement (because you previously satisfied the additional recording requirements mentioned in that paragraph at a time when the election applied); or

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



- (b) all of the following subparagraphs apply:
- (i) a hedging financial arrangement election would apply to the financial arrangement if you satisfied the additional recording requirements mentioned in paragraph (3)(d);
  - (ii) the election and subsection (3) apply to another financial arrangement;
  - (iii) subsection (4) is or was satisfied in relation to that other arrangement at a time when the election applied to that other arrangement.
- (4) This subsection is satisfied if:
- (a) the \*financial arrangement hedges a foreign currency risk in relation to an anticipated \*foreign equity distribution from a \*connected entity; and
  - (b) the distribution is \*non-assessable non-exempt income under section 768-5.
- (5) This subsection is satisfied if:
- (a) you enter into a \*financial arrangement with a \*connected entity; and
  - (b) the principles or standards referred to in paragraph 230-315(2)(a) require that a consolidated financial report be prepared that deals with both your affairs and the affairs of the connected entity; and
  - (c) the report properly reflects your affairs; and
  - (d) the arrangement satisfies the requirements of paragraph (1)(a); and
  - (e) the arrangement would satisfy the requirements of paragraph (1)(b) or (c) but for the fact that the consolidated report disregards the arrangement.
- (6) This subsection is satisfied if:
- (a) the period for which the risk or risks are hedged does not straddle 2 or more income years; and
  - (b) the \*financial arrangement satisfies the requirements of paragraph (1)(a); 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 arrangement would satisfy the requirements of paragraph (1)(c) if the period for which the risk or risks that are hedged did straddle 2 or more income years.
- (7) This subsection is satisfied if the requirements prescribed by the regulations for the purposes of this subsection are satisfied.

*Financial arrangement hedging more than one type of risk*

- (8) A \*financial arrangement that hedges more than one type of risk may only be a **hedging financial arrangement** if the principles or standards referred to in paragraph (1)(b) allow the arrangement to be designated as a hedge of those risks.

*More than one financial arrangement hedging the same risk or risks*

- (9) If 2 or more \*financial arrangements hedge the same risk or risks, each of the arrangements may only be a **hedging financial arrangement** if the principles or standards referred to in paragraph (1)(b) allow those arrangements to be viewed in combination and jointly designated as hedging that risk or those risks.

*Hedged item*

- (10) If a \*financial arrangement that you have hedges a risk in relation to:
- (a) an asset or a part of an asset; or
  - (b) a liability or a part of a liability; or
  - (c) a firm commitment (within the meaning of the \*accounting principles) or a part of such a commitment; or
  - (d) a highly probable forecast transaction (within the meaning of the accounting principles) or a part of such a transaction; or
  - (e) a net investment in a foreign operation (within the meaning of the accounting principles) or a part of such an investment;
- or

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

- (f) something prescribed by the regulations for the purposes of this paragraph;  
the asset (or that part of the asset), the liability (or that part of the liability), the commitment (or that part of the commitment), the transaction (or that part of the transaction) or the investment (or that part of the investment) is a **hedged item** for the arrangement.
- (11) If a \*financial arrangement is a \*hedging financial arrangement because of paragraph (4)(a), the anticipated dividend referred to in that subparagraph is a **hedged item** for the arrangement even if subsection (10) is not satisfied in relation to the anticipated dividend.

### **230-340 Generally whole arrangement must be hedging financial arrangement**

- (1) Subject to subsections (2), (3) and (4), the whole of a \*financial arrangement must satisfy the requirements of subsection 230-335(1) or (3) for the arrangement to be a **hedging financial arrangement**.

#### *Partial hedges*

- (2) If a \*financial arrangement:
- (a) is an options contract; and
  - (b) hedges risk only in part by reference to changes in the intrinsic value of the options contract;
- the arrangement may be treated as a **hedging financial arrangement** to the extent to which the part of the arrangement referred to in paragraph (b) satisfies the requirements of subsection 230-335(1) or (3).
- (3) If a \*financial arrangement:
- (a) is a forward contract; and
  - (b) has a spot price element and an interest element;

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

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the arrangement may be treated as a **hedging financial arrangement** to the extent to which the spot price element satisfies the requirements of subsection 230-335(1) or (3).

*Proportionate hedges*

- (4) A specified proportion of a \*financial arrangement may be treated as a **hedging financial arrangement** to the extent to which that proportion of the arrangement satisfies the requirements of subsection 230-335(1) or (3).

*Separate financial arrangements if partial or proportionate hedge*

- (5) If a part (or parts), or a proportion (or proportions), of a \*financial arrangement is (or are) treated as a \*hedging financial arrangement under subsection (2), (3) or (4):
- (a) the part (or each of the parts), or the proportion (or each of the proportions), of the arrangement that is (or are) treated as a hedging financial arrangement is taken to be a separate financial arrangement for the purposes of this Division; and
  - (b) the remaining part or proportion (if any) of the arrangement is taken to be a separate financial arrangement for the purposes of this Division.
- (6) Subsection (5) has effect even if there would not be separate \*arrangements under subsection 230-55(4).

**230-345 Requirements not satisfied because of honest mistake or inadvertence**

If a \*derivative financial arrangement, or a \*foreign currency hedge, that you have would not be a \*hedging financial arrangement only because the requirements of paragraph 230-335(1)(b) or (c), or both, are not satisfied because of an honest mistake or inadvertence, it is nevertheless a **hedging financial arrangement** if the Commissioner considers this appropriate having regard to:

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

- (a) your documented risk management practices and policies;  
and
- (b) your record keeping practices; and
- (c) your accounting systems and controls; and
- (d) your internal governance processes; and
- (e) the circumstances surrounding the mistake or inadvertence (including the steps (if any) taken to correct or address the mistake or inadvertence and the steps (if any) taken to prevent a recurrence); and
- (f) the extent to which the requirements of paragraphs 230-335(1)(b) and (c) have been met; and
- (g) the objects of this Subdivision.

### **230-350 Derivative financial arrangement and foreign currency hedge**

#### *Derivative financial arrangement*

- (1) A **derivative financial arrangement** is a \*financial arrangement that you have where:
- (a) its value changes in response to changes in a specified variable or variables; and
  - (b) there is no requirement for a net investment, or there is such a requirement but the net investment is smaller than would be required for other types of financial arrangement that would be expected to have a similar response to changes in market factors.

Note: Paragraph (a)—a specified variable includes an interest rate, foreign exchange rate, credit rating, index or commodity or financial instrument price.

#### *Foreign currency hedge*

- (2) A **foreign currency hedge** is a \*financial arrangement that you have if:
- (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and
  - (b) the arrangement hedges a risk in relation to movements in currency exchange rates.

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

### **230-355 Recording requirements**

- (1) The requirement of this section is that you must make, or have in place, a record that:
  - (a) contains a description of the following:
    - (i) the \*hedging financial arrangement in relation to which the election is made;
    - (ii) the nature of the risk or risks being hedged;
    - (iii) the \*hedged item or items;
    - (iv) how you will assess the effectiveness of hedging the risk in reducing your exposure to changes in the fair value of the hedged item or items or cash flows or foreign currency exposure attributable to them;
    - (v) the risk management objective for, and the risk management strategy to be followed in, acquiring, creating or applying the arrangement; and
  - (b) contains any further details that the \*accounting principles require, by way of documentation, for an arrangement to be recorded in a financial report as a hedging instrument; and
  - (c) sets out the terms of the determinations you make under section 230-360.

To avoid doubt, paragraph (b) applies even if the arrangement is not recorded in your financial report as a hedging instrument.
- (2) To avoid doubt, the record may consist of a single document or 2 or more documents.
- (3) The record must be made or in place:
  - (a) at, or soon after, the time when you create, acquire or apply the \*hedging financial arrangement; or
  - (b) at such other time as is provided for in the regulations for the purposes of this paragraph.
- (4) The description must be sufficiently precise and detailed that the following are clear:
  - (a) that the risk in respect of the particular \*hedged item or items was the one hedged by the \*hedging financial arrangement;

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

- (b) the extent to which the risk was hedged;
  - (c) that the rights and/or obligations comprising the hedging financial arrangement were in fact those created, acquired or applied for the purpose of hedging the risk.
- (5) If a \*financial arrangement is a \*hedging financial arrangement under subsection 230-335(2) or (3), the following requirements must be met in addition to the requirements of subsections (1), (3) and (4):
- (a) you must make or have in place, at, or soon before or soon after, the time when you create, acquire or apply the arrangement, a record that sets out:
    - (i) a statement of why, and the way in which, the arrangement operates commercially or economically as a hedge of the \*hedged item or items; and
    - (ii) the reasons why the arrangement does not satisfy the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument;
  - (b) you must, at the end of each income year during which you have the arrangement, make a record of the accumulated gains and/or losses (whether realised or unrealised) as at the end of that income year from the arrangement or arrangements relating to the hedged item or items that are yet to be included in your assessable income or allowed to you as deductions;
  - (c) you must have, at the time when you create, acquire or apply the arrangement, a record that sets out your risk management policies and practices;
  - (d) you must have in place, at the time when you create, acquire or apply the arrangement, internal risk management systems and controls that record the arrangement and the hedged item or items.
- (6) For the purposes of paragraph (5)(b), you must assume that:
- (a) all the gains from the \*financial arrangement would be assessable income; and

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

Section 230-360

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- (b) all the losses from the financial arrangement would be allowed to you as deductions.

**230-360 Determining basis for allocating gain or loss**

- (1) A requirement of this section is that you must determine the basis on which your gain or loss from the \*hedging financial arrangement is to be allocated to an income year, or over 2 or more income years, for the purposes of this Division.
- (2) It is also a requirement of this section that the basis that you determine must:
- (a) fairly and reasonably correspond with the basis on which gains, losses or other amounts in relation to the \*hedged item or items are recognised or allocated under this Act; and
  - (b) be objective; and
  - (c) be sufficiently precise and detailed that, when your gain, loss or other amount from the \*hedged item or items is taken into account for the purposes of this Act, the following will be clear from the record made under section 230-355:
    - (i) the time at which the gain or loss from the \*hedging financial arrangement is to be taken into account for the purposes of this Division;
    - (ii) the way in which that gain or loss will be dealt with under section 230-310.

Note: Paragraph (a) refers to an amount in relation to the hedged item or items being recognised or allocated under this Act. This would include an amount being allowed as a deduction or an amount being included in assessable income. If the hedged item were an asset, an amount referable to a part of the cost of the asset might, for example, be allowed as a deduction for a particular income year.

- (3) To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the \*hedging financial arrangement.

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

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### **230-365 Effectiveness of the hedge**

The requirement of this section is that:

- (a) hedging the risk must be expected to be highly effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a)), for the period for which you expect to have the \*hedging financial arrangement, in reducing your exposure to changes in the fair value of the \*hedged item or items or cash flows attributable to your hedged risk; and
- (b) the fair value of the hedged item or items or cash flows relating to them and the fair value of the arrangement must be able to be reliably measured; and
- (c) you must assess the hedging of the risk by the arrangement:
  - (i) on a regular basis in accordance with the \*accounting principles; and
  - (ii) at least once in each 12 month period; and
- (d) your assessment must be that the hedging of the risk will be highly effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a)) in reducing your exposure to changes in the fair value of the hedged item or items or cash flows attributable to the hedged risk throughout the remainder of the period for which you expect to have the arrangement.

### **230-370 When election ceases to apply**

- (1) A \*hedging financial arrangement election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-315(2) to make the election for that income year.
- (2) Subsection (1) does not prevent you from making a new \*hedging financial arrangement election at a later time if you become, at that later time, eligible under subsection 230-315(2) to make an election for 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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**Section 230-375**

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Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

**230-375 Balancing adjustment if election ceases to apply**

- (1) This section applies if a \*hedging financial arrangement election ceases to have effect under subsection 230-370(1).
- (2) You are taken, for the purposes of this Division, to have:
  - (a) disposed of each \*hedging financial arrangement to which the election applies for its fair value immediately before the election ceases to have effect; and
  - (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect.
- (3) To avoid doubt, this Subdivision applies, for the purposes of working out the consequences of the disposal referred to in paragraph (2)(a), as if the \*hedging financial arrangement were one to which the \*hedging financial arrangement election applied at the time of the disposal.

**230-380 Commissioner may determine that requirement met**

*Commissioner may determine that requirement met*

- (1) If (apart from this section) the requirements of sections 230-355 to 230-365 are not met in relation to a \*hedging financial arrangement that you have, treat those requirements as having been so met if the Commissioner makes a determination under subsection (1A) in relation to the arrangement.
  - (1A) The Commissioner may make the determination if the Commissioner considers that this is appropriate, having regard to:
    - (a) the respects in which the arrangement does not meet those requirements; and
    - (b) the extent to which it does not meet those requirements; and
    - (c) the reasons why it does not meet those requirements; and

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

- (d) if the Commissioner is considering whether to impose conditions under subsection (2)—the likelihood that you will comply with those conditions; and
- (e) the objects of this Subdivision.

*Commissioner may impose additional record keeping requirements*

- (2) The Commissioner may make a determination under subsection (1A) conditional on your keeping records in addition to those required by section 230-355.
- (3) A determination under subsection (1A) ceases to have effect if you breach a condition imposed under subsection (2).
- (4) Subsection (3) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (5) In deciding whether to make the determination under subsection (4), the Commissioner must have regard to:
  - (a) your record keeping practices; and
  - (b) your compliance history; and
  - (c) any changes that have been made to:
    - (i) your accounting systems and controls; and
    - (ii) your internal governance processes;to ensure that breaches of the kind referred to in subsection (3) do not happen again; and
  - (d) any other relevant matter.

*Commissioner may determine matter under section 230-360*

- (6) If:
  - (a) the Commissioner makes a determination under subsection (1A) in relation to a \*hedging financial arrangement; and
  - (b) either or both of the following applies:

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

**Section 230-385**

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- (i) you fail to determine a matter in relation to the arrangement under section 230-360;
- (ii) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);

the Commissioner may determine that matter, in a way that satisfies the requirements of section 230-360. The Commissioner's determination has effect as if you had made the determination and recorded it under that section.

**230-385 Consequences of failure to meet requirements**

*When this section applies*

- (1) This section applies if:
  - (a) your \*hedging financial arrangement election applies to a \*hedging financial arrangement; and
  - (b) you do not meet a requirement of section 230-355 or 230-360 or paragraph 230-365(c) in relation to the arrangement.
- (2) For the purposes of paragraph (1)(b), treat the requirement in paragraph 230-365(c) as being met even if you do not assess the hedging of the risk mentioned in that paragraph, but you can demonstrate that you intend to do so.

*Commissioner may determine matter under section 230-360*

- (3) If:
  - (a) you fail to determine a matter in relation to the \*hedging financial arrangement under section 230-360; or
  - (b) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);the Commissioner may determine that matter, in a way that satisfies the requirements of section 230-360. A reference in this Division to a determination made under that section is treated as including a reference to a determination under this subsection.

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

*Election does not apply to hedging financial arrangements you start to have after failing to comply with requirements*

- (4) Your \*hedging financial arrangement election does not apply to a \*hedging financial arrangement you start to have:
- (a) after you fail to meet the requirement mentioned in paragraph (1)(b) in relation to the arrangement mentioned in that paragraph; and
  - (b) before a date (if any) determined by the Commissioner.
- (5) The Commissioner may make a determination under paragraph (4)(b) only if satisfied that you are unlikely to fail again to meet a requirement of section 230-355 or 230-360 or paragraph 230-365(c) in relation to a \*hedging financial arrangement.
- (6) In deciding whether to make a determination under paragraph (4)(b), the Commissioner must have regard to:
- (a) your record keeping practices; and
  - (b) your compliance history; and
  - (c) any changes that have been made to:
    - (i) your accounting systems and controls; and
    - (ii) your internal governance processes;to ensure that failures of the kind mentioned in paragraph (1)(b) do not happen again; and
  - (d) any other relevant matter.

*Commissioner may still exercise powers under section 230-380*

- (7) This section does not prevent the Commissioner from exercising the Commissioner's powers under section 230-380 in relation to the \*hedging financial arrangement mentioned in subsection (1).

## **Subdivision 230-F—Reliance on financial reports**

### **Table of sections**

230-390 Objects of this Subdivision

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

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**Section 230-390**

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- 230-395 Election to rely on financial reports
- 230-400 Financial reports election where differing income and accounting years
- 230-405 Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)
- 230-410 Financial arrangements to which the election applies
- 230-415 Financial arrangements not covered by election
- 230-420 Effect of election to rely on financial reports
- 230-425 When election ceases to apply
- 230-430 Balancing adjustment if election ceases to apply

**230-390 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a \*financial arrangement with the accounting treatment that applies to the arrangement; and
- (b) to achieve those objects without your obtaining inappropriate tax benefits.

**230-395 Election to rely on financial reports**

*Election*

- (1) You may make an ***election to rely on financial reports*** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

*Eligibility to make election*

- (2) You are eligible to make an election to rely on financial reports for an income year if:
  - (a) you prepare a financial report for that income year in accordance with:
    - (i) the \*accounting principles; or
    - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a \*foreign law that

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

apply to the preparation of the financial report under a foreign law; and

- (b) the financial report is audited in accordance with:
  - (i) the \*auditing principles; or
  - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law; and
- (c) your auditor has not qualified the auditor's report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of \*financial arrangements; and
- (d) your accounting systems and controls and your internal governance processes are reliable; and
- (e) no report of an audit or review conducted in the income year, or any of the preceding 4 income years, has included an adverse assessment of your accounting systems in a respect that is relevant to the taxation treatment of financial arrangements.

Note 1: Paragraph (b)—section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

Note 2: For the purposes of paragraphs (c) and (e), a qualification or assessment may be relevant to the taxation treatment of financial arrangements even though it does not deal with the amount or timing of recognition of gains or losses (but relates, for example, to the reliability of the accounting systems through which information about financial arrangements is recorded).

- (3) Paragraph (2)(e) does not apply to a report of:
  - (a) an internal audit or review that you conduct; or
  - (b) an audit or review of a kind prescribed by the regulations for the purposes of this paragraph.

*Election irrevocable*

- (4) An election under subsection (1) is irrevocable.

Note: The election may cease to apply under section 230-425.

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

Section 230-400

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**230-400 Financial reports election where differing income and accounting years**

- (1) This section applies if:
  - (a) you prepare a financial report for a year (the *first year*); and
  - (b) you prepare a financial report for the subsequent year (the *second year*); and
  - (c) your income year starts in the first year and ends in the second year; and
  - (d) both the financial report for the first year and the financial report for the second year are:
    - (i) prepared in accordance with paragraph 230-395(2)(a); and
    - (ii) audited in accordance with paragraph 230-395(2)(b); and
  - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-395(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
  - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-420 (treating the first year as an income year);
  - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
  - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-420 (treating the second year as an income year);
  - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

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

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- (e) next:
- (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
  - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
  - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
  - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

**230-405 Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)**

- (1) Paragraph 230-395(2)(c) or (e) does not apply in relation to your \*election to rely on financial reports for a particular income year or income years if the Commissioner determines that the paragraph does not apply to the election for that income year or those income years.
- (2) In deciding whether to make the determination under subsection (1), the Commissioner must have regard to:
- (a) the reasons for the non-compliance with the principles or standards concerned; and

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

Section 230-410

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- (b) the remedial action (if any) that you have undertaken to ensure that non-compliance with those principles or standards does not occur in future (such as changes to your accounting systems and controls or to your internal governance structures); and
- (c) if you, or your activities, are subject to regulatory oversight or review—any opinions expressed by the regulator about the adequacy of remedial action of the kind referred to in paragraph (b); and
- (d) any other relevant matter.

**230-410 Financial arrangements to which the election applies**

- (1) An \*election to rely on financial reports applies in relation to a \*financial arrangement that you have if:
  - (a) the arrangement is a \*Division 230 financial arrangement; and
  - (b) you start to have the arrangement in the income year in which you make the election or in a later income year; and
  - (c) the arrangement is recognised in financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b); and
  - (d) if the arrangement is a financial arrangement under section 230-50—the arrangement is an asset or liability that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting principles; or
    - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a \*foreign law;  
to classify or designate, in the financial reports, as at fair value through profit or loss; and
  - (e) it is reasonably expected that the following is, or will be, the same:

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

- (i) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the financial reports);
  - (ii) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the provisions of this Division if the election under this subsection did not apply to the arrangement); and
- (f) the differences between the results of the following methods would reasonably be expected not to be substantial:
- (i) the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year;
  - (ii) the method that would be applied by this Division to work out the amounts of those gains or losses if the election did not apply to the arrangement.

This subsection has effect subject to section 230-415.

- (2) In applying paragraph (1)(f) at the time when you start to have the \*financial arrangement, disregard any differences between the results of the methods referred to in subparagraphs (1)(f)(i) and (ii) that are attributable solely to the provision for the possible impairment of debts required by the principles or standards referred to in paragraph 230-395(2)(a).
- (3) Subsections (4), (5) and (6) apply if, but for this subsection, paragraphs (1)(c) and (d) would not be satisfied in relation to a \*financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) \*accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
  - (b) 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.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single

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

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**Section 230-410**

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entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the \*financial arrangement.
- (5) Paragraph (1)(e) applies as if the reference in subparagraph (1)(e)(i) to the amount of the overall gain or loss you make from the \*financial arrangement (as determined in accordance with the financial reports) were a reference to the amount of that overall gain or loss (as would be determined in accordance with the financial reports if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3)).
- (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i) to the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year were a reference to the method that would be used in your financial reports to work out those amounts if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3).
- (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to a \*financial arrangement, assume that you had made any election that:
  - (a) you could make under Subdivision 230-C or 230-D; and
  - (b) could apply to the arrangement.
- (8) If:
  - (a) the \*financial arrangement would not be a financial arrangement if the following provisions were disregarded:
    - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
    - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and

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

- (b) paragraphs (1)(c) and (d) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
  - (c) the \*election to rely on financial reports is made by:
    - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
    - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(c) and (d) are taken to be satisfied in relation to the arrangement.

### **230-415 Financial arrangements not covered by election**

- (1) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
  - (a) the arrangement is an \*equity interest; and
  - (b) you are the issuer of the equity interest.
- (2) An \*election to rely on financial reports does not apply to a \*financial arrangement if:
  - (a) you are:
    - (i) an individual; or
    - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
  - (b) the arrangement is a \*qualifying security; and
  - (c) you have not made an election under subsection 230-455(7).
- (3) An \*election to rely on financial reports does not apply to a \*financial arrangement 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

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

**Section 230-420**

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- 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.
- (4) An \*election to rely on financial reports does not apply to a \*financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

**230-420 Effect of election to rely on financial reports**

- (1) If an \*election to rely on financial reports applies to a \*financial arrangement, the gain or loss you make from the arrangement for an income year is:
- (a) the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) require you to recognise in profit or loss from that arrangement for that income year; or
- (b) if subsection 230-410(3) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would have required you to recognise in profit or loss from that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-410(3)(b); or
- (c) if subsection 230-410(8) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-410(1)(d) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-410(1)(d) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that this Subdivision does not apply to a gain or loss from a financial arrangement to the extent to which Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

- (2) Subsection (3) applies if:

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

- (a) a \*head company of a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) an \*election to rely on financial reports applies to the arrangement; and
  - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
  - (d) immediately after the leaving time, the subsidiary member has the arrangement.
- (3) The gain or loss the group makes from the \*financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would require the group to recognise in profit or loss from the arrangement for that income year if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
  - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

### **230-425 When election ceases to apply**

- (1) An election under subsection 230-395(1) ceases to have effect from the start of an income year if you cease to be eligible to make an \*election to rely on financial reports for that income year.
- (2) Subsection (1) does not prevent you from making a new election under subsection 230-395(1) at a later time if you become, at that later time, eligible to make an \*election to rely on financial reports for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) An election under subsection 230-395(1) ceases to apply to a \*financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-410(1)(c), (d), (e) or (f) during 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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Section 230-430

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- (4) If the election ceases to apply to a particular \*financial arrangement under subsection (3), the election cannot subsequently apply to that arrangement (even if the requirements of paragraphs 230-410(1)(c), (d), (e) and (f) are satisfied once more in relation to the arrangement).

**230-430 Balancing adjustment if election ceases to apply**

- (1) You must make balancing adjustments under subsection (2) if an election under subsection 230-395(1) ceases to have effect under subsection 230-425(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G in relation to each of the \*financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make balancing adjustments under subsection (5) if an election under subsection 230-395(1) ceases to apply to a particular \*financial arrangement under subsection 230-425(3).
- (4) Subsection (3) does not apply to a \*financial arrangement if:
- (a) the arrangement is not one that you are required (whether or not as a result of a choice you make) by the principles or standards referred to in paragraph 230-395(2)(a) to classify or designate, in your financial reports, as at fair value through profit or loss; and
  - (b) the election under subsection 230-395(1) ceases to apply to the arrangement because the arrangement fails to satisfy the requirements of paragraph 230-410(1)(e) or (f); and
  - (c) the arrangement ceases to satisfy the requirements of that paragraph because the arrangement becomes impaired for the purposes of those principles or standards.
- (5) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you

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



disposed of the \*financial arrangement for its fair value when the election ceases to apply to the arrangement.

- (6) If a balancing adjustment is made under subsection (2) or (5) in relation to a \*financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

### **Subdivision 230-G—Balancing adjustment on ceasing to have a financial arrangement**

#### **Table of sections**

230-435	When balancing adjustment made
230-440	Exceptions
230-445	Balancing adjustment

#### **230-435 When balancing adjustment made**

##### *When balancing adjustment made*

- (1) A balancing adjustment is made under this Subdivision if:
- (a) you transfer to another entity all of your rights and/or obligations under a \*financial arrangement; or
  - (b) all of your rights and/or obligations under a financial arrangement otherwise cease; or
  - (c) you transfer to another entity:
    - (i) a proportionate share of all of your rights and/or obligations under a financial arrangement; or
    - (ii) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or
    - (iii) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit; or

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

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- (d) an \*arrangement that is a \*Division 230 financial arrangement ceases to be a financial arrangement.
- (2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation under a \*financial arrangement unless that right or obligation is one of the rights or obligations that constitute the financial arrangement.

Note: See subsections 230-45(1) and 230-50(1) and (2) for the rights and/or obligations that constitute a financial arrangement.

*Modifications for arrangements that are assets*

- (3) If the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs, paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred.
- (4) If a \*financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are treated as transferring a right under the arrangement to another entity if:
- (a) you retain the right but assume a new obligation; and
  - (b) your assumption of the new obligation has the same effect, in substance, as transferring the right to another entity; and
  - (c) the new obligation arises only to the extent to which the right to \*financial benefits under the arrangement is satisfied; and
  - (d) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
  - (e) you must, under the new obligation, provide financial benefits you receive in relation to the right to the entity to which you owe the new obligation without delay.

*Historic rate rollover of derivative financial arrangement*

- (5) For the purposes of paragraph (1)(b), all of your rights and/or obligations under a \*financial arrangement that is a \*derivative financial arrangement are taken to cease if there is an historic rate rollover of the arrangement.

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

## 230-440 Exceptions

*Equity interests etc.*

- (1) A balancing adjustment is not made under this Subdivision in relation to a \*financial arrangement at a time if:
  - (a) the arrangement is a financial arrangement under section 230-50 (equity interests etc.); and
  - (b) neither Subdivision 230-C nor Subdivision 230-F apply to the arrangement immediately before that time.

*Financial arrangements to which hedging financial arrangement elections apply*

- (2) Balancing adjustments are not made under this Subdivision in relation to a \*financial arrangement in relation to which a \*hedging financial arrangement election applies.

*Bad debts, margining and conversion into, or exchange for, ordinary shares*

- (3) A balancing adjustment is not made under this Subdivision in relation to the following events:
  - (a) a \*financial arrangement being written off in whole or part as a bad debt;
  - (b) a financial arrangement that is a \*derivative financial arrangement being settled or closed out for margining purposes;
  - (c) the ceasing of obligations or rights under a financial arrangement that is a \*traditional security if:
    - (i) the ceasing occurs because the traditional security is converted into ordinary shares in, or transferred to, a company that is the issuer of the traditional security or a \*connected entity; and
    - (ii) the traditional security was issued on the basis that it will or may convert into ordinary shares in, or be

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

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transferred to, the issuer of the traditional security or the connected entity;

- (d) the ceasing of obligations or rights under a financial arrangement that is a traditional security if:
- (i) the ceasing occurs because the traditional security is exchanged for ordinary shares in a company that is neither the issuer of the traditional security nor a connected entity; and
  - (ii) if the ceasing of the obligations or rights occurs because of a disposal—the disposal is to the issuer of the traditional security or a connected entity; and
  - (iii) the traditional security was issued on the basis that it will or may be exchanged for ordinary shares in the company.

Note: Paragraph (a)—for the treatment of bad debts, see paragraph 230-190(3)(c).

*Subsidiary member leaving consolidated group or MEC group*

- (4) A balancing adjustment is not made under this Subdivision in relation to a subsidiary member of a \*consolidated group or \*MEC group that has a \*financial arrangement ceasing to be a member of the group.

**230-445 Balancing adjustment**

*Complete cessation or transfer*

- (1) Use the following method statement to make the balancing adjustment if paragraph 230-435(1)(a), (b) or (d) applies:

*Method statement for balancing adjustment*

Step 1. Add up the following:

- (a) the total of all the \*financial benefits you have received under the \*financial arrangement;

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

Note: This would include financial benefits you receive in relation to the transfer or cessation (see paragraph 230-60(2)(c)).

- (b) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;
- (c) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions;

Note: The losses from the arrangement here include losses made in gaining or producing exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement;
- (e) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 2. Add up the following:

- (a) the total of all the \*financial benefits you have provided under the \*financial arrangement;

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

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Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-60(1)(c)).

(b) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;

(c) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable;

Note: The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.

(d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement.

(e) the total of the amounts that will be included in your assessable income after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable 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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Step 3. Compare the amount obtained under step 1 (the *step 1 amount*) with the amount obtained under step 2 (the *step 2 amount*). If the step 1 amount exceeds the step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the \*financial arrangement for the purposes of this Division. If the step 2 amount exceeds the step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the step 1 amount and the step 2 amount are equal, no balancing adjustment is made.

*Proportionate transfer of all rights and/or obligations under financial arrangement*

- (2) If subparagraph 230-435(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in step 1; and
  - (b) the amounts referred to in step 2;
- by applying the proportion referred to in subparagraph 230-435(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

- (3) If subparagraph 230-435(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in step 1; and
  - (b) the amounts referred to in step 2;
- were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(ii).

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

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*Proportionate transfer of specifically identified right or obligation under financial arrangement*

- (4) If subparagraph 230-435(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
    - (i) the amounts referred to in step 1; and
    - (ii) the amounts referred to in step 2;were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(iii); and
  - (b) by reducing those amounts by applying the proportion referred to in subparagraph 230-435(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

*Income year for which gain or loss is made*

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 230-435(1) occurs.

*Treatment of bad debts in relation to financial arrangements*

- (7) For the purposes of applying paragraph (b) of step 1 of the method statement in subsection (1) to a \*financial arrangement, a bad debt deduction in relation to the arrangement to which

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



subsection 230-25(3) applies is taken to be a deduction for a loss from the arrangement.

## **Subdivision 230-H—Exceptions**

### **Table of sections**

230-450	Short-term arrangements where non-money amount involved
230-455	Certain taxpayers where no significant deferral
230-460	Various rights and/or obligations
230-465	Ceasing to have a financial arrangement in certain circumstances
230-470	Forgiveness of commercial debts
230-475	Clarifying exceptions
230-480	Treatment of gains in form of franked distribution etc.
230-481	Registered emissions units

### **230-450 Short-term arrangements where non-money amount involved**

This Division does not apply in relation to your gains and losses from a \*financial arrangement if:

- (a) the arrangement is a financial arrangement under section 230-45; and
- (b) either:
  - (i) you acquired goods or other property (other than goods that are, or property that is, money or a \*money equivalent) or services (other than services that are a money equivalent) from another entity and the \*financial benefits you are to provide under the arrangement are consideration for those goods, that property or those services; or
  - (ii) you provided goods or other property (other than goods that are, or other property that is, money or a money equivalent) or services (other than services that are a money equivalent) to another entity and the financial benefits you are to receive under the arrangement are consideration for those goods, that property or those services; 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 period between the following is not more than 12 months:
  - (i) the time when you are to provide or receive the consideration (or a substantial proportion of it);
  - (ii) the time when you acquired or provided the property, goods or services (or a substantial proportion of them);and
- (d) the arrangement is not a \*derivative financial arrangement for any income year; and
- (e) a \*fair value election does not apply to the arrangement.

**230-455 Certain taxpayers where no significant deferral**

- (1) This Division does not apply in relation to your gains or losses from a \*financial arrangement for any income year if:
  - (a) you are:
    - (i) an individual; or
    - (ii) a superannuation entity (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*), a \*superannuation fund that is not such an entity, a managed investment scheme (within the meaning of the *Corporations Act 2001*) or an entity with a similar status to such a scheme under a \*foreign law relating to corporate regulation; or
    - (iii) an \*ADI, a \*securitisation vehicle, an entity that is required to register under the *Financial Sector (Collection of Data) Act 2001* or an entity that would be required to register under that Act if it were a corporation; or
    - (iv) an entity other than an entity of a kind mentioned in subparagraph (i), (ii) or (iii); and
  - (b) where subparagraph (a)(ii) applies—you satisfy subsection (2) for the income year in which you start to have the arrangement; and
  - (c) where subparagraph (a)(iii) applies—you satisfy subsection (3) for the income year in which you start to have the arrangement; and

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

- (d) where subparagraph (a)(iv) applies—you satisfy subsection (4) for the income year in which you start to have the arrangement; and
  - (e) either:
    - (i) the arrangement is to end not more than 12 months after you start to have it; or
    - (ii) the arrangement is not a \*qualifying security.
- (2) An entity satisfies this subsection for an income year if:
- (a) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
  - (b) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence.
- (3) An entity satisfies this subsection for an income year if:
- (a) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$20 million if the income year is the one in which the entity comes into existence; or
  - (b) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$20 million if the income year is an income year after the one in which the entity comes into existence.
- (4) An entity satisfies this subsection for an income year if:
- (a) either:
    - (i) the entity's \*aggregated turnover for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or

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

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- (ii) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
- (b) either:
  - (i) the value of the entity's financial assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
  - (ii) the value of the entity's financial assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
- (c) either:
  - (i) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$300 million if the income year is the one in which the entity comes into existence; or
  - (ii) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$300 million if the income year is an income year after the one in which the entity comes into existence.
- (5) For the purposes of subsections (2) and (4), the value of the entity's assets or financial assets is to be determined in accordance with:
  - (a) if the entity applies \*accounting standard AAS 25 in preparation of its financial reports—that accounting standard or another accounting standard prescribed by the regulations for the purposes of this paragraph; or

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

- (b) if paragraph (a) does not apply and the entity prepares its financial reports in accordance with the \*accounting principles—the entity’s financial reports; or
  - (c) if paragraphs (a) and (b) do not apply and the entity prepares its financial reports in accordance with an accounting standard comparable to accounting standard AAS 25 under a \*foreign law—that comparable standard; or
  - (d) if paragraphs (a), (b) and (c) do not apply—commercially accepted valuation principles.
- (6) Subsection (1) does not apply to your gains or losses from a \*financial arrangement for an income year if:
- (a) you have made an election under subsection (7) in that income year or an earlier income year; and
  - (b) you start to have the arrangement after the beginning of the income year in which you make the election.
- (7) An election under this subsection is an election to have this Division apply to all of the \*financial arrangements that you start to have in the income year in which the election is made or a later income year.
- (8) An election under subsection (7) is irrevocable.
- (9) This section does not apply in relation to your gains or losses from a \*financial arrangement that you start to have after a time if you are not an individual and you failed to satisfy subsection (2), (3) or (4) (as the case may be) for an income year ending before that time.

### **230-460 Various rights and/or obligations**

#### *Rights and/or obligations subject to an exception*

- (1) This Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations under the arrangement are the subject of an exception under any of the following subsections.

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

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Note: Further exceptions are also provided for in section 230-475.

*Leasing or property arrangement*

- (2) A right or obligation arising under:
- (a) an \*arrangement to which Division 242 (about luxury car leases) applies; or
  - (b) an arrangement to which Division 240 (about arrangements treated as a sale and loan) applies; or
  - (c) an arrangement that relates to an asset to which Division 250 (about assets put to tax preferred use) applies; or
  - (d) an arrangement that, in substance or effect, depends on the use of a specific asset that is:
    - (i) real property; or
    - (ii) goods or a personal chattel (other than money or a \*money equivalent); or
    - (iii) intellectual property;and gives a right to control the use of the asset; or
  - (e) an arrangement that is a licence to use:
    - (i) real property; or
    - (ii) goods or a personal chattel (other than money or a money equivalent); or
    - (iii) intellectual property;is the subject of an exception.

*Interest in partnership or trust*

- (3) A right carried by an interest in a partnership or a trust, or an obligation that corresponds to such a right, is the subject of an exception if:
- (a) there is only one class of interest in the partnership or trust; or
  - (b) the interest is an \*equity interest in the partnership or trust; or
  - (c) for a right or obligation relating to a trust—the trust is managed by a funds manager or custodian, or a responsible

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

entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).

- (4) Subsection (3) does not apply if, assuming that the \*financial arrangement were a \*Division 230 financial arrangement, a \*fair value election, or an \*election to rely on financial reports, would apply to it.

*Certain insurance policies*

- (5) A right or obligation under a \*life insurance policy is the subject of an exception unless:
- (a) you are not a \*life insurance company that is the insurer under the policy; and
  - (b) the policy is an annuity that is a \*qualifying security.
- (6) A right or obligation under a \*general insurance policy is the subject of an exception unless:
- (a) you are not a \*general insurance company; and
  - (b) the policy is a \*derivative financial arrangement.

*Certain workers' compensation arrangements*

- (7) A right or obligation in relation to a liability for workers' compensation claims to which Subdivision 321-C applies is the subject of an exception.

*Certain guarantees and indemnities*

- (8) A right or obligation under a guarantee or indemnity is the subject of an exception unless:
- (a) assuming that the \*financial arrangement were a \*Division 230 financial arrangement, it would be the subject of a \*fair value election or an \*election to rely on financial reports; or
  - (b) the financial arrangement is a \*derivative financial arrangement; or

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

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- (c) the guarantee or indemnity is given in relation to a financial arrangement.

*Personal arrangements and personal injury*

- (9) The following rights and obligations are the subject of an exception:
  - (a) a right to receive, or an obligation to provide, consideration for providing personal services;
  - (b) a right, or obligation, arising from the administration of a deceased person's estate;
  - (c) a right to receive, or an obligation to provide, a gift under a deed;
  - (d) a right to receive, or an obligation to provide, a \*financial benefit by way of maintenance:
    - (i) to an individual who is or has been the \*spouse of the person liable to provide the benefit; or
    - (ii) to or for the benefit of an individual who is or has been a child of the person liable to provide the benefit; or
    - (iii) to or for the benefit of an individual who is or has been a child of an individual who is or has been a spouse of the person liable to provide the benefit;
  - (e) a right to receive, or an obligation to provide, a financial benefit in relation to personal injury to an individual;
  - (f) a right to receive, or an obligation to provide, a financial benefit in relation to an injury to an individual's reputation.
- (10) Without limiting paragraph (9)(e), that paragraph applies:
  - (a) even if the person to whom the \*financial benefit is to be provided is not the individual who was injured; and
  - (b) even if the personal injury to the individual takes the form of:
    - (i) a wrong to the individual; or
    - (ii) illness of the individual.

Note: The person referred to in paragraph (a) may, for example, be a relative of the individual who was injured.

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

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*Superannuation and pension benefits*

- (11) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises from a person's membership of a superannuation or pension scheme, including:
- (a) a right of a dependant of a member to receive financial benefits or an obligation to provide financial benefits to a dependant of a member; and
  - (b) a right or obligation arising from an interest in:
    - (i) a \*complying superannuation fund or \*non-complying superannuation fund; or
    - (ii) a \*pooled superannuation trust; or
    - (iii) an \*approved deposit fund; or
    - (iv) an \*RSA.

*Interest in controlled foreign companies*

- (12) A right or obligation that arises under a \*direct participation interest of an \*attributable taxpayer in a \*controlled foreign company is the subject of an exception.

*Proceeds from certain business sales*

- (13) A right to receive, or an obligation to provide, \*financial benefits arising from the sale of:
- (a) a business; or
  - (b) shares in a company that operates a business; or
  - (c) interests in a trust that operates a business;
- is the subject of an exception if the amounts, or the values, of those benefits are only \*contingent on aspects of the economic performance of the business after the sale.

*Infrastructure borrowings*

- (14) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises under an

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

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\*arrangement to which Division 16L of the *Income Tax Assessment Act 1936* applies.

*Farm management deposits*

- (15) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if:
- (a) the right or obligation is the right or obligation of an \*owner of a \*farm management deposit; and
  - (b) the right or obligation relates to the deposit.

*Rights and obligations to which section 121EK of the Income Tax Assessment Act 1936 applies*

- (16) A right or obligation that arises because of a payment of an amount to which section 121EK of the *Income Tax Assessment Act 1936* applies is the subject of an exception.

*Forestry managed investment scheme interests*

- (17) A right or obligation under a \*forestry interest in a \*forestry managed investment scheme in relation to which you can claim deductions under Division 394 is the subject of an exception.

*Exploration benefits*

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

*Regulations may provide for exceptions*

- (18) A right or obligation of a kind specified in the regulations for the purposes of this subsection is the subject of an exception.

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

**230-465 Ceasing to have a financial arrangement in certain circumstances**

- (1) This section applies if:
- (a) you cease to have a \*financial arrangement (or part of a financial arrangement); and
  - (b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and
  - (c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
    - (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
    - (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial arrangement in the ordinary course of trading on a securities market; and
  - (d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
  - (e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.
- (2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.
- Note: However, the amount by which the loss is reduced is a capital loss.
- (3) In applying paragraph (1)(e), you must have regard to:
- (a) the financial position of the other party or parties to the \*financial arrangement; and
  - (b) the perceptions of the financial position of the other party or parties 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) other relevant matters.

**230-470 Forgiveness of commercial debts**

If a gain that you make from a \*financial arrangement arises from the \*forgiveness of a debt to which Subdivisions 245-C to 245-G apply, the gain is reduced by:

- (a) if section 245-90 (about agreements to forgo capital losses or deductions) applies—the debt’s provisional net forgiven amount mentioned in that section; or
- (b) if that section does not apply—the debt’s \*net forgiven amount.

Note: Section 51AAA (about a net capital gains limit) of the *Income Tax Assessment Act 1936* also has the effect of preventing you from deducting losses.

**230-475 Clarifying exceptions**

*Exceptions*

- (1) To avoid doubt, this Division does not apply to your gains and losses from a \*financial arrangement for any income year to the extent that your rights and/or obligations are the subject of an exception under any of the following subsections.
- (2) This section is not intended to limit, expand or otherwise affect the operation of sections 230-45 to 230-55 (which tell you what is covered by the concept of **financial arrangement**) in relation to rights and/or obligations other than those dealt with in this section.

*Retirement village and residential or flexible care arrangements*

- (3) The following rights and obligations are the subject of an exception:
  - (a) a right or obligation arising under a \*retirement village residence contract;
  - (b) a right or obligation arising under a \*retirement village services contract;

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

- (c) a right or obligation arising under an \*arrangement under which \*residential care or \*flexible care is provided.
- (4) For the purposes of subsection (3):
  - (a) a **retirement village residence contract** is a contract that gives rise to a right to occupy \*residential premises in a \*retirement village; and
  - (b) a **retirement village services contract** is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

### **230-480 Treatment of gains in form of franked distribution etc.**

- (1) This section applies if a gain you make from a \*financial arrangement is in the form of:
  - (a) a \*franked distribution (including a franked distribution that \*flows indirectly to you); or
  - (b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).
- (2) This Division does not apply to the gain to the extent that the \*franked distribution has a \*franked part.

### **230-481 Registered emissions units**

A \*registered emissions unit is exempt from this Division.

### **Subdivision 230-I—Other provisions**

#### **Table of sections**

230-485	Effect of change of residence—rules for particular methods
230-490	Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement
230-495	Effect of change of accounting principles or standards
230-500	Comparable foreign accounting and auditing standards
230-505	Financial arrangement as consideration for provision or acquisition of a thing

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

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- 230-510 Non-arm's length dealings in relation to financial arrangement
- 230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations
- 230-520 Disregard gains or losses covered by value shifting regime
- 230-525 Consolidated financial reports
- 230-527 Elections—reporting documents of foreign ADIs

**230-485 Effect of change of residence—rules for particular methods**

- (1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:
  - (a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and
  - (b) determining the assessability of the gains and the deductibility of the losses according to:
    - (i) your residency in each period; and
    - (ii) the sources of the gains and the connection of the losses with your assessable income.
- (2) This section applies if:
  - (a) you are a foreign resident for part of an income year (the *foreign residency period*) and an Australian resident for the other part of the income year (the *Australian residency period*); and
  - (b) section 230-490 does not apply in respect of the change of residence.

Note: See section 230-490 if you change residence, and after the change the gains and losses you make from the arrangement are not assessable or deductible under this Division.

*Realisation method*

- (3) Subsection (4) applies if:
  - (a) you have a \*financial arrangement at the time (the *residence change time*):
    - (i) you cease to be an Australian resident; or
    - (ii) you become an Australian resident; and

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

- (b) you apply the realisation method to determine the amount of a gain or loss you make from the arrangement.
- (4) You are taken for the purposes of this Division:
  - (a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

*Accruals and hedging financial arrangement methods*

- (5) Subsection (6) applies if:
  - (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the accruals or hedging financial arrangement method to determine the amount of:
    - (i) a gain included in your assessable income under section 230-15 for the income year; or
    - (ii) a loss you can deduct under section 230-15 for the income year; and
  - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (6) Apply that method by apportioning the gain or loss on a reasonable basis between those periods so as to work out:
  - (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

*Fair value, foreign exchange retranslation and financial reports methods*

- (7) Subsection (8) applies if:
  - (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the fair value or foreign exchange retranslation method or the method of relying on your financial reports to determine the amount of:

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

Section 230-490

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- (i) a gain included in your assessable income under section 230-15 for the income year; or
  - (ii) a loss you can deduct under section 230-15 for the income year; and
- (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (8) Apply that method to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and
  - (b) a gain or loss from the arrangement for the Australian residency period.

**230-490 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement**

- (1) This section applies if:
- (a) you cease to be an Australian resident at a particular time (the *residence change time*); and
  - (b) you have a \*financial arrangement at the residence change time; and
  - (c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.
- (2) You are taken for the purposes of this Division:
- (a) to have disposed of the arrangement just before that time for its fair value just before that time; and
  - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

**230-495 Effect of change of accounting principles or standards**

- (1) This section applies if:
- (a) one of these methods apply to take account of a gain or loss you make from a \*financial arrangement:

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



- (i) the fair value method provided for in Subdivision 230-C; or
  - (ii) the foreign exchange retranslation method provided for in Subdivision 230-D; or
  - (iii) the method of relying on your financial reports provided for in Subdivision 230-F; and
- (b) there is a change in, or in the application of, the relevant principles or standards (as mentioned in section 230-230 (fair value method), 230-280 (foreign exchange retranslation method) or 230-420 (method of relying on financial reports)) that apply in relation to the arrangement; and
- (c) that change applies to a particular income year and later years; and
- (d) as a result of the change, those principles or standards require you to recognise in your statement of financial position an amount (the *equity amount*), in order to avoid the need to increase or decrease gains or losses recognised in profit or loss from the financial arrangement in respect of previous income years.
- (2) If the equity amount is positive, include in your assessable income for the particular income year mentioned in paragraph (1)(c) so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).
- (3) If the equity amount is negative, you are entitled to a deduction for the particular income year mentioned in paragraph (1)(c) equal to so much of it as relates to the \*financial arrangement mentioned in paragraph (1)(a).

### **230-500 Comparable foreign accounting and auditing standards**

The regulations may:

- (a) specify that particular standards that apply under a \*foreign law are to be taken for the purposes of this Division to be comparable to the \*accounting principles; and

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

Section 230-505

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- (b) specify that particular standards that apply under a foreign law are to be taken for the purposes of this Division to be comparable to the \*auditing principles.

**230-505 Financial arrangement as consideration for provision or acquisition of a thing**

- (1) This section applies if you start or cease to have a \*Division 230 financial arrangement as consideration for the provision or acquisition of a thing.
- (2) Work out the \*market value of the thing at the time at which you (in fact) provide or acquire it. For the purposes of applying this Act to you, treat the amount:
  - (a) you obtain for providing the thing; or
  - (b) you provide for acquiring the thing;as being that market value.

Note 1: The amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing.

Note 2: This subsection does not affect the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it (except in the circumstances described in Note 3). However:

- (a) the market value of the thing will be, or form part of, those financial benefits for the purposes of section 230-445; and
- (b) in the case of a non arm's length transaction, the amount of those financial benefits may be affected by section 230-510.

Note 3: If the thing is itself a Division 230 financial arrangement and subsection (3) does not apply, this subsection will determine the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it.

- (3) Subsection (2) does not apply if:
  - (a) you start or cease to have the \*financial arrangement as mentioned in subsection (1) under an arrangement (the **starting or ceasing arrangement**); and
  - (b) the thing is itself a \*Division 230 financial 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 starting or ceasing arrangement is *not* itself a Division 230 financial arrangement.

Example: An arrangement for exchanging a share subject to Subdivision 230-C for another share subject to Subdivision 230-C, where the arrangement itself is not a Division 230 financial arrangement.

- (4) For the purposes of this section:
- (a) treat yourself as providing a thing to another entity if:
    - (i) you have provided, or are to provide, the thing to the other entity; or
    - (ii) you cease to have, have ceased to have or are to cease to have, the thing; or
    - (iii) the other entity starts to have, has started having or is to start to have, the thing; and
  - (b) treat yourself as acquiring a thing if:
    - (i) another entity has provided, or is to provide, the thing to you; or
    - (ii) another entity ceases to have, has ceased to have or is to cease to have, the thing; or
    - (iii) you start to have, have started to have or are to start to have, the thing.
- (5) For the purposes of this section, treat part of a \*Division 230 financial arrangement as a Division 230 financial arrangement.
- (6) Without limiting subsection (1), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.
- (7) To avoid doubt, this section applies even if your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) is only part of the consideration for the provision or acquisition of the thing.
- (8) For the purposes of this section, treat your starting or ceasing to have the \*financial arrangement mentioned in subsection (1) as consideration for the provision or acquisition of the thing if that

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

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starting or ceasing is, in substance or effect, done for the provision or acquisition of the thing.

Example: Starting to have a financial arrangement in satisfaction of an obligation, where the obligation itself was incurred as consideration for the thing.

**230-510 Non-arm's length dealings in relation to financial arrangement**

- (1) This section applies if:
- (a) a balancing adjustment is made under Subdivision 230-G in relation to a \*Division 230 financial arrangement you have; and
  - (b) if the balancing adjustment was made because of paragraph 230-435(1)(b) or (d) (cessations without transfer)—the arrangement is not a \*debt interest or loan.

*Non-arm's length transaction resulting in you starting to have the arrangement*

- (2) Subsection (3) applies if the parties to the dealing that resulted in you starting to have the arrangement were not dealing at \*arm's length in relation to the dealing.
- (3) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provided or received in relation to you starting to have the arrangement; and
  - (b) instead, treat yourself as having provided or received a financial benefit in relation to you starting to have the arrangement that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (2) were dealing at \*arm's length in relation to the dealing.

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

*Non-arm's length transaction resulting in change of an amount of a financial benefit that you provided or received under the financial arrangement*

- (4) Subsection (5) applies if the parties to a dealing that resulted in a change of an amount of a \*financial benefit that you provide or receive under the \*financial arrangement were not dealing at \*arm's length in relation to the dealing.
- (5) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provide or receive under the \*financial arrangement as a result of the dealing; and
  - (b) instead, treat yourself as providing or receiving a financial benefit under the financial arrangement as a result of the dealing that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing were dealing at \*arm's length in relation to the dealing.

*Non-arm's length transaction resulting in balancing adjustment*

- (6) Subsection (7) applies if the parties to the dealing that resulted in the balancing adjustment mentioned in subsection (1) being made were not dealing at \*arm's length in relation to the dealing.
- (7) For the purposes of this Division:
- (a) disregard the amount of the \*financial benefit (if any) that you provide or receive in relation to the balancing adjustment; and
  - (b) instead, treat yourself as providing or receiving a financial benefit in relation to the balancing adjustment that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (6) were dealing at \*arm's length in relation to the dealing.

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

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**230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations**

- (1) This section applies if:
  - (a) disregarding this Division, a provision mentioned in subsection (2) makes an adjustment to an amount (including a nil amount) (the *relevant amount*); and
  - (b) the relevant amount is relevant in determining the amount of a gain or loss you make from a \*Division 230 financial arrangement.
- (2) The provisions are as follows:
  - (a) section 52A of the *Income Tax Assessment Act 1936*;
  - (c) Division 16J of Part III of the *Income Tax Assessment Act 1936*;
  - (d) Division 16K of Part III of the *Income Tax Assessment Act 1936*;
  - (e) item 3 of the table in subsection 245-65(1) of this Act;
  - (f) section 775-40 of this Act.
- (3) In determining the amount of the gain or loss, treat the relevant amount as having been adjusted by the provision mentioned in subsection (2).
- (4) However, if the circumstances that give rise to the adjustment result in section 230-510 having the effect of altering the amount of the gain or loss, do not treat the relevant amount as having been adjusted under subsection (3) to the extent of that alteration.

**230-520 Disregard gains or losses covered by value shifting regime**

- (1) Disregard a gain or loss under this Division from a \*financial arrangement to the extent that it is attributable to:
  - (a) a shifting of value that has consequences under Division 723;or

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

- (b) a \*direct value shift that has consequences under Division 725; or
  - (c) an \*indirect value shift that has consequences under Division 727; or
  - (d) a shifting of value that has consequences analogous to those under Division 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.
- (2) Determine whether a shifting of value has the consequences mentioned in paragraph (1)(a) on the assumption that a \*realisation event in respect of all or part of the \*financial arrangement happens in the income year for the gain or loss.

### **230-525 Consolidated financial reports**

For the purposes of this Division, treat a financial report prepared by another entity as being prepared by you if:

- (a) the other entity is a \*connected entity of yours; and
- (b) the report is a consolidated financial report that deals with both your affairs and the affairs of the connected entity; and
- (c) the report properly reflects your affairs.

### **230-527 Elections—reporting documents of foreign ADIs**

- (1) So much of a Statement of Financial Performance and a Statement of Financial Position, given to \*APRA by a foreign ADI (within the meaning of the *Banking Act 1959*) as required under section 13 of the *Financial Sector (Collection of Data) Act 2001*, as:
- (a) cover the activities of an \*Australian permanent establishment of the foreign ADI for the year; and
  - (b) are prepared in accordance with the recognition and measurement standards under the \*accounting principles; and
  - (c) are audited in accordance with the \*auditing principles;
- are treated, for the purposes of the provisions mentioned in subsection (2), as being a financial report for a year:

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

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- (d) prepared by the foreign ADI in accordance with the accounting principles; and
  - (e) audited in accordance with the auditing principles.
- (2) The provisions are as follows:
- (a) sections 230-150 to 230-165 (election for portfolio treatment of fees);
  - (b) sections 230-210 to 230-220 (fair value election);
  - (c) sections 230-255 to 230-265 (foreign exchange retranslation election);
  - (d) sections 230-315 to 230-335 (hedging financial arrangement election);
  - (e) sections 230-395, 230-400, 230-410 and 230-430 (election to rely on financial reports).

**Subdivision 230-J—Additional operation of Division**

**Table of sections**

230-530 Additional operation of Division

**230-530 Additional operation of Division**

*Foreign currency*

- (1) This Division also applies to \*foreign currency as if the currency were a right that constituted a \*financial arrangement.

*Non-equity shares*

- (2) This Division also applies to a \*non-equity share in a company as if the share were a right that constituted a \*financial arrangement.

*Commodities held by traders*

- (3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a \*financial arrangement if:

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



- (a) you are an entity that trades or deals both in:
  - (i) that commodity; and
  - (ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and
- (b) you hold that commodity for the purposes of dealing in the commodity; and
- (c) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and
- (d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
  - (i) the \*accounting principles; or
  - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

*Offsetting commodity contracts held by traders*

- (4) This Division also applies to a contract to which you are a party as if the contract were a \*financial arrangement if:
  - (a) you have a right to receive or an obligation to provide a commodity under the contract; and
  - (b) you have a practice of dealing in the commodity through the performance of offsetting contracts to receive and provide the commodity; and
  - (c) you do not have, as your sole or dominant purpose for entering into the contract, the purpose of receiving or delivering the commodity as part of your expected purchase, sale or usage requirements; and
  - (d) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you enter into the contract; and

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

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- (e) the contract is an asset or liability that you are required (whether or not as a result of a choice you make) by:
  - (i) the \*accounting principles; or
  - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

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

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

### **Table of Subdivisions**

	Guide to Division 235
235-I	Instalment trusts

### **Guide to Division 235**

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

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

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

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

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

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

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

#### **Table of sections**

##### **Operative provisions**

235-810	Object of this Subdivision
235-815	Application of Subdivision
235-820	Look-through treatment for instalment trusts
235-825	Meaning of <i>instalment trust</i> and <i>instalment trust asset</i>

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

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**Section 235-810**

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- 235-830 What trusts are covered—instalment trust arrangements
- 235-835 Requirement for underlying investments to be listed or widely held
- 235-840 What trusts are covered—limited recourse borrowings by regulated superannuation funds
- 235-845 Interactions with other provisions

**Operative provisions**

**235-810 Object of this Subdivision**

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

**235-815 Application of Subdivision**

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

*Joint investments*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) A trust is an *instalment trust* if:

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

Section 235-830

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

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

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

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

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

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

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

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

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

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

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

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

Section 235-840

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- (b) is caused by circumstances outside the investor's control.
- (3) In applying subsection (1), disregard an asset, or the cash proceeds from disposing of an asset, if:
- (a) the trustee became entitled to the asset in respect of a \*share, unit or stapled security that was, or was part of, the underlying investment just before the entitlement arose; and
  - (b) the asset is not a \*share, unit in a unit trust, or stapled security; and
  - (c) if the asset is an interest in an entity, or a right, option or similar interest that gives the holder an entitlement to acquire an interest in an entity:
    - (i) an interest in the entity is listed for quotation in the official list of an \*approved stock exchange; or
    - (ii) the entity meets a widely held requirement set out in column 2 of item 1 or 2 of the table in subsection (1); and
  - (d) the underlying investment comprises one or more other assets that are not disregarded under this subsection.
- Example: Examples of the types of assets disregarded by this subsection are:
- (a) assets that represent distributions and capital payments in respect of the underlying investment; and
  - (b) bonus rights issued in respect of the underlying investment.
- (4) Despite subsections (1) to (3), the underlying investment does not satisfy the requirement in this section if an asset that is, or is part of, the underlying investment is an \*ESS interest to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

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

This section covers a trust if:

- (a) under an \*arrangement, an asset or assets (the *underlying investment*) is acquired by the trustee of the trust for the

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



benefit of a trustee of a \*regulated superannuation fund to secure a \*borrowing; and

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

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

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

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

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

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## **Division 240—Arrangements treated as a sale and loan**

### **Table of Subdivisions**

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240-B	The notional sale and notional loan
240-C	Amounts to be included in notional seller's assessable income
240-D	Deductions allowable to notional buyer
240-E	Notional interest and arrangement payments
240-F	The end of the arrangement
240-G	Adjustments if total amount assessed to notional seller differs from amount of interest
240-H	Application of Division 16E to certain arrangements
240-I	Provisions applying to hire purchase agreements

### **Guide to Division 240**

#### **240-1 What this Division is about**

For income tax purposes, some arrangements (such as hire purchase agreements) are recharacterised as a sale of property, combined with a loan, by the notional seller to the notional buyer, to finance the purchase price.

#### **240-3 How the recharacterisation affects the notional seller**

##### *Effect of notional sale*

- (1) The consideration for the notional sale is either the price stated as the cost or value of the property or its arm's length value. If the notional seller is disposing of the property as trading stock, the

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

normal consequences of disposing of trading stock follow. In particular, the notional seller will be assessed on the sale price.

- (2) Where the property is not trading stock the notional seller's assessable income will include any profit made by the notional seller on the notional sale or on the sale of the property after a notional re-acquisition.

*Effect of notional loan*

- (3) The notional seller's assessable income will include notional interest over the period of the loan.

*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the actual payments to the notional seller are not included in its assessable income. Also, the notional seller loses the right to deduct amounts under Division 40 (about capital allowances).

## **240-7 How the recharacterisation affects the notional buyer**

*Effect of notional purchase*

- (1) The cost of the acquisition is either the price stated as the cost or value of the property or its arm's length value. If the notional buyer is acquiring the property as trading stock, the normal consequences of acquiring trading stock follow. In particular, the notional buyer can usually deduct the purchase price.
- (2) If the property is not trading stock, the notional buyer may be able to deduct amounts for the expenditure under Division 40 (about capital allowances).

*Effect of notional loan*

- (3) The notional buyer may be able to deduct notional interest payments over the period of the loan.

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

Section 240-10

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*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the notional buyer cannot deduct the actual payments to the notional seller.

**Subdivision 240-A—Application and scope of Division**

**Table of sections**

**Operative provisions**

- 240-10 Application of this Division  
240-15 Scope of Division

**Operative provisions**

**240-10 Application of this Division**

An \*arrangement is treated as a notional sale and notional loan if:

- (a) the arrangement is listed in the table below; and
- (b) the arrangement relates to the kind of property listed in the table; and
- (c) any conditions listed in the table are satisfied.

Special provisions that apply to particular arrangements are also listed in the table.

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<b>This Division applies to:</b>			
<b>*Arrangements of this kind:</b>	<b>That relate to this kind of property:</b>	<b>If these conditions are satisfied:</b>	<b>Special provisions:</b>
1 *Hire purchase agreement	Any goods	None	See Subdivision 240-I

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

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## 240-15 Scope of Division

This Division has effect for the purposes of this Act and for the purposes of the *Income Tax Assessment Act 1936* other than:

- (a) Parts 3-1 and 3-3 of this Act (capital gains tax); and
- (b) Division 11A of Part III of the *Income Tax Assessment Act 1936* (certain payments to non-residents etc.).

## Subdivision 240-B—The notional sale and notional loan

### Table of sections

#### Operative provisions

240-17	Who is the notional seller and the notional buyer?
240-20	Notional sale of property by notional seller and notional acquisition of property by notional buyer
240-25	Notional loan by notional seller to notional buyer

### Operative provisions

#### 240-17 Who is the notional seller and the notional buyer?

- (1) An entity is the **notional seller** if it is a party to the \*arrangement and:
  - (a) actually owns the property; or
  - (b) is the owner of the property because of a previous operation of this Division.
- (2) An entity is the **notional buyer** if it is a party to the \*arrangement and, under the arrangement, has the \*right to use the property.

Example: If the arrangement is a hire purchase agreement, the finance provider will be the notional seller and the hirer will be the notional buyer.

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

Section 240-20

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**240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer**

- (1) The \*notional seller is taken to have disposed of the property by way of sale to the \*notional buyer, and the notional buyer is taken to have acquired it, at the start of the \*arrangement.
- (2) The \*notional buyer is taken to own the property until:
  - (a) the \*arrangement ends; or
  - (b) the notional buyer becomes the \*notional seller under a later arrangement to which this Division applies.

**240-25 Notional loan by notional seller to notional buyer**

- (1) On entering into the \*arrangement, the \*notional seller is taken to have made a loan (the *notional loan*) to the \*notional buyer.
- (2) The notional loan is for a period:
  - (a) starting at the start of the \*arrangement; and
  - (b) ending on the day on which the arrangement is to cease to have effect or, if the arrangement is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the arrangement, that the arrangement will cease to have effect.
- (3) The notional loan is of an amount (the *notional loan principal*) equal to the consideration for the sale of the property less any amount paid, or credited by the \*notional seller as having been paid, by the \*notional buyer to the notional seller, at or before the start of the \*arrangement, for the cost of the property.

Note: Section 240-80 affects the amount of the notional loan principal where the arrangement is an extension or renewal of another arrangement.
- (4) The notional loan is subject to payment of interest.
- (5) The consideration for the sale of the property by the \*notional seller, and the cost of the acquisition of the property by the \*notional buyer, are each taken to have been:

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

- (a) if an amount is stated to be the cost or value of the property for the purposes of the \*arrangement and the notional seller and the notional buyer were dealing with each other at \*arm's length in connection with the arrangement—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer at the start of the arrangement; and
    - (ii) the notional seller and the notional buyer were dealing with each other at arm's length in connection with the sale.
- (6) The notional loan principal is taken to be repaid, and the interest is taken to be paid, by the making of the payments under the \*arrangement.

### **Subdivision 240-C—Amounts to be included in notional seller's assessable income**

#### **Guide to Subdivision 240-C**

##### **240-30 What this Subdivision is about**

This Subdivision provides for the inclusion in the notional seller's assessable income of:

- (a) amounts (notional interest) on account of the interest for the notional loan that the notional seller is taken to have made to the notional buyer; and
- (b) any profit made by the notional seller:
  - (i) on the notional sale of the property to the notional buyer; or

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

Section 240-35

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- (ii) on a sale of the property after any notional re-acquisition of the property by the notional seller.

**Table of sections**

**Operative provisions**

- 240-35 Amounts to be included in notional seller's assessable income  
240-40 Arrangement payments not to be included in notional seller's assessable income

**Operative provisions**

**240-35 Amounts to be included in notional seller's assessable income**

*Notional interest*

- (1) The \*notional seller's assessable income of an income year includes the \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

*Profit on notional sale*

- (2) If the property is not \*trading stock of the \*notional seller and the consideration for the notional sale of the property exceeds the cost of the acquisition of the property by the notional seller, the excess is included in the notional seller's assessable income of the income year of the notional sale.

*Profit on actual sale after notional re-acquisition*

- (3) If:
- (a) the \*notional seller is taken under this Division to have re-acquired the property from the \*notional buyer; and
  - (b) the notional seller afterwards sells the property; and
  - (c) the consideration for the sale exceeds the cost of the re-acquisition;

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



the excess is included in the notional seller's assessable income of the income year in which the sale occurred.

**240-40 Arrangement payments not to be included in notional seller's assessable income**

- (1) The \*arrangement payments that the \*notional seller receives, or is entitled to receive, under the \*arrangement:
  - (a) are not to be included in the \*notional seller's assessable income of any income year; but
  - (b) are not taken to be \*exempt income of the notional seller.
- (2) However, those \*arrangement payments are taken into account in calculating \*notional interest that is included in the \*notional seller's assessable income under section 240-35.
- (3) A loss or outgoing incurred by the \*notional seller in deriving any such \*arrangement payments is not taken to be a loss or outgoing incurred by the notional seller in relation to gaining or producing \*exempt income.

**Subdivision 240-D—Deductions allowable to notional buyer**

**Guide to Subdivision 240-D**

**240-45 What this Subdivision is about**

This Subdivision provides that the notional buyer may, in certain circumstances, be entitled to deductions for the notional interest for the notional loan that the notional seller is taken to have made to the notional buyer.

**Table of sections**

**Operative provisions**

240-50 Extent to which deductions are allowable to notional buyer

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

Section 240-50

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240-55 Arrangement payments not to be deductions

**Operative provisions**

**240-50 Extent to which deductions are allowable to notional buyer**

- (1) The \*notional buyer is only entitled to deduct \*notional interest for an income year to the extent that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments for that income year if no part of those payments were capital in nature.
- (2) The \*notional buyer is entitled to deduct \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

**240-55 Arrangement payments not to be deductions**

The \*notional buyer is not entitled to deduct \*arrangement payments that the \*notional buyer makes under the \*arrangement, but those payments are taken into account in calculating \*notional interest that may be deducted under section 240-50.

**Subdivision 240-E—Notional interest and arrangement payments**

**Table of sections**

**Operative provisions**

240-60	Notional interest
240-65	Arrangement payments
240-70	Arrangement payment periods

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

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## Operative provisions

### 240-60 Notional interest

- (1) The *\*notional interest* for an *\*arrangement* payment period is worked out as follows:

#### Calculating *\*notional interest*

- Step 1. Add the *\*notional interest* from previous *\*arrangement* payment periods to the notional loan principal.
- Step 2. Subtract any *\*arrangement* payments that have already been made or that are due but that have not been made. The result is the *outstanding notional loan principal* as at the start of the *\*arrangement* payment period.
- Step 3. Work out the *implicit interest rate* for the *\*arrangement* payment period, taking into account the *\*arrangement* payments payable by the *\*notional* buyer under the *\*arrangement* and any *\*termination* amounts.
- Step 4. Multiply the outstanding notional loan principal by the implicit interest rate. The result is the *notional interest* for the *\*arrangement* payment period.

- (2) If only part of an *\*arrangement* payment period occurs during an income year, the *\*notional interest* for that part of the arrangement payment period is so much of the notional interest for that arrangement payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (3) In calculating the implicit interest rate, if any of the relevant amounts are not known at the start of the *\*arrangement*, a reasonable estimate of the amount is to be made and is to be used

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

Section 240-65

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for the purposes of calculating the implicit interest rate for each income year of the \*notional seller.

- (4) If a reasonable estimate cannot be made at that time, an estimate of the amount is to be made at the end of each income year of the \*notional seller for the purposes of calculating the implicit interest rate for each income year of the notional seller.

**240-65 Arrangement payments**

An *arrangement payment* is an amount that the \*notional buyer is required to pay under the \*arrangement but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment on time; or
- (b) a \*termination amount.

**240-70 Arrangement payment periods**

- (1) An *arrangement payment period* is a period for which a payment under the \*arrangement is allocated or expressed to be payable.
- (2) However, if a period exceeds 6 months, the period is not an \*arrangement payment period but each of the following parts of the period is a separate arrangement payment period:
- (a) the part of the period beginning at the start of that period and ending 6 months later;
  - (b) each part of the period:
    - (i) beginning immediately after a part of the period that is an arrangement payment period under paragraph (a) or under a previous application of this paragraph; and
    - (ii) ending 6 months after the start of that later part or at the end of the period, whichever first occurs.

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

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## Subdivision 240-F—The end of the arrangement

### Table of sections

#### Operative provisions

240-75	When is the end of the arrangement?
240-80	What happens if the arrangement is extended or renewed
240-85	What happens if an amount is paid by or on behalf of the notional buyer to acquire the property
240-90	What happens if the notional buyer ceases to have the right to use the property

### Operative provisions

#### 240-75 When is the end of the arrangement?

- (1) If the \*arrangement is stated to cease to have effect at a particular time, it is taken for the purposes of this Division to end (even if it is extended or renewed) at the earlier of:
  - (a) that time; or
  - (b) the time at which the arrangement ceases to have effect (whether because the arrangement is terminated or for any other reason).

Note: Section 240-80 deals with extensions and renewals.

- (2) An \*arrangement is taken to have ended if it is extended or renewed.
- (3) If the \*arrangement is of indefinite duration, it ends at the time at which the arrangement ceases to have effect even if the \*arrangement is renewed.

Note: Section 240-80 deals with extensions and renewals.

- (4) An \*arrangement is taken to have ended if it is reasonable to conclude, having regard to the terms and conditions of the \*arrangement, that the arrangement has ceased to have effect.

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

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Section 240-80

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- (5) An \*arrangement is also taken to have ended if the property has been lost or destroyed.

**240-80 What happens if the arrangement is extended or renewed**

- (1) This section sets out what happens if, after the end of the \*arrangement, the \*notional buyer and \*notional seller extend or renew the \*arrangement.
- (2) This Division applies as if the original \*arrangement has ended and the extended arrangement or renewed arrangement is a separate arrangement (the *new arrangement*).
- (3) There is not, however, taken to be any disposal or acquisition as a result of the original arrangement ending or of the new arrangement starting and the \*notional buyer does not cease to own the property.
- (4) Also, the notional loan principal for the new loan is:
- (a) if the \*arrangement as extended or renewed states an amount as the cost or value of the property for the purposes of the extension or renewal and the \*notional seller and the \*notional buyer were dealing with each other at \*arm's length in connection with the extension or renewal—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer when the arrangement was extended or renewed; and
    - (ii) the notional seller and notional buyer were dealing with each other at arm's length in connection with the sale.
- (5) Subdivision 240-G applies to the notional loan for the original arrangement. For that purpose, the notional loan principal for the new arrangement is taken to be a \*termination amount paid to the \*notional seller under the original arrangement.

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

**240-85 What happens if an amount is paid by or on behalf of the notional buyer to acquire the property**

If, at or after the end of the \*arrangement, an amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property, the following provisions have effect:

- (a) the amount paid is not included in the notional seller's assessable income;
- (b) the notional buyer cannot deduct the payment;
- (c) the notional buyer is taken to continue to own the property;
- (d) the transfer to the notional buyer of legal title to the property is not taken to be a disposal of the property by the notional seller.

**240-90 What happens if the notional buyer ceases to have the right to use the property**

- (1) This section applies if, at the end of the \*arrangement:
  - (a) the arrangement is not extended or renewed in the way mentioned in subsection 240-80(1); and
  - (b) no amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property; and
  - (c) the property is not lost or destroyed.
- (2) The property is taken to have been disposed of by the \*notional buyer by way of sale back to the \*notional seller, and to have been acquired by the \*notional seller, at the end of the \*arrangement.
- (3) The consideration for the sale of the property by the \*notional buyer, and the cost of the acquisition of the property by the \*notional seller, are each taken to be equal to the \*market value of the property at the end of the \*arrangement.
- (4) Subsection (5) applies where the property is a \*car and if it:
  - (a) had been bought from the \*notional seller, when this Division first applied to an \*arrangement in respect of the car, by the

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

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Section 240-100

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\*notional buyer for a price equal to the notional loan principal; and

- (b) had been first used by the notional buyer for any purpose in the \*financial year in which that time occurred;

the cost of the car, for the purpose of working out its decline in value for that person under Division 40, would have been limited by section 40-230.

- (5) Where an associate of the \*notional buyer acquires the \*car, the \*cost of the car for the purposes of the application of Division 40 to the associate is taken to be whichever is the lesser of:

- (a) the sum of:

- (i) the amount that would have been the \*adjustable value of the car at that time for the purposes of the application of that Division to the notional buyer if the notional buyer were not taken under this Division to have disposed of the car; and

- (ii) any amount that is included in the notional buyer's assessable income under section 40-285 because the notional buyer is taken to have disposed of the car; or

- (b) the cost of the acquisition of the car by the associate.

**Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of interest**

**Guide to Subdivision 240-G**

**240-100 What this Subdivision is about**

This Subdivision provides for adjustments if the sum of the amounts included in the notional seller's assessable income are greater or less than the interest, worked out at the end of the arrangement, for the notional loan.

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



## Table of sections

### Operative provisions

- 240-105 Adjustments for notional seller  
240-110 Adjustments for notional buyer

## Operative provisions

### 240-105 Adjustments for notional seller

- (1) This section applies at the end of the \*arrangement.
- (2) If the sum of:
- (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and
  - (b) any termination amounts paid or payable to the notional seller;

exceeds the amount worked out using the formula in subsection (4), the excess is included in the notional seller's assessable income of the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

- (3) If the amount worked out using the formula in subsection (4) exceeds:
- (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and
  - (b) any termination amounts paid or payable to the notional seller;

the notional seller is entitled to deduct the excess in the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

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

Section 240-110

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- (4) The formula for the purposes of subsections (2) and (3) is:

Notional loan principal + Assessed notional interest

where:

**assessed notional interest** means the \*notional interest that has been or is to be included in the \*notional seller's assessable income of any income year.

**240-110 Adjustments for notional buyer**

- (1) If:

- (a) an amount is included in the \*notional seller's assessable income of an income year under subsection 240-105(2); or
- (b) an amount would have been so included if the notional seller had been subject to tax on assessable income;

the \*notional buyer is entitled to deduct a corresponding amount in the notional buyer's income year.

- (2) If:

- (a) the \*notional seller is entitled to deduct an amount for an income year under subsection 240-105(3); or
- (b) the notional seller would have been so entitled if the \*notional seller had been subject to tax on assessable income;

a corresponding amount is included in the notional buyer's assessable income for the notional buyer's income year.

- (3) The \*notional buyer is entitled to a deduction, and is required to include an amount in his or her assessable income only to the extent (if any) that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments if no part of those payments were capital in nature.

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

## **Subdivision 240-H—Application of Division 16E to certain arrangements**

### **240-112 Division 16E applies to certain arrangements**

- (1) Division 16E of Part III of the *Income Tax Assessment Act 1936* applies in relation to an arrangement (the **assignment arrangement**) between the notional seller and another person (the **holder**) to transfer the right to payments (the **Division 240 payments**) under an arrangement that is treated as a sale and loan by this Division (the **sale and loan arrangement**).
- (2) In applying Division 16E, the following assumptions are to be made:
  - (a) the assignment arrangement is the qualifying security;
  - (b) the notional seller is the issuer;
  - (c) the qualifying security is issued when the assignment arrangement is entered into;
  - (d) the issue price is consideration provided to the notional seller under the assignment arrangement;
  - (e) the Division 240 payments are payments made by the notional seller under the assignment arrangement;
  - (f) no part of the payments represent periodic interest.
- (3) This Subdivision does not apply if the assignment arrangement gives rise to a termination of the sale and loan arrangement for the purposes of this Division.
- (4) To avoid doubt, Division 6A of Part III of the *Income Tax Assessment Act 1936* does not apply to an assignment arrangement to which this Subdivision applies.

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

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Section 240-115

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**Subdivision 240-I—Provisions applying to hire purchase agreements**

**Table of sections**

**Operative provisions**

240-115 Another person, or no person taken to own property in certain cases

**Operative provisions**

**240-115 Another person, or no person taken to own property in certain cases**

- (1) This section sets out special modifications of the effect of this Division that apply in relation to a \*hire purchase agreement unless:
- (a) the notional buyer would have been the owner or the \*quasi-owner of the property if the \*arrangement had been a sale of the property; and
  - (b) it is reasonably likely that the right, obligation or contingent obligation to acquire the property will be exercised by, or in respect of, the notional buyer.

Note: An example of a contingent obligation is a put option.

- (2) The modifications also apply if the \*notional buyer:
- (a) disposes of his or her interest in the property; or
  - (b) enters into a lease covered by Division 242 (about luxury car leases) under which he or she leases the property to another person.

*Modifications*

- (3) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, an entity other than the \*notional seller would own the property that is the subject of an agreement covered by this section, that entity is taken to be the owner of the property.

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

- (4) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, the \*notional seller would own the property that is the subject of an agreement covered by this section, no entity is taken to be the owner of the property.

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

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## **Division 242—Leases of luxury cars**

### **Table of Subdivisions**

	Guide to Division 242
242-A	Notional sale and loan
242-B	Amount to be included in lessor's assessable income
242-C	Deductions allowable to lessee
242-D	Adjustments if total amount assessed to lessor differs from amount of interest
242-E	Extension, renewal and final ending of the lease

### **Guide to Division 242**

#### **242-1 What this Division is about**

A luxury car is one whose market value exceeds the car limit set for a car's capital allowance deductions by section 40-230.

If the lessor of a luxury car is tax exempt, or taxed at a lower rate than the lessee, the lease could be structured to give both parties a better after-tax outcome than if the lessee had bought the car. The lessee could fully deduct the lease payments, thereby avoiding the capital allowance limit for luxury cars, and the lessor would receive higher lease payments.

This Division removes the tax benefit for the lessee by putting both parties in the same position as if the lessor had sold the car to the lessee and lent the lessee the purchase price.

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

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## Subdivision 242-A—Notional sale and loan

### Guide to Subdivision 242-A

#### 242-5 What this Subdivision is about

A leased luxury car is treated for income tax purposes as if it had been sold by the lessor to the lessee for the car's market value. The lessor is treated as having lent the lessee the money to buy the car, and the lease payments are treated as payments of the principal and interest on that notional loan.

#### Table of sections

##### Operative provisions

242-10	Application
242-15	Notional sale and acquisition
242-20	Consideration for notional sale, and cost, of car
242-25	Notional loan by lessor to lessee

#### Operative provisions

##### 242-10 Application

- (1) This Division applies to a \*car that:
  - (a) is leased (but not under a \*short-term hire agreement or a \*hire purchase agreement) for consideration; and
  - (b) was a \*luxury car when the lessor first leased it; and
  - (c) is not \*trading stock of the lessee; and
  - (d) is not a car covered by subsection 40-230(2) (about cars modified to carry individuals with a disability).
- (2) The provisions of this Division do not have effect for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936* (about withholding tax on dividends, interest and royalties).

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

**Section 242-15**

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Note: This subsection prevents interest on the notional loan that this Division creates being subject to withholding tax under Division 11A.

- (3) For the purposes of paragraph (1)(a), the question whether an agreement is a \*short-term hire agreement is determined on the basis that an employee or employer of an entity is an \*associate of the entity.

Note: Under the definition of *short-term hire agreement* in subsection 995-1(1), successive agreements for the hire of the same asset to an entity or its associates are not short-term hire agreements if they result in substantial continuity of hiring.

**242-15 Notional sale and acquisition**

- (1) This Act has effect as if:
- (a) the \*car had been disposed of (the *notional sale*) by the lessor to the lessee; and
  - (b) the car had been acquired by the lessee;
- at the start of the term of the lease.

Note: This Act will apply as it would have if the lessor had actually disposed of the car to the lessee. For example, if the lessor had been deducting an amount for the car's decline in value, the notional disposal will activate the balancing adjustment rules in Subdivision 40-D because the lessor would be treated as no longer holding the car.

- (2) This Act also has effect as if the lessee owns the \*car until:
- (a) the lease (not including any extension or renewal of the lease) ends; or
  - (b) the lessee enters into a sublease of the car and this Division applies to the car in relation to the sublease.

Note 1: This means that the lessee (and not the lessor) may be able to deduct amounts for the decline in value of the car under Division 40.

Note 2: The lessee will be treated as continuing to own the car until the end of any extension or renewal: see section 242-80.

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

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**242-20 Consideration for notional sale, and cost, of car**

- (1) The consideration for the notional sale by the lessor, and the first element of the \*cost of the \*car for the lessee, are the car's \*market value at the start of the term of the lease.
- (2) If:
  - (a) the lease is a sublease; and
  - (b) the lessee is one or more of the following:
    - (i) an \*associate of the lessor;
    - (ii) an employer of the lessor;
    - (iii) an employee of the lessor;the first element of the \*cost of the \*car to the lessee is the sum of:
  - (c) the amount that would have been the car's \*adjustable value at the start of the term of the lease for the purposes of applying this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and
  - (d) any amount that is included in the lessor's assessable income under section 40-285 as a balancing adjustment because the lessor is treated as having disposed of the car.

Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends paragraph (2)(d) to cover amounts included in assessable income under former provisions corresponding to section 40-285.

**242-25 Notional loan by lessor to lessee**

- (1) This Act has effect as if, on the grant of the lease, the lessor had made a loan (the ***notional loan***) to the lessee:
  - (a) for a period equal to the term of the lease (not including the term of any extension or renewal); and
  - (b) of an amount (the ***notional loan principal***) equal to the consideration for the notional sale of the \*car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the term of the lease, for the first element of the \*cost of the car to the lessee; and

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

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Section 242-30

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(c) subject to payment of interest.

Note: There is a further notional loan if the lease is extended or renewed: see section 242-80.

(2) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the \*luxury car lease payments.

**Subdivision 242-B—Amount to be included in lessor’s assessable income**

**Guide to Subdivision 242-B**

**242-30 What this Subdivision is about**

The lessor’s assessable income includes the interest on the notional loan.

The lease payments to the lessor are non-assessable non-exempt income.

Note: If the consideration for a notional sale of a car exceeds the adjustable value of the car to the lessor, the excess will be included in the lessor’s assessable income under section 40-285.

There would be a similar result if the lessor is treated as having reacquired the car and then sells the car for more than the cost of reacquisition.

**Table of sections**

**Operative provisions**

242-35 Amount to be included in lessor’s assessable income  
242-40 Treatment of lease payments

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

## Operative provisions

### 242-35 Amount to be included in lessor's assessable income

#### *Accrual amounts*

- (1) The lessor's assessable income for an income year includes:
  - (a) if a \*luxury car lease payment period for the lease of a \*car occurs wholly during that income year—the amount (an **accrual amount**) worked out under subsection (2) for that luxury car lease payment period; and
  - (b) if part of a luxury car lease payment period for the lease of a car occurs during that income year—so much of the amount (also an **accrual amount**) worked out under subsection (2) for that luxury car lease payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (2) The amount is:

Outstanding notional loan principal at  
the start of the lease payment period × Implicit interest rate

where:

**implicit interest rate** is the implicit interest rate under the lease for the \*luxury car lease payment period, taking into account the payments to be made by the lessee under the lease and any \*termination amounts.

**outstanding notional loan principal at the start of the lease payment period** is:

- (a) the sum of the notional loan principal and the accrual amounts for earlier \*luxury car lease payment periods; less
- (b) the sum of the \*luxury car lease payments that the lessee was required to make before the start of the relevant luxury car lease payment period.

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

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**Section 242-40**

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*Excessive periods*

- (3) If, apart from this subsection, a \*luxury car lease payment period for the lease of a \*car would exceed 6 months, this Division applies as if each of the following were a separate luxury car lease payment period:
- (a) the first 6 months of the original luxury car lease payment period;
  - (b) if the original luxury car lease payment period was not longer than 12 months—the remaining part of the original luxury car lease payment period;
  - (c) if the original luxury car lease payment period was longer than 12 months—each successive 6 month period in the original luxury car lease payment period;
  - (d) the period (if any) after the end of the last of the periods to which paragraph (c) applies.

**242-40 Treatment of lease payments**

- (1) The \*luxury car lease payments under the lease are not assessable income and are not \*exempt income of the lessor.

Note: Those lease payments are instead taken into account in calculating accrual amounts that are included in the lessor's assessable income under section 242-35.

- (2) In working out the amounts the lessor can deduct for any income year, ignore the fact that subsection (1) makes the \*luxury car lease payments \*non-assessable non-exempt income.

Note: This allows the lessor to continue to deduct amounts related to earning the lease payments (such as interest on an amount the lessor borrowed to acquire the car), just as if the amounts related to earning interest on the notional loan to the lessee.

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

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## Subdivision 242-C—Deductions allowable to lessee

### Guide to Subdivision 242-C

#### 242-45 What this Subdivision is about

The lessee is entitled to deduct the interest on the notional loan to the same extent that the lessee would have been able to deduct the lease payments apart from this Division.

#### Table of sections

##### Operative provisions

242-50	Extent to which deductions are allowable to lessee
242-55	Lease payments not deductible

#### Operative provisions

##### 242-50 Extent to which deductions are allowable to lessee

- (1) If a \*luxury car lease payment period for the lease of a \*car occurs wholly during an income year of the lessee, the lessee can deduct the accrual amount for that period for that income year.  

Note 1: If a luxury car lease payment period would otherwise be longer than 6 months, subsection 242-35(3) divides the original period into periods of no longer than 6 months.

Note 2: For *accrual amount*, see subsection 242-35(1).
- (2) If part of a \*luxury car lease payment period for the lease of a \*car occurs during an income year of the lessee, the lessee can deduct so much of the accrual amount for that period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (3) The lessee can deduct an accrual amount, or part of an accrual amount, for a \*luxury car lease payment period under subsection (1) or (2) for an income year only to the extent that the

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

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Section 242-55

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lessee could deduct the luxury car lease payments made for that year apart from this Division.

**242-55 Lease payments not deductible**

The lessee cannot deduct the \*luxury car lease payments that the lessee makes under the lease for any income year.

Note: Those payments are instead taken into account in calculating accrual amounts that are deductible under section 242-50.

**Subdivision 242-D—Adjustments if total amount assessed to lessor differs from amount of interest**

**Guide to Subdivision 242-D**

**242-60 What this Subdivision is about**

When a luxury car lease is extended, renewed or ends, the overall nominal gain to the lessor is compared to the nominal interest so far paid under the lease.

If the overall nominal gain is greater, the difference is assessable income of the lessor, and the lessee may be able to deduct it.

If the overall nominal gain is less, the lessor can deduct the difference, which may also be assessable income of the lessee.

This process ensures that the right amount has been taxed over the term of the lease.

**Table of sections**

**Operative provisions**

242-65	Adjustments for lessor
242-70	Adjustments for lessee

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

## Operative provisions

### 242-65 Adjustments for lessor

- (1) This section applies at the following times:
  - (a) if the term of the lease is extended—when the extension takes effect;
  - (b) if the lease is renewed—when the renewal takes effect;
  - (c) when the lease (including any extension or renewal of the lease) ends.
- (2) If the sum of all amounts (whether \*luxury car lease payments, a \*termination amount or any other payments) that were paid or payable to the lessor under the lease exceeds the amount worked out under subsection (4), the excess is included in the lessor's assessable income for the income year in which the relevant time occurs.

Note: Subsection 242-80(8) treats the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.
- (3) If the sum of all amounts (whether \*luxury car lease payments, a \*termination amount or any other payments) that were paid or payable to the lessor under the lease is less than the amount worked out under subsection (4), the lessor can deduct the difference for the income year in which the relevant time occurs.
- (4) The amount for the purposes of subsections (2) and (3) is the sum of:
  - (a) the notional loan principal; and
  - (b) the sum of the accrual amounts that have been or are to be included in the lessor's assessable income of any income year.

Note: For **accrual amount**, see subsection 242-35(1).

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

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Section 242-70

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**242-70 Adjustments for lessee**

- (1) If:
- (a) an amount is included in the lessor's assessable income for an income year under subsection 242-65(2); or
  - (b) an amount would have been so included if the lessor had been subject to tax on assessable income;
- the lessee can deduct a corresponding amount for the same income year.
- (2) If:
- (a) the lessor can deduct an amount for an income year under subsection 242-65(3); or
  - (b) the lessor could have deducted an amount under that subsection if the lessor had been subject to tax on assessable income;
- a corresponding amount is included in the lessee's assessable income for the same income year.
- (3) The lessee cannot deduct an amount for any income year under subsection (1), and an amount is not included in the lessee's assessable income of any income year under subsection (2), except to the extent (if any) that the lessee could deduct the \*luxury car lease payments made apart from this Division.

**Subdivision 242-E—Extension, renewal and final ending of the lease**

**Guide to Subdivision 242-E**

**242-75 What this Subdivision is about**

When a luxury car lease ends (whether it expires or is terminated before its expiry date), one of 3 things will happen:

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

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- (a) if the lease is extended or renewed—the original notional loan is treated as having been repaid and the lessor is treated as having made a new loan to the lessee; or
- (b) if the lessee acquires the car from the lessor—the lessee continues to own the car for tax purposes, and the actual transfer and the termination payment to acquire the car are ignored for tax purposes; or
- (c) if the lessee’s right to use the car ends—the lessee is treated as having sold the car back to the lessor.

In each case, there may be adjustments under Subdivision 242-D to ensure that the right amount has been taxed over the term of the lease.

## Table of sections

### Operative provisions

242-80	What happens if the term of the lease is extended or the lease is renewed
242-85	What happens if an amount is paid by the lessee to acquire the car
242-90	What happens if the lessee stops having the right to use the car

## Operative provisions

### 242-80 What happens if the term of the lease is extended or the lease is renewed

- (1) The rules in this section have effect if, after the end of the lease (or the end of any extension of the lease term or renewal of the lease), the lessee continues to have the \*right to use the \*car because the term of the lease is extended (or further extended) or the lease is renewed (or further renewed).
- (2) This Act has effect as if the lessee continued to be the owner of the \*car until the end of the lease as extended or renewed.

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

Section 242-80

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- (3) However, this Act has effect as if the lessee stopped being the owner of the \*car if:
- (a) the lessee enters into a sublease in respect of the car; and
  - (b) this Division applies to the car in respect of that sublease.
- (4) This Act has effect as if the notional loan that arose because of the grant of the lease, or because of the previous extension or renewal, had been repaid.
- Note: Also, Subdivision 242-D (about balancing adjustments) will apply to the ending, extension or renewal.
- (5) This Act has effect as if, on the grant of the extension or renewal, the lessor had made a new loan (the **notional loan**) to the lessee:
- (a) for the period of the extension of the term of the lease or the period of the renewed lease, as the case may be; and
  - (b) of an amount (the **notional loan principal**) equal to the \*car's \*market value when the extension or renewal is granted; and
  - (c) subject to the payment of interest.
- (6) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the \*luxury car lease payments under the lease as extended or renewed (or further extended or renewed).
- (7) In determining whether subsection (1) applies to the lessee, disregard any period after the end of the lease (or the end of any extension of the lease term or renewal of the lease) and before the extension or renewal (or further extension or renewal) is granted and during which the lessee did not have the \*right to use the \*car if the extension or renewal (or further extension or renewal):
- (a) has effect from the time immediately after the end of that term, extension or renewal; or
  - (b) otherwise results in substantial continuity of the leasing of the car to the lessee.
- (8) The amount of the notional loan is treated, for the purposes of section 242-65 (about the lessor's balancing adjustments), as a

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

\*termination amount paid to the lessor under the lease or under the previous extension or renewal.

**242-85 What happens if an amount is paid by the lessee to acquire the car**

If, at the end of the lease or, if it is extended or renewed, at the end of any extension or renewal (the *end time*), an amount is paid to the lessor by, or on behalf of, the lessee to acquire the \*car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) the lessee cannot deduct the payment;
- (c) this Act has effect as if:
  - (i) the lessee continued to be the owner of the car until the lessee disposes of it; and
  - (ii) the transfer to the lessee of legal title to the car were not a disposal of the car by the lessor.

**242-90 What happens if the lessee stops having the right to use the car**

- (1) If, at the end time:
  - (a) the lessee stops having the \*right to use the \*car; and
  - (b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;

the following provisions have effect.

Note: For *end time*, see section 242-85.

- (2) This Act has effect as if the \*car:
  - (a) were sold by the lessee to the lessor; and
  - (b) were acquired by the lessor;at the end time.

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

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- (3) The consideration for the sale of the \*car by the lessee, and the first element of the \*cost of the car to the lessor, are the \*market value of the car at the end time.
- (4) If the \*car is afterwards acquired by an \*associate of the lessee or an employer or employee of the lessee, this Act has effect as if the first element of the \*cost of the car as a \*depreciating asset were the lesser of:
- (a) the sum of:
    - (i) the amount that would have been the \*adjustable value of the car at that time for the purposes of applying this Act to the lessee if the lessee were not treated under this Division as having disposed of the car; and
    - (ii) any amount that is included in the lessee's assessable income under section 40-285 as a balancing adjustment because the lessee is treated as having disposed of the car; and
  - (b) the cost of the acquisition of the car by the associate, employer or employee.
- Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends subparagraph (a)(ii) to cover amounts included in assessable income under former provisions corresponding to section 40-285.
- (5) For the purposes of paragraph (1)(a), the lessee is not treated as having stopped to have the \*right to use the \*car if:
- (a) the term of the lease is extended (or further extended), or the lease is renewed (or further renewed), at a time after, but not immediately after, the end of that term, extension or renewal with effect from the time immediately after that end; or
  - (b) the extension or renewal (or further extension or renewal) otherwise results in substantial continuity of the leasing of the car to the lessee.

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

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## **Division 243—Limited recourse debt**

### **Table of Subdivisions**

- Guide to Division 243
- 243-A Circumstances in which Division operates
- 243-B Working out the excessive deductions
- 243-C Amounts included in assessable income and deductions
- 243-D Special provisions

### **Guide to Division 243**

#### **243-10 What this Division is about**

This Division tells you when you must include an additional amount in your assessable income at the termination of a limited recourse debt arrangement. It also tells you what the additional amount is.

Basically, the Division applies where the capital allowance deductions that have been obtained for expenditure that is funded by the debt and the deductions are excessive having regard to the amount of the debt that was repaid.

The reason for the adjustment is to ensure that, where you have not been fully at risk in relation to an amount of expenditure, you do not get a net deduction if you fail to pay that amount.

### **Subdivision 243-A—Circumstances in which Division operates**

#### **Table of sections**

##### **Operative provisions**

- 243-15 When does this Division apply?

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

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Section 243-15

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- 243-20 What is limited recourse debt?
- 243-25 When is a debt arrangement terminated?
- 243-30 What is the financed property and the debt property?

## Operative provisions

### 243-15 When does this Division apply?

- (1) This Division applies if:
- (a) \*limited recourse debt has been used to wholly or partly finance or refinance expenditure; and
  - (b) at the time that the debt \*arrangement is terminated, the debt has not been paid in full by the debtor; and
  - (c) the debtor can deduct an amount as a \*capital allowance for the income year in which the termination occurs, or has deducted or can deduct an amount for an earlier income year, in respect of the expenditure or the \*financed property.

Note: This Division does not apply to certain limited recourse debts that are used to refinance limited recourse debt to which this Division has applied (see subsection 243-50(4)).

- (2) However, unless the net \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid (see section 243-35), no amount is included in the debtor's assessable income under this Division although future deductions may be reduced.
- (3) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, the following amounts are to be treated as if they were not payments in respect of the debt:
- (a) any reduction in the debt as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;
  - (b) any payment to reduce the debt that is funded directly or indirectly by \*non-arm's length limited recourse debt or by proceeds from the disposal of the debtor's interest in the financed property.

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

However, any amounts accrued that are interest, \*notional interest or in the nature of interest are taken not to be unpaid.

- (4) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, payments are to be attributed first to the payment of any accrued amounts that are interest, \*notional interest or in the nature of interest.
- (5) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is taken to be a debt that has been used to wholly or partly finance or refinance expenditure.

### **243-20 What is limited recourse debt?**

- (1) A **limited recourse debt** is an obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) where the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to any or all of the following:
  - (a) rights (including the right to money payable) in relation to any or all of the following:
    - (i) the \*debt property or the use of the debt property;
    - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;
    - (iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property;
  - (b) rights in respect of a mortgage or other security over the debt property or other property;
  - (c) rights that arise out of any \*arrangement relating to the financial obligations of an end-user of the \*financed property towards the debtor, and are financial obligations in relation to the financed property.
- (2) An obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) is also a **limited recourse debt** if it is reasonable to conclude that the rights of the creditor as

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

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against the debtor in the event of default in payment of the debt or of interest:

- (a) are capable of being limited in the way mentioned in subsection (1); or
- (b) are in substance or effect limited wholly or predominantly to rights (including the right to money payable) in relation to any or all of the following:
  - (i) the \*debt property or the use of the debt property;
  - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;
  - (iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property.

Note: Paragraph (b) could apply to a special purpose entity. For example, an entity's only significant asset is one that it financed by way of a bank loan. The bank's rights to recover the debt (if the entity defaults) are not contractually limited, however they are in effect limited to rights in relation to the asset.

- (3) An obligation imposed by law on an entity (the *debtor*) to pay an amount to another entity (the *creditor*) is also a *limited recourse debt* if there is no \*debt property and it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited.
- (3A) In reaching a conclusion for the purposes of subsection (2) or (3), have regard to the following:
  - (a) the debtor's assets (other than assets that are indemnities or guarantees provided in relation to the debt);
  - (b) any \*arrangement to which the debtor is a party;
  - (c) except for the purposes of paragraph (2)(b)—whether all of the debtor's assets would be available for the purpose of discharging the debt (other than assets that are security for other debts of the debtor or any other entity);
  - (d) whether the debtor and creditor are dealing at \*arm's length in relation to the debt.

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



- (4) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) under a \*hire purchase agreement is also a **limited recourse debt**.
- (5) However, an obligation that is covered by subsection (1) is not a limited recourse debt if the creditor's recourse is not in practice limited due to the creditor's rights in respect of a mortgage or other security over property of the debtor (other than the financed property) the value of which exceeds, or is likely to exceed, the amount of the debt.
- (6) Also, an obligation that is covered by subsection (1), (2) or (3) is not a limited recourse debt if, having regard to all relevant circumstances, it would be unreasonable for the obligation to be treated as limited recourse debt.
- (7) A \*limited recourse debt is a **non-arm's length limited recourse debt** if the debtor and creditor do not deal with each other at \*arm's length in relation to the debt.

#### **243-25 When is a debt arrangement terminated?**

- (1) A debt arrangement is taken to have terminated if:
  - (a) it is actually terminated; or
  - (b) the debtor's obligation to repay the debt is waived, novated or otherwise varied so as to reduce, transfer or extinguish the debt; or
  - (c) an agreement is entered into to waive, novate or otherwise vary the debtor's obligation to repay the debt so as to reduce, transfer or extinguish the debt; or
  - (d) the creditor ceases to have an entitlement to recover the debt from the debtor (other than as a result of an \*arm's length assignment of some or all of the creditor's rights under the debt arrangement); or
  - (e) the debtor ceases to be the owner or the \*quasi-owner of some or all of the \*debt property because that property is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or

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

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- (f) the debtor ceases to be the owner of a beneficial interest in some or all of the debt property because the interest is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
  - (g) the debt becomes a bad debt.
- (2) However, a debt arrangement that is a notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is not taken to have terminated merely because it has been renewed or extended.
- Note: Under Division 240, notional loans are taken to have ended if the relevant arrangement is renewed or extended.
- (3) Where a debt is terminated under paragraph (1)(b) or (c) as a result of the debt being reduced, the remaining debt is taken to be a new debt to which section 243-15 applies.

**243-30 What is the financed property and the debt property?**

- (1) Property is the *financed property* if the expenditure referred to in paragraph 243-15(1)(a) is on the property, is on the acquisition of the property, results in the creation of the property or is otherwise connected with the property.
- (2) If the debt agreement is a notional loan arising under Division 240 (about arrangements treated as a sale and loan), the property that is the subject of the agreement is the *financed property*.
- (3) Property is the *debt property* if:
  - (a) it is the \*financed property; or
  - (b) the property is provided as security for the debt.

**Subdivision 243-B—Working out the excessive deductions**

**Table of sections**

**Operative provisions**

243-35 Working out the excessive deductions

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

## Operative provisions

### 243-35 Working out the excessive deductions

- (1) The \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid if the amount worked out under subsection (2) exceeds the amount worked out under subsection (4).
- (2) This is how to work out the total net \*capital allowance deductions:

#### **Working out the total net capital allowance deductions**

Step 1. Add up all of the debtor's \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) for the income year in which the termination occurs or an earlier income year.

Note: The amount of a capital allowance deduction may be reduced under section 707-415.

Step 2. Deduct from that any amount that is included in the assessable income of the debtor of any income year by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the effect of which is to reverse a deduction covered by Step 1.

Step 3. Deduct from the result an amount equal to the sum of any amounts included in the entity's assessable income as a result of an earlier application of this Division to the debt.

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

Section 243-35

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Step 4. Add to the result an amount equal to the sum of any deductions to which the entity is entitled under section 243-45 (repayments of the original debt after termination) or 243-50 (repayments of the replacement debt) because of payments in respect of the debt.

- (3) The reference in step 2 of the method statement in subsection (2) to an amount that is included in the assessable income of a taxpayer as a result of the disposal of the \*financed property includes a reference to an amount that is included under section 26AG of the *Income Tax Assessment Act 1936* as a result of the disposal of the financed property.

Note: Division 20 deals with amounts included to reverse the effect of past deductions.

- (4) This is how to work out the total net capital allowance deductions that would otherwise be allowable taking into account the amount of the debt that is unpaid:

**Working out the total net capital allowance deductions that would otherwise be allowable**

Work out the amount that would be worked out under subsection (2) if the deductions and the amounts included in assessable income had been calculated using the following assumptions:

- (1) The original expenditure in respect of which deductions were calculated was reduced by the amount of the debt that was unpaid by the debtor when the debt was terminated. (In calculating the amount unpaid the following are to be disregarded:
- (a) any reduction in the amount as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;

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

- (b) any reduction in the amount to the extent that it is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the financed property.)
- (2) Deductions for income years after the income year in which the termination occurred were also taken into account.
- (3) The original expenditure in respect of which deductions were calculated was increased by any amount that is paid by the debtor as consideration for another person assuming a liability under the debt. (This assumption does not apply to the extent that the consideration is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the \*financed property.)
- (4) Step 2 were omitted from subsection (2).

### **Subdivision 243-C—Amounts included in assessable income and deductions**

#### **Table of sections**

##### **Operative provisions**

243-40	Amount included in debtor's assessable income
243-45	Deduction for later payments in respect of debt
243-50	Deduction for payments for replacement debt
243-55	Effect of Division on later capital allowance deductions
243-57	Effect of Division on later capital allowance balancing adjustments
243-58	Adjustment where debt only partially used for expenditure

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

Section 243-40

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## Operative provisions

### 243-40 Amount included in debtor's assessable income

The debtor's assessable income for the income year in which the termination occurs is to include the excess referred to in subsection 243-35(1).

Note: Section 243-60 applies in relation to certain partnership debts.

### 243-45 Deduction for later payments in respect of debt

- (1) This section applies if:
  - (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) the debtor makes a payment to the creditor, after the termination of the debt arrangement, in respect of the debt (other than an amount to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

#### Working out the amount of the deduction

- Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the debt were terminated immediately before the payment.
- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been taken into account.
- Step 3. The **amount of the deduction** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

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

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- (3) The amount can be deducted for the income year in which the payment is made.

*Limit on deductions*

- (4) The total amounts deducted under this section in respect of a debt, and under section 243-50 in respect of a replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

### **243-50 Deduction for payments for replacement debt**

*Payments where debt refinanced*

- (1) This section applies if:
- (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) an amount funded by a \*non-arm's length limited recourse debt (the **replacement debt**) was disregarded in calculations under subsection 243-35(4); and
  - (c) the debtor makes a payment, after the termination of the original debt arrangement, in respect of the replacement debt (other than to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

**Working out the amount of the deduction**

Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the replacement debt were terminated immediately before the payment.

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

Section 243-55

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- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been made in respect of the original debt and it had been taken into account.
- Step 3. The **amount of the deduction** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

*Division not to apply to termination of replacement debt*

- (4) This Division does not apply to termination of the replacement debt referred to in paragraph (1)(b).

*Limit on deductions*

- (5) The total amounts deducted under section 243-45 in respect of the original debt, or under this section in respect of the replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

**243-55 Effect of Division on later capital allowance deductions**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and the debtor is entitled to a \*capital allowance deduction in respect of the expenditure or the \*financed property in relation to a time or period after the termination of the debt.
- (2) The \*capital allowance deduction is reduced if the amount that would have been worked out under subsection 243-35(2) would

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



have exceeded the amount worked out under subsection 243-35(4) if the following assumptions were applied in both subsections:

**Assumptions to be applied**

- (1) That the debt was terminated at the time, or at the end of the period, referred to in subsection (1) of this section.
- (2) That the amount unpaid at the time, or at the end of the period, is reduced by any amounts paid under a replacement debt.
- (3) The debtor's \*capital allowance deductions in respect of the expenditure or the \*financed property were increased by the amount of the capital allowance deduction referred to in subsection (1) of this section.

- (3) The deduction is to be reduced by the amount of the excess.

**243-57 Effect of Division on later capital allowance balancing adjustments**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and an amount is later included in the assessable income of an entity by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the effect of which is to reverse a deduction covered by Step 1 in subsection 243-35(2).
- (2) Any amount that would be included in the debtor's assessable income is reduced if the amount that would have been worked out under subsection 243-35(4) would have exceeded the amount worked out under subsection 243-35(2) if the following assumptions were applied in both subsections:

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

Section 243-58

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**Assumptions to be applied**

- (1) That the debt was terminated at the time of the disposal of the \*financed property, referred to in subsection (1) of this section.
- (2) The amount in Step 2 in subsection 243-35(2) were increased by the amount that would otherwise be included in the debtor's assessable income.
- (3) The amount worked out under subsection 243-35(4) were reduced by any amount by which:
  - (a) the amount arising as a result of the disposal that is taken into account for the purposes of the provision mentioned in subsection (1);exceeds:
  - (b) the unpaid amount of the debt immediately before the time of the disposal of the \*financed property, referred to in subsection (1).

- (3) The amount is to be reduced by the amount of the excess.

**243-58 Adjustment where debt only partially used for expenditure**

If the debt is only partially used to finance the expenditure, or the property, in respect of which the \*capital allowance deductions referred to in Step 1 in subsection 243-35(2) are allowed, the amount of any deduction, any reduction in a deduction or any amount included in assessable income is to be so much as is reasonable taking into account the proportion of the debt that is used for that purpose.

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

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## **Subdivision 243-D—Special provisions**

### **Table of sections**

#### **Operative provisions**

243-60	Application of Division to partnerships
243-65	Application where partner reduces liability
243-70	Application of Division to companies ceasing to be 100% subsidiary
243-75	Application of Division where debt forgiveness rules also apply

### **Operative provisions**

#### **243-60 Application of Division to partnerships**

This Division applies to a partnership in respect of the partnership's debts and in respect of debts of a partner, and references to a debtor include a reference to a partnership.

#### **243-65 Application where partner reduces liability**

- (1) This section applies to a debt in relation to a partner in a partnership if:
  - (a) in connection with an \*arrangement, the partner's liability to pay the debt is reduced or eliminated and the partner's interest in the partnership ceases or is varied or transferred; and
  - (b) an excess would have been worked out under subsection 243-35(1) if, at the time when the debt is reduced or eliminated, the debt had been terminated and remained unpaid and this section had not applied.
- (2) If this section applies to a debt in relation to a partner in a partnership, an amount is to be included in his or her assessable income.
- (3) This is how to work out the amount to be included:

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

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**Working out the amount included**

- Step 1. Work out which income years the partner was a member of the partnership and the partnership was entitled to a \*capital allowance deduction in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments).
- Step 2. For each of those income years, work out the proportion of net income of the partnership or the partnership loss (as the case requires) that was included in the assessable income of the partner or which the partner could deduct.
- Step 3. For each of those income years, multiply the \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership by the corresponding proportion worked out under Step 2. Sum all of the amounts.
- Step 4. Divide the sum by the total of the \*capital allowance deductions in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership for all of those income years.
- Step 5. Work out the amount that would have been included in the partnership's assessable income under section 243-40 if the debt had been terminated and remained unpaid and this section had not applied.
- Step 6. Multiply the amount worked out in Step 5 by the factor worked out in Step 4. The result is the amount to be included in the partner's assessable income.

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

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**243-70 Application of Division to companies ceasing to be 100% subsidiary**

- (1) This section applies to a company if:
  - (a) the company ceases to be a \*100% subsidiary in relation to at least one other company; and
  - (b) at that time, the company is the debtor for a \*limited recourse debt that has not been paid in full by the company; and
  - (c) the creditor's rights under the debt are transferred or assigned to another entity.
- (2) If this section applies, this Division applies as if the debt were terminated, and refinanced with \*non-arm's length limited recourse debt, at the time the company ceased to be a \*100% subsidiary of that other company.

**243-75 Application of Division where debt forgiveness rules also apply**

- (1) This section is to remove doubt about how this Division and Division 245 apply where both apply to the same debt.
- (2) Where both apply:
  - (a) this Division is to be applied first and is to be applied disregarding any operation of Division 245; and
  - (b) any amounts included in assessable income under this Division are taken into account under paragraph 245-85(1)(a).

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

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## Division 245—Forgiveness of commercial debts

### Table of Subdivisions

#### Guide to Division 245

- 245-A Debts to which operative rules apply
- 245-B What constitutes forgiveness of a debt
- 245-C Calculation of gross forgiven amount of a debt
- 245-D Calculation of net forgiven amount of a debt
- 245-E Application of net forgiven amounts
- 245-F Special rules relating to partnerships
- 245-G Record keeping

### Guide to Division 245

#### 245-1 What this Division is about

When a creditor forgives a commercial debt you owe, you make a gain. This is usually not included in your assessable income. Instead, this Division offsets the forgiven amount against amounts that could otherwise reduce your taxable income in the same or a later income year. Those amounts are:

- (a) your tax losses and net capital losses; and
- (b) capital allowances and some similar deductions; and
- (c) the cost bases of your CGT assets.

#### 245-2 Simplified outline of this Division

- (1) This Division applies to any commercial debt (or part of a commercial debt) you owe that is forgiven.

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

- Note: This Division does not apply if:
- (a) the debt is waived and the waiver constitutes a fringe benefit; or
  - (b) the amount of the debt has been, or will be, included in your assessable income in any income year; or
  - (c) the debt is forgiven under an Act relating to bankruptcy; or
  - (d) the debt is forgiven by will; or
  - (e) the debt is forgiven for reasons of natural love and affection; or
  - (f) the debt is a tax-related liability.
- (2) The net forgiven amount of a debt is worked out by reducing the value of your forgiven debt by:
- (a) any consideration you provided for the forgiveness; and
  - (b) any amounts that this Act already brings to account because of the forgiveness.
- (3) The net forgiven amounts of all your forgiven debts in an income year are added up. This total net forgiven amount is applied to reduce the following amounts (in the following order):
- (a) your tax losses from previous income years;
  - (b) your net capital losses from previous income years;
  - (c) the deductions you would otherwise get in the income year, or in a later year, because of expenditure from a previous year (e.g. the capital allowance deductions you would get for the cost of a depreciating asset);
  - (d) the cost bases of your CGT assets.
- (4) Any unapplied total net forgiven amount is disregarded.
- (5) Special rules apply to debts of partnerships.

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

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Section 245-5

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## Subdivision 245-A—Debts to which operative rules apply

### Guide to Subdivision 245-A

#### 245-5 What this Subdivision is about

This Division applies to a debt if you can deduct interest payable on the debt.

#### Table of sections

##### Application of Division

245-10	Commercial debts
245-15	Non-equity shares
245-20	Parts of debts

#### Application of Division

##### 245-10 Commercial debts

Subdivisions 245-C to 245-G apply to a debt of yours if:

- (a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable by you in respect of the debt has been deducted, or can be deducted, by you; or
- (b) interest, or an amount in the nature of interest, is not payable by you in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount could have been deducted by you; or
- (c) interest or an amount mentioned in paragraph (a) or (b) could have been deducted by you apart from the operation of a provision of this Act (other than paragraphs 8-1(2)(a), (b) and (c)) that has the effect of preventing a deduction.

Note: Paragraphs 8-1(2)(a), (b) and (c) prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income or non-assessable non-exempt income.

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



### 245-15 Non-equity shares

This Division applies to a \*non-equity share issued by a company as if it were a debt to which section 245-10 applies that is owed by the company to the relevant shareholder.

### 245-20 Parts of debts

This Division applies to part of a debt in the same way as it applies to a whole debt.

Note: This Division treats interest, or an amount in the nature of interest, payable on a debt as being a separate debt if the interest or amount has accrued but has not been paid.

## Subdivision 245-B—What constitutes forgiveness of a debt

### Guide to Subdivision 245-B

#### 245-30 What this Subdivision is about

A debt is *forgiven* if you no longer have to pay it.

However, this Division does not apply to some cases of forgiveness, such as bankruptcy.

### Table of sections

#### Operative provisions

245-35	What constitutes <i>forgiveness</i> of a debt
245-36	What constitutes <i>forgiveness</i> of a debt if the debt is assigned
245-37	What constitutes <i>forgiveness</i> of a debt if a subscription for shares enables payment of the debt
245-40	Forgivenesses to which operative rules do not apply
245-45	Application of operative rules if forgiveness involves an arrangement

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

## Operative provisions

### 245-35 What constitutes *forgiveness* of a debt

A debt is *forgiven* if and when:

- (a) the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or
- (b) the period within which the creditor is entitled to sue for the recovery of the debt ends, because of the operation of a statute of limitations, without the debt having been paid.

### 245-36 What constitutes *forgiveness* of a debt if the debt is assigned

A debt is *forgiven* if and when the creditor assigns the right to receive payment of the debt to another entity (the *new creditor*) and the following conditions are met:

- (a) either the new creditor is the debtor's \*associate or the assignment occurred under an \*arrangement to which the new creditor and debtor were parties;
- (b) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of \*trading on a market, exchange or other place on which, or facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) are made or accepted.

Note 1: Division 16E of Part III of the *Income Tax Assessment Act 1936* brings to account gains and losses on some securities on an accruals basis.

Note 2: This Division also applies if an assigned debt is subsequently forgiven by the new creditor. Section 245-61 tells you how to work out the value of the debt in that case.

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

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**245-37 What constitutes *forgiveness* of a debt if a subscription for shares enables payment of the debt**

If an entity subscribes for \*shares in a company to enable the company to make a payment in or towards discharge of a debt it owes to the entity, the debt is *forgiven* when, and to the extent that, the company applies any of the money subscribed in or towards payment of the debt.

**245-40 Forgivenesses to which operative rules do not apply**

Subdivisions 245-C to 245-G do not apply to a \*forgiveness of a debt if:

- (a) the debt is waived and the waiver constitutes a \*fringe benefit; or

Note: The waiver by an employer of a debt owed by an employee is usually a fringe benefit: see section 14 of the *Fringe Benefits Tax Assessment Act 1986*.

- (b) the amount of the debt has been, or will be, included in the assessable income of the debtor in any income year; or
- (c) the forgiveness is effected under an Act relating to bankruptcy; or
- (d) the forgiveness is effected by will; or
- (e) the forgiveness is for reasons of natural love and affection; or
- (f) the debt is a \*tax-related liability or a civil penalty under Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (about penalties for promoters and implementers of tax avoidance schemes).

Note: If the forgiveness of your debt involved an arrangement which was entered into before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

**245-45 Application of operative rules if forgiveness involves an arrangement**

- (1) If:

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

Section 245-48

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- (a) the debtor and the creditor in relation to a debt enter into an \*arrangement; and
  - (b) under the arrangement, the debtor's obligation to pay the debt is to cease at a particular future time; and
  - (c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);
- Subdivisions 245-C to 245-G apply as if the debt were \*forgiven when the arrangement is entered into.
- (2) If, after the arrangement is entered into, the debt is forgiven, the later forgiveness is disregarded for the purposes of those Subdivisions.

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

**Guide to Subdivision 245-C**

**245-48 What this Subdivision is about**

The amount of forgiveness (called the gross forgiven amount) for the debtor reflects the loss that the creditor makes for tax purposes. It is worked out in 2 steps:

- (a) the value of the debt when it was forgiven is worked out on the basis that you were solvent both then and when you incurred the debt; and
- (b) the value of the debt is then offset by any consideration given for the forgiveness of the debt.

The difference between the value of the debt and the amount offset is the gross forgiven amount.

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

If the debt was owed by several debtors, the gross forgiven amount is divided between them equally.

## Table of sections

### Working out the value of a debt

- 245-50 Extent of forgiveness if consideration is given
- 245-55 General rule for working out the value of a debt
- 245-60 Special rule for working out the value of a non-recourse debt
- 245-61 Special rule for working out the value of a previously assigned debt

### Working out if an amount is offset against the value of the debt

- 245-65 Amount offset against amount of debt

### Working out the gross forgiven amount

- 245-75 *Gross forgiven amount* of a debt
- 245-77 Gross forgiven amount shared between debtors

## Working out the value of a debt

### 245-50 Extent of forgiveness if consideration is given

If any consideration is paid or given in respect of the \*forgiveness of a debt, the debt that is forgiven is:

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

Example: Daniel owes Samara \$100. Samara agrees to accept \$60 in full payment of the debt.

If their agreement specifies that Samara forgives the whole debt in return for \$60, paragraph (a) provides that the forgiven debt is \$100.

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

**Section 245-55**

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If their agreement instead requires Daniel to repay \$60 and specifies that Samara forgives the remaining \$40, paragraph (a) would deal with the \$40 and paragraph (b) would add the remaining \$60, again producing a forgiven amount of \$100.

In either case, the \$60 Daniel pays is offset against the forgiven amount of \$100 in working out the gross forgiven amount of the debt: see sections 245-65 and 245-75.

**245-55 General rule for working out the value of a debt**

- (1) The value of your debt at the time (the *forgiveness time*) when it is \*forgiven is the amount that would have been its \*market value (considered as an asset of the creditor) at the forgiveness time, assuming that:
  - (a) when you incurred the debt, you were able to pay all your debts (including that one) as and when they fell due; and
  - (b) your capacity to pay the debt is the same at the forgiveness time as when you incurred it.
- (2) However, the value of the debt at the forgiveness time is the sum of the following amounts, if that sum is less than the amount applicable under subsection (1):
  - (a) what would have been the amount applicable under subsection (1) if there had been no change, from the time the debt was incurred until the forgiveness time, in any rate of interest, or rate of exchange between currencies, that affects the \*market value of the debt;
  - (b) each amount:
    - (i) that you have deducted or can deduct as a result of the \*forgiveness of the debt; and
    - (ii) that is attributable to such a change.
- (3) Paragraph (1)(a) does not apply to the debt if:
  - (a) either:
    - (i) the creditor was an Australian resident at the forgiveness time; or
    - (ii) the \*forgiveness of the debt was a \*CGT event involving a \*CGT asset that was \*taxable Australian property; and

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

- (b) you and the creditor were not dealing with each other at \*arm's length in respect of you incurring the debt; and
- (c) the debt was not a \*moneylending debt.

Note: This subsection reduces your gross forgiven amount to reflect the reduction in the creditor's loss on the forgiven debt under the capital gains tax regime.

- (4) This section has effect subject to sections 245-60 and 245-61 (about non-recourse and assigned debts).

### **245-60 Special rule for working out the value of a non-recourse debt**

- (1) The value of a debt when it is \*forgiven is the lesser of:
  - (a) the amount of the debt outstanding at that time; and
  - (b) the \*market value at that time of the creditor's rights mentioned in paragraph (2)(b).
- (2) Subsection (1) applies to a debt if:
  - (a) you incurred the debt directly in respect of financing:
    - (i) the acquisition of property by you; or
    - (ii) the construction or development of property by you; (but not including the manufacture of goods); and
  - (b) the creditor's rights against you in the event of default in the payment of the debt or interest were, just before the debt was forgiven, limited to all or any of the following:
    - (i) rights (including the right to money payable) in relation to all or any of the matters mentioned in subsection (3);
    - (ii) rights in respect of a mortgage or other security over the property;
    - (iii) rights arising out of any \*arrangement relating to the financial obligations, in relation to the property, of the \*end user of the property to you.
- (3) For the purposes of subparagraph (2)(b)(i), the matters are as follows:
  - (a) the property or the use of the property;

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

Section 245-61

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- (b) goods produced, supplied, carried, transmitted or delivered by means of the property;
- (c) services provided by means of the property;
- (d) the loss or \*disposal of the whole or a part of the property or of your interest in the property.

**245-61 Special rule for working out the value of a previously assigned debt**

If your debt has been assigned as mentioned in section 245-36 and is later \*forgiven by the new creditor, the value of that debt when it is later forgiven is:

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

**Working out if an amount is offset against the value of the debt**

**245-65 Amount offset against amount of debt**

- (1) The table explains how to work out the amount (if any) that is offset against the value of a debt when it is forgiven (calculated under section 245-55, 245-60 or 245-61) in working out the \*gross forgiven amount of the debt.

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



<b>Amount offset against value of debt</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>In this case:</b>	<b>the amount offset is:</b>
1	the debt is a *moneylending debt, and neither of items 4 and 6 applies	the sum of: (a) each amount that the debtor has paid; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given; and (c) the market value, at that time, of each obligation of the debtor to pay an amount, or to give such an item of property; as a result of, or in respect of, the forgiveness of the debt.
2	the debt is <i>not</i> a *moneylending debt, and none of items 3, 4, 5 and 6 applies	the sum of: (a) each amount that the debtor has paid, or is required to pay; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given, or is required to give; as a result of, or in respect of, the forgiveness of the debt.
3	the debt is <i>not</i> a *moneylending debt, the conditions in subsection (2) are met and none of items 4, 5 and 6 applies	the *market value of the debt at the time of the *forgiveness.

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

Section 245-65

<b>Amount offset against value of debt</b>		
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>In this case:</b>	<b>the amount offset is:</b>
4	the debt is assigned as mentioned in section 245-36, and item 5 does not apply	the sum of: (a) the amount or *market value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, in respect of the assignment; and (b) the amount or market value of the consideration (if any) paid or given by the new creditor in respect of the assignment.
5	the debt is assigned as mentioned in section 245-36, and: (a) the debt is <i>not</i> a *moneylending debt; and (b) the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment	the *market value of the debt at the time of the assignment.
6	the debt is *forgiven by subscribing for *shares in a company as mentioned in section 245-37	the amount worked out using the formula in subsection (3).

- (2) The conditions for the purposes of item 3 of the table in subsection (1) are:
- (a) at least one of the following is satisfied:
    - (i) at the time when the debt was \*forgiven, the creditor was an Australian resident;
    - (ii) the forgiveness of the debt was a \*CGT event involving a \*CGT asset that was \*taxable Australian property; and
  - (b) at least one of the following is satisfied:
    - (i) there is no amount, and no property, covered by column 2 of item 2 of the table;

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

- (ii) the amount worked out under item 2 of the table is greater or less than the \*market value of the debt at the time of the forgiveness and the debtor and creditor did not deal with each other at \*arm's length in connection with the forgiveness.
- (3) The formula for the purposes of item 6 of the table in subsection (1) is:

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

where:

**amount applied** means the amount applied by the company as mentioned in section 245-37.

**amount subscribed** means the amount subscribed as mentioned in section 245-37.

**market value of shares subscribed for** means the \*market value of all the shares in the company that were subscribed for as mentioned in section 245-37, immediately after those shares were issued.

## Working out the gross forgiven amount

### 245-75 Gross forgiven amount of a debt

- (1) The **gross forgiven amount** of a debt is:
- (a) if section 245-65 does not apply to the debt—the value of the debt when it was \*forgiven (worked out under section 245-55, 245-60 or 245-61); or
  - (b) if the value of the debt when it was forgiven exceeds the amount offset under section 245-65 in relation to the debt—the excess.
- (2) If the value of the debt when it was \*forgiven is equal to or less than the amount offset:

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

Section 245-77

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- (a) there is no **gross forgiven amount** in respect of the debt; and
- (b) Subdivisions 245-D to 245-F (about how to work out the net forgiven amount of a debt and how to treat it) do not apply in respect of the debt.

**245-77 Gross forgiven amount shared between debtors**

If 2 or more entities were liable (except as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, this Subdivision applies as if each entity had a \*gross forgiven amount worked out using the formula:

$$\frac{\text{*Gross forgiven amount in relation to the debt}}{\text{Number of entities liable to pay the debt}}$$

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

**Guide to Subdivision 245-D**

**245-80 What this Subdivision is about**

The net forgiven amount of a debt is worked out by subtracting, from the gross forgiven amount of the debt, any amount that this Act already takes into account for the debtor because the debt was forgiven (for example, if some part of the forgiven amount is treated as the debtor's ordinary income).

If the debtor and creditor were companies under common ownership, they may agree to transfer some of the net forgiven amount from the debtor to the creditor. The creditor must apply that amount to reduce the capital loss or deduction it has because of the forgiveness.

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

## Table of sections

### Operative provisions

245-85	Reduction of gross forgiven amount
245-90	Agreement between companies under common ownership for creditor to forgo capital loss or deduction

## Operative provisions

### 245-85 Reduction of gross forgiven amount

- (1) The \*gross forgiven amount of your debt is reduced by the sum of the following amounts:
- (a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in your assessable income for any income year as a result of the \*forgiveness of the debt;
  - (b) any amount by which, under a provision of this Act other than this Division, an amount you could otherwise have deducted for any income year has been, or will be, reduced as a result of the forgiveness of the debt (except a reduction under Division 727 (about indirect value shifting));
  - (c) any amount by which the \*cost base of any of your \*CGT assets has been, or will be, reduced under Part 3-1 or 3-3 as a result of the forgiveness of the debt.
- Note: Paragraph (1)(c) does not cover a reduction under Division 727 (indirect value shifting) because that Division is not in Part 3-1 or 3-3.
- (2) Subject to section 245-90, the amount remaining after reducing the \*gross forgiven amount under subsection (1) is the ***net forgiven amount*** of the debt.

### 245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

- (1) This section applies if:

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

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Section 245-90

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- (a) a debt owed by a company to another company is \*forgiven;  
and
  - (b) from the time when the debt was incurred until the time when the debt is forgiven, the companies were \*under common ownership.
- (2) If, apart from this subsection, the creditor would have made a \*capital loss as a result of the \*forgiveness of the debt:
- (a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the **provisional net forgiven amount** of the debt); and
  - (b) if such an agreement is made:
    - (i) the creditor's capital loss is reduced by the agreed amount; and
    - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
    - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the **net forgiven amount** of the debt.
- (3) If, apart from this subsection, the creditor could deduct an amount in respect of the debt under section 8-1 (about general deductions) or section 25-35 (about bad debts) for the \*forgiveness income year:
- (a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the **provisional net forgiven amount** of the debt); and
  - (b) if such an agreement is made:
    - (i) the amount the creditor can deduct is reduced by the agreed amount; and
    - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

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

- (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the *net forgiven amount* of the debt.
- (4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:
  - (a) is in writing and signed by the public officer of each company; and
  - (b) is made before:
    - (i) the first of those companies lodges its \*income tax return for the \*forgiveness income year; or
    - (ii) any later day that the Commissioner determines in writing.
- (5) A determination made under subparagraph (4)(b)(ii) is not a legislative instrument.

### **Subdivision 245-E—Application of net forgiven amounts**

#### **Guide to Subdivision 245-E**

##### **245-95 What this Subdivision is about**

The total of the net forgiven amounts of all your debts forgiven in an income year is applied to reduce 4 classes of amounts that could otherwise reduce your taxable income in the same or a later income year. It is applied in the following order:

- (a) to your tax losses from previous income years;
- (b) to your net capital losses from previous income years;

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

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Section 245-95

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- (c) to the deductions you would otherwise get in the income year, or in a later income year, because of expenditure from a previous year (for example, the capital allowance deductions you would get for expenditure on acquiring a depreciating asset);
- (d) to the cost bases of your CGT assets.

You can choose the order in which the net forgiven amounts reduce the amounts within each class.

If all the amounts in the 4 classes are reduced to nil, any remaining net forgiven amounts are disregarded.

### Table of sections

#### General operative provisions

- 245-100 Subdivision not to apply to calculation of attributable income  
245-105 How *total net forgiven amount* is applied

#### Reduction of tax losses

- 245-115 Total net forgiven amount is applied in reduction of tax losses  
245-120 Allocation of total net forgiven amount in respect of tax losses

#### Reduction of net capital losses

- 245-130 Remaining total net forgiven amount is applied in reduction of net capital losses  
245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

#### Reduction of expenditure

- 245-145 Remaining total net forgiven amount is applied in reduction of expenditure  
245-150 Allocation of remaining total net forgiven amount in respect of expenditures  
245-155 How expenditure is reduced—straight line deductions  
245-157 How expenditure is reduced—diminishing balance deductions  
245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

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

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**Reduction of cost bases of assets**

- 245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets
- 245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets
- 245-185 Relevant cost bases of investments in associated entities are reduced last
- 245-190 Reduction of the relevant cost bases of a CGT asset

**Unapplied total net forgiven amount**

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

**General operative provisions**

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

This Subdivision does not apply to the calculation of:

- (a) attributable income of a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936*; or
- (b) \*attributable income of a \*CFC.

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

- (1) Your ***total net forgiven amount*** for the \*forgiveness income year is the total of the \*net forgiven amounts of all your debts that are \*forgiven in that year.

Note 1: The total net forgiven amount may be reduced under section 707-415.

Note 2: The total net forgiven amount of a partner in a partnership is affected by section 245-215.

- (2) Your \*total net forgiven amount is applied, in accordance with sections 245-115 to 245-195, for the \*forgiveness income year.

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

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Section 245-115

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## Reduction of tax losses

### 245-115 Total net forgiven amount is applied in reduction of tax losses

The \*total net forgiven amount is applied first, to the maximum extent possible, in reduction, in accordance with section 245-120, of your \*tax losses (if any) for any income years, if the tax losses could, if you had enough assessable income, be deducted in:

- (a) the \*forgiveness income year; or
- (b) a later income year.

### 245-120 Allocation of total net forgiven amount in respect of tax losses

- (1) You may choose:
  - (a) the order in which your \*tax losses are reduced; and
  - (b) the amount applied to reduce each of those losses;so long as the \*total net forgiven amount is applied, to the maximum extent possible, in reduction of those losses.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

## Reduction of net capital losses

### 245-130 Remaining total net forgiven amount is applied in reduction of net capital losses

- (1) The \*total net forgiven amount (if any) remaining after being applied under section 245-115 is applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of your \*net capital losses (if any) specified in subsection (2).
- (2) Those \*net capital losses are your net capital losses for income years before the \*forgiveness income year that you could apply in

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

working out your \*net capital gain for the forgiveness income year if you had enough capital gains.

**245-135 Allocation of remaining total net forgiven amount in respect of net capital losses**

- (1) You may choose:
  - (a) the order in which your \*net capital losses are reduced; and
  - (b) the amount applied in reduction of each of those losses;so long as the \*total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of those losses.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

**Reduction of expenditure**

**245-145 Remaining total net forgiven amount is applied in reduction of expenditure**

- (1) The \*total net forgiven amount (if any) remaining after being applied under sections 245-115 and 245-130 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-150, 245-155 and 245-157, of your expenditure that:
  - (a) is mentioned in the following table (other than expenditure covered by subsection (2)) and was incurred by you before the \*forgiveness income year; and
  - (b) apart from this Subdivision, could be deducted by you for the forgiveness income year or a later income year if no event or circumstance (other than a \*recoupment of the expenditure by you in the forgiveness income year) occurred that would affect its deductibility.

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

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Section 245-145

<b>Table of expenditure</b>		
<b>Item</b>	<b>Column 1 General description of expenditure</b>	<b>Column 2 Provision under which a deduction is available for the expenditure</b>
1	Expenditure deductible under Division 40 (Capital allowances)	Division 40 of this Act
2	Expenditure incurred in *borrowing money to produce assessable income	Section 25-25 of this Act
3	Expenditure on scientific research	Subsection 73A(2) of the <i>Income Tax Assessment Act 1936</i>
4	Expenditure deductible under Division 355 (R&D)	Division 355 of this Act
5	Advance revenue expenditure	Subdivision H of Division 3 of Part III of the <i>Income Tax Assessment Act 1936</i>
6	Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1) of the <i>Income Tax Assessment Act 1936</i>
7	Expenditure on Australian films	Section 124ZAF of the <i>Income Tax Assessment Act 1936</i>
8	Expenditure on assessable income-producing buildings and other capital works	Section 43-10 of this Act

Note: If the asset to which the expenditure relates was disposed of, lost or destroyed before 28 June 1996 or the expenditure was recouped before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) Expenditure is covered by this subsection if:
- (a) it was incurred in respect of an asset you \*disposed of to an entity that you dealt with at \*arm's length in respect of the disposal; and
  - (b) the disposal occurred during the \*forgiveness income year before the \*forgiveness of any debt owed by you, and the forgiveness resulted in a \*net forgiven amount; and

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

- (c) no provision of this Act includes an amount in your assessable income, or allows you a deduction, as a result of the disposal.

**245-150 Allocation of remaining total net forgiven amount in respect of expenditures**

- (1) You may choose:
- (a) the order in which your expenditures are reduced; and
  - (b) the amount applied in reduction of each of those expenditures;
- so long as that the \*total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of your expenditures.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

**245-155 How expenditure is reduced—straight line deductions**

- (1) This section applies in respect of the reduction under section 245-145 of an expenditure of yours, if:
- (a) the amount that you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount (the **base amount**); and
  - (b) the base amount is worked out without regard to any amount or amounts you previously deducted in respect of that expenditure.
- (2) The amount of the reduction of the expenditure must not exceed:
- (a) the base amount; less
  - (b) the amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4)), or can deduct, an amount for any income year before the \*forgiveness income year.

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

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**Section 245-157**

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- (3) For the purpose of working out your deductions for the \*forgiveness income year and later income years, any amount that is applied in reduction of your expenditure is taken to reduce the base amount.
- (4) You are taken to have deducted the amount of the reduction in respect of the expenditure:
  - (a) before the \*forgiveness income year; and
  - (b) for the purposes of any provision of this Act that includes an amount in your assessable income or allows you a deduction:
    - (i) because of the \*disposal, loss or destruction of the asset in respect of which the expenditure was incurred; or
    - (ii) because of the \*recoupment of any of the expenditure; or
    - (iii) because use of the asset for a particular purpose has been otherwise terminated; or
    - (iv) because a \*balancing adjustment event occurs for that asset.
- (5) The amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4), or can deduct, an amount for all income years (including income years before the \*forgiveness income year) must not exceed the base amount as reduced under subsection (3).

**245-157 How expenditure is reduced—diminishing balance deductions**

Any amount applied in reduction under section 245-145 of an expenditure of yours is taken to have been deducted by you in respect of the expenditure before the \*forgiveness income year, if the amount you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount previously deducted by you in respect of the expenditure.

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

**245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances**

If:

- (a) after the \*forgiveness income year you \*recoup an amount of expenditure that is subject to reduction under section 245-145; and
- (b) as a result of the recoupment, this Act applies to disallow any amount you have deducted in respect of the expenditure; an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the expenditure is included in your assessable income in the income year in which the expenditure is recouped.

**Reduction of cost bases of assets**

**245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets**

- (1) The \*total net forgiven amount (if any) remaining after being applied under sections 245-115, 245-130 and 245-145 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the \*cost base and \*reduced cost base of your \*CGT assets.
- (2) Subsection (1) does not apply to the following \*CGT assets:
  - (a) a \*pre-CGT asset;
  - (b) a CGT asset you \*acquire after the start of the \*forgiveness income year;
  - (c) a \*personal use asset;
  - (d) a \*dwelling that was your main residence at any time before the forgiveness income year;
  - (e) goodwill;
  - (f) a right of yours covered by section 118-305 (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);

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

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Section 245-180

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- (g) a CGT asset that, throughout the period before the forgiveness income year when it was owned by you, was your \*trading stock;
- (h) a CGT asset if:
  - (i) expenditure by you (of a kind which is subject to reduction under section 245-145) relates to the asset; and
  - (ii) a \*CGT event in relation to the asset would result in an amount being included in your assessable income, or in you being able to deduct an amount;
- (i) if you are a foreign resident at the beginning of the forgiveness income year—an asset of yours that is not \*taxable Australian property.

**245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets**

- (1) Subject to section 245-185, you may choose:
  - (a) your \*CGT assets whose \*cost base and \*reduced cost base are subject to reduction under section 245-175; and
  - (b) the amount applied in reduction of the cost base and reduced cost base of each of those assets;so long as the \*total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of the cost base and reduced cost base of such assets.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

**245-185 Relevant cost bases of investments in associated entities are reduced last**

If your \*CGT assets that are subject to reduction under section 245-175 include investments in, or in relation to, an \*associate of yours (including \*membership interests, or \*debt interests, in your associate), the:

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



- (a) \*cost base; and
  - (b) \*reduced cost base;
- of those assets are not subject to reduction under section 245-175 until the \*total net forgiven amount (if any) remaining has been applied, to the maximum extent possible, in reduction of the cost bases of your other CGT assets.

### **245-190 Reduction of the relevant cost bases of a CGT asset**

- (1) Subject to subsection (3), if you choose to apply an amount in reduction of the \*cost base and \*reduced cost base of a particular \*CGT asset, the cost base and reduced cost base of the asset, as at any time on or after the beginning of the \*forgiveness income year, are reduced by that amount.
- (2) The reduction by a particular amount of the \*cost base and \*reduced cost base of a particular \*CGT asset is, for the purpose of working out the amount by which the \*total net forgiven amount remaining is applied, taken to be a reduction by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).
- (3) The maximum amount by which the \*cost base and \*reduced cost base of a \*CGT asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if a \*CGT event had happened to the asset:
  - (a) subject to paragraph (b), on the first day of the \*forgiveness income year; or
  - (b) if, after the beginning of that income year, an event occurred that would cause the reduced cost base of the asset to be reduced—on the day on which the event occurred;and the asset had been \*disposed of at its \*market value on the day concerned.

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

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## Unapplied total net forgiven amount

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

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

### Subdivision 245-F—Special rules relating to partnerships

#### Guide to Subdivision 245-F

#### 245-200 What this Subdivision is about

Any part of a partnership's total net forgiven amount left over after applying it under Subdivision 245-E is divided between the partners. Each partner treats the partner's share as a net forgiven amount the partner has for the income year.

#### Table of sections

##### Operative provisions

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

#### Operative provisions

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

- (1) This section applies if any part (the *residual amount*) of the \*total net forgiven amount in relation to a partnership in respect of the

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

\*forgiveness income year remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.

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

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

where:

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

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

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

where:

***partner's share of partnership loss*** means the part of the partnership loss that the partner has deducted or can deduct.

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

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

Section 245-265

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- (5) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.

**Subdivision 245-G—Record keeping**

**245-265 Keeping and retaining records**

- (1) If you incur a debt, you must keep any records that are necessary to enable the following matters to be readily found out:
- (a) the date on which you incurred the debt;
  - (b) the identity of the creditor;
  - (c) the amount of the debt;
  - (d) the terms of repayment of the debt;
  - (e) if the debt is not a \*moneylending debt and you and the creditor were not dealing with each other at \*arm's length in respect of the incurring of the debt—your capacity at the time when the debt was incurred to pay the debt when it falls due;
  - (f) if your debt is \*forgiven—the date of the forgiveness and the amount offset under section 245-65 (if any) in respect of the debt.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

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

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

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- (3) You must keep the records required by subsection (1) or (2) in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.
- (4) Subject to subsection (5), you must keep the records required by subsection (1) until:
  - (a) if paragraph (b) does not apply—the end of 5 years after the debt was \*forgiven; or
  - (b) if the period within which the Commissioner may, under section 170 of the *Income Tax Assessment Act 1936*, amend your assessment for the income year to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7) of that Act—the later of:
    - (i) the end of the assessment period as so extended; and
    - (ii) the end of the period of 5 years mentioned in paragraph (a).
- (5) Subsection (4) does not require you to keep records after the debt is paid.
- (6) Subject to subsection (7), each company that keeps any records required by subsection (2) must retain the records until the end of the second income year after the income year in which the companies ceased to be \*under common ownership.
- (7) If a debt of one of the companies mentioned in subsection (2) was \*forgiven at any time after the companies ceased to be \*under common ownership and before the end of the second income year after the income year in which the cessation occurred, each company that keeps records required by that subsection must retain the records until the time specified in subsection (4).
- (8) You commit an offence if you fail to comply with a provision of this section.

Penalty: 30 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 3** Specialist liability rules

**Part 3-10** Financial transactions

**Division 245** Forgiveness of commercial debts

Section 245-265

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(9) An offence against subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(10) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

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

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## Division 247—Capital protected borrowings

### Guide to Division 247

#### 247-1 What this Division is about

Capital protection provided under a relevant capital protected borrowing to the extent that it is not provided by an explicit put option is treated (for the borrower) as if it were a put option.

An amount attributable to capital protection under any relevant capital protected borrowing is treated (for the borrower) as a payment for a put option.

#### Table of sections

##### Operative provisions

247-5	Object of Division
247-10	What <i>capital protected borrowing</i> and <i>capital protection</i> are
247-15	Application of this Division
247-20	Treating capital protection as a put option
247-25	Number of put options
247-30	Exercise or expiry of option

#### Operative provisions

##### 247-5 Object of Division

The object of this Division is to ensure that amounts for \*capital protection under all relevant \*capital protected borrowings are treated (for the borrower) under this Act as a payment for a put option.

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

Section 247-10

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**247-10 What *capital protected borrowing* and *capital protection* are**

- (1) An \*arrangement under which a \*borrowing is made, or credit is provided, is a ***capital protected borrowing*** if the borrower is wholly or partly protected against a fall in the \*market value of a thing (the ***protected thing***) to the extent that:
  - (a) the borrower uses the amount borrowed or credit provided to acquire the protected thing; or
  - (b) the borrower uses the protected thing as security for the borrowing or provision of credit.
- (2) That protection is called ***capital protection***.

**247-15 Application of this Division**

- (1) This Division applies to a \*capital protected borrowing only if the protected thing is a beneficial interest in:
  - (a) a \*share, a unit in a unit trust or a stapled security; or
  - (b) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities.
- (2) This Division applies only to borrowers under \*capital protected borrowings.
- (3) This Division does not apply to a \*capital protected borrowing if:
  - (a) an \*ESS interest is acquired under the borrowing; and
  - (b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.
- (4) This Division does not apply to a \*capital protected borrowing entered into before 1 July 2007 (except to the extent that it is extended on or after that day) unless the \*share, unit in a unit trust or stapled security is listed for quotation in the official list of an \*approved stock exchange.
- (5) This Division does not apply to a \*capital protected borrowing entered into on or after 1 July 2007 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 protected thing is a beneficial interest in:
  - (i) a \*share, unit or stapled security that is not listed for quotation in the official list of an \*approved stock exchange; or
  - (ii) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities, that is not so listed; and
- (b) one of these conditions is satisfied:
  - (i) for a non-listed share—the company is not a \*widely held company;
  - (ii) for a non-listed unit—the trust is not a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*;
  - (iii) for a non-listed stapled security—any company involved is not a widely held company and any trust involved is not such a widely held unit trust.

#### **247-20 Treating capital protection as a put option**

- (1) This section applies to a borrower if:
  - (aa) the borrower has an excess using the method statement in subsection (3) for:
    - (i) a \*capital protected borrowing entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the **2008 Budget time**); or
    - (ii) an extension of the capital protected borrowing; or
  - (a) the borrower has an amount that is reasonably attributable to the \*capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time; or
  - (b) the borrower has an amount that is reasonably attributable to the capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

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

**Section 247-20**

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Note: If a capital protected borrowing covered by paragraph (1)(a) or (b) is extended or otherwise changed after the 2008 Budget time, section 247-85 of the *Income Tax (Transitional Provisions) Act 1997* applies to the capital protected borrowing.

- (2) For paragraphs (1)(a) and (b), the amount that is reasonably attributable to the \*capital protection is worked out under Division 247 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) This is the method statement.

*Method statement*

- Step 1. Work out the total amount incurred by the borrower under or in respect of the \*capital protected borrowing for the income year, ignoring amounts that are not in substance for \*capital protection or interest.
- Step 2. Work out the total interest that would have been incurred for the income year on a \*borrowing or provision of credit of the same amount as under the \*capital protected borrowing at the rate applicable under either or both of subsections (4) and (5A).
- Step 3. If the step 1 amount exceeds the step 2 amount, the excess is reasonably attributable to the \*capital protection for the income year.

Example: Amounts that would be ignored under step 1 include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

- (4) If:
  - (a) the \*capital protected borrowing is at a fixed rate for all or part of the term of the capital protected borrowing; and
  - (b) that fixed rate is applicable to the capital protected borrowing for all or part of the income year;

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

use the rate worked out under subsection (5) at the first time an amount covered by step 1 of the method statement in subsection (3) was incurred, in any income year, during the term of the capital protected borrowing or that part of the term.

- (5) The rate (the *adjusted loan rate*), at a particular time, is the sum of:
- (a) the Reserve Bank of Australia's Indicator Lending Rate for Standard Variable Housing Loans at that time; and
  - (b) 100 basis points.

(5A) If:

- (a) the \*capital protected borrowing is at a variable rate for all or part of the term of the capital protected borrowing; and
- (b) a variable rate is applicable to the capital protected borrowing for all or part of the income year;

use the average of the adjusted loan rates applicable during those parts of the income year when the capital protected borrowing is at a variable rate.

- (6) If this section applies to a borrower, this Act applies as if:
- (a) the borrower's excess from the method statement in subsection (3); or
  - (b) the amount that is reasonably attributable to \*capital protection as mentioned in paragraph (1)(a) or (b);
- (reduced by any amount the borrower incurred under or in respect of the \*capital protected borrowing for an explicit put option) were incurred only for a put option granted by the lender or by another entity under the \*arrangement.

### **247-25 Number of put options**

- (1) If a \*capital protected borrowing specifies more than one occasion on which the \*capital protection can be invoked, this Act applies as if there were a separate put option for each of those occasions. So much of the amount to which subsection 247-20(6) applies as is reasonably attributable to each option is taken to have been incurred for that option.

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

**Section 247-30**

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- (2) However, if a borrower may invoke the \*capital protection under a \*capital protected borrowing at any time up to the end of a period, or only at the end of a period, for which there is capital protection, this Act applies as if there were a single put option for that period.

**247-30 Exercise or expiry of option**

- (1) If the \*capital protection under a \*capital protected borrowing is invoked:
- (a) the borrower is taken to have exercised the put option; and
  - (b) any interest in a \*share, unit in a unit trust or stapled security that is acquired by the lender or another entity under the \*arrangement as a result of that capital protection being invoked is taken to have been disposed of by the borrower as a result of the exercise of the option.
- (2) If the \*capital protection under a \*capital protected borrowing is not invoked on or before the last occasion on which it could have been, the put option is taken to have expired.

Note: If a borrower under a capital protected borrowing holds the protected things on capital account, the exercise or expiry of the put option may give rise to a capital gain or capital loss: see sections 104-25 (CGT event C2) and 134-1 (exercise of options).

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

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## **Division 250—Assets put to tax preferred use**

### **Table of Subdivisions**

	Guide to Division 250
250-A	Objects
250-B	When this Division applies to you and an asset
250-C	Denial of, or reduction in, capital allowance deductions
250-D	Deemed loan treatment of financial benefits provided for tax preferred use
250-E	Taxation of deemed loan
250-F	Treatment of asset when Division ceases to apply to the asset
250-G	Objections against determinations and decisions by the Commissioner

### **Guide to Division 250**

#### **250-1 What this Division is about**

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are assessed only to the extent of a notional gain component. This component is worked out on the basis of treating the arrangements under which the asset is put to a tax preferred use, and financial benefits are provided in relation to that tax preferred use, as a loan. Subdivision 250-E then applies to determine the amounts that are to be assessed.

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

Section 250-5

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**Subdivision 250-A—Objects**

**Table of sections**

250-5 Main objects

**250-5 Main objects**

The main objects of this Division are:

- (a) to deny or reduce your \*capital allowance deductions in respect of an asset if the asset is put to a \*tax preferred use and you have insufficient economic interest in the asset; and
- (b) if your capital allowance deductions are denied or reduced, to treat the \*arrangement for the tax preferred use of the asset as a loan that is taxed as a financial arrangement (on a compounding accruals basis).

**Subdivision 250-B—When this Division applies to you and an asset**

**Table of sections**

**Overall test**

250-10 When this Division applies to you and an asset  
250-15 General test  
250-20 First exclusion—small business entities  
250-25 Second exclusion—financial benefits under minimum value limit  
250-30 Third exclusion—certain short term or low value arrangements  
250-35 Exceptions to section 250-30  
250-40 Fourth exclusion—sum of present values of financial benefits less that amount otherwise assessable  
250-45 Fifth exclusion—Commissioner determination

**Tax preferred use of asset**

250-50 *End user* of an asset  
250-55 *Tax preferred end user*  
250-60 *Tax preferred use* of an asset  
250-65 *Arrangement period* for tax preferred use

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

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- 250-70 New tax preferred use at end of arrangement period if tax preferred use continues
- 250-75 What constitutes a separate asset for the purposes of this Division
- 250-80 Treatment of particular arrangements in the same way as leases

**Financial benefits in relation to tax preferred use**

- 250-85 Financial benefits in relation to tax preferred use of an asset
- 250-90 Financial benefit provided directly or indirectly
- 250-95 Expected financial benefits in relation to an asset put to tax preferred use
- 250-100 Present value of financial benefit that has already been provided

**Discount rate to be used in working out present values**

- 250-105 Discount rate to be used in working out present values

**Predominant economic interest**

- 250-110 Predominant economic interest
- 250-115 Limited recourse debt test
- 250-120 Right to acquire asset test
- 250-125 Effectively non-cancellable, long term arrangement test
- 250-130 Meaning of *effectively non-cancellable* arrangement
- 250-135 Level of expected financial benefits test
- 250-140 When to retest predominant economic interest under section 250-135

**Overall test**

**250-10 When this Division applies to you and an asset**

This Division applies to you and an asset at a particular time if:

- (a) the general test in section 250-15 is satisfied in relation to you and the asset; and
- (b) none of the exclusions in sections 250-20, 250-25, 250-30, 250-40 and 250-45 apply.

**250-15 General test**

This Division applies to you and an asset at a particular time if:

- (a) the asset is being \*put to a tax preferred use; and

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

Section 250-20

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- (b) the \*arrangement period for the \*tax preferred use of the asset is greater than 12 months; and
- (c) \*financial benefits in relation to the tax preferred use of the asset have been, will be or can reasonably be expected to be, \*provided to you (or a \*connected entity) by:
  - (i) a \*tax preferred end user (or a connected entity); or
  - (ii) any \*tax preferred entity (or a connected entity); or
  - (iii) any entity that is a foreign resident; and
- (d) disregarding this Division, you would be entitled to a \*capital allowance in relation to:
  - (i) a decline in the value of the asset; or
  - (ii) expenditure in relation to the asset; and
- (e) you lack a \*predominant economic interest in the asset at that time.

**250-20 First exclusion—small business entities**

This Division does not apply to you and an asset if:

- (a) you are a \*small business entity for the income year in which the \*arrangement period for the \*tax preferred use of the asset starts; and
- (b) you choose to deduct amounts under Subdivision 328-D for the asset for that income year.

**250-25 Second exclusion—financial benefits under minimum value limit**

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if, at the start of the \*arrangement period, the total of the nominal values of all the \*financial benefits that have been, or will be or can reasonably be expected to be, provided to you (or a \*connected entity):
  - (a) by \*members of the tax preferred sector; and
  - (b) in relation to the \*tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;

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



does not exceed \$5 million.

- (2) The amount referred to in subsection (1) is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

**250-30 Third exclusion—certain short term or low value arrangements**

*Certain short term or low value arrangements generally excluded*

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if:
- (a) the \*arrangement period for the \*tax preferred use of the asset does not exceed:
    - (i) 5 years if the asset is real property and the tax preferred use of the asset is a lease; or
    - (ii) 3 years in any other case; or
  - (b) at the start of the arrangement period, the total of the nominal values of all the \*financial benefits that have been, will be or can reasonably be expected to be, provided to you (or a \*connected entity):
    - (i) by \*members of the tax preferred sector; and
    - (ii) in relation to the tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;  
does not exceed:
      - (iii) \$50 million if the asset is real property and the tax preferred use of the asset is a lease; or
      - (iv) \$30 million in any other case; or
  - (c) at the start of the arrangement period, the total of the values of all the assets that are put to a tax preferred use under the arrangement does not exceed:
    - (i) \$40 million if the asset is real property and the tax preferred use of the asset is a lease; or
    - (ii) \$20 million in any other case.

This subsection has effect subject to section 250-35.

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

Section 250-35

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- (2) The amounts referred to in paragraphs (1)(b) and (c) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

**250-35 Exceptions to section 250-30**

*Debt interests*

- (1) Section 250-30 does not apply if the \*arrangement (either alone or together with any arrangement in relation to the \*tax preferred use of the asset or the provision of \*financial benefits in relation to the tax preferred use of the asset) is a \*debt interest.
- (2) In applying subsection (1), disregard subsection 974-130(4).

*Member of tax preferred sector having certain rights in relation to the asset*

- (3) Section 250-30 does not apply if:
- (a) a \*member of the tax preferred sector has:
- (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
  - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; or
  - (iii) a residual or reversionary interest in the asset that will arise or become exercisable at or after the end of the \*arrangement period; and
- (b) the consideration for the purchase, acquisition or transfer of the right, obligation or interest is not fixed as the \*market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this subsection does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

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

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*Member of tax preferred sector providing financing*

- (4) Section 250-30 does not apply if a \*member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).

*Finance leases, non-cancellable operating leases, service concessions and similar arrangements*

- (5) Section 250-30 does not apply if an \*arrangement in relation to the \*tax preferred use of the asset, or the provision of \*financial benefits in relation to the tax preferred use of the asset, is or involves:
- (a) a finance lease; or
  - (b) a non-cancellable operating lease; or
  - (c) a service concession or similar arrangement;
- that generally accepted accounting principles, as in force at the start of the \*arrangement period, require to be included as an asset or a liability in your balance sheet.

*Financial benefits irregular, not based on comparable market-based rates or not reflecting value of tax preferred use of asset*

- (6) Section 250-30 does not apply if the \*financial benefits that have been, or are to be provided, to you (or a \*connected entity) by \*members of the tax preferred sector in relation to the \*tax preferred use of the asset:
- (a) are not provided on a regular periodic basis (and at least annually); or
  - (b) are not based on comparable market-based rates; or
  - (c) do not reflect the value of the tax preferred use of the asset.

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

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**Section 250-40**

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*Special rules if tax preferred use is a lease or hire of the asset*

- (7) If the \*tax preferred use of the asset is a lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) the asset is so specialised that the \*end user could not carry out one or more of its functions effectively without the asset; and
  - (b) you would be unlikely to be able to re-lease, re-hire or resell the asset to another person who is not a \*member of the tax preferred end user group.

Note: For particular arrangements that are treated as leases, see section 250-80.

*Special rules if tax preferred use is not a lease or hire of the asset*

- (8) If the \*tax preferred use of the asset is not the lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) a \*member of the tax preferred sector has a right, if particular circumstances occur, to manage, or to assume control over, the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); or
  - (b) the asset is so specialised that it is unlikely that it could effectively be put to any use other than the tax preferred use; or
  - (c) neither you (nor a \*connected entity) has effective day to day control and physical possession of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

**250-40 Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable**

- (1) This Division does not apply to you and an asset that is being \*put to a tax preferred use under a particular \*arrangement if, when that

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

\*tax preferred use of the asset starts, the Division 250 assessable amount is less than the alternative assessable amount.

- (2) For the purposes of subsection (1), the **Division 250 assessable amount** is the sum of the present values of all the amounts that would be likely to be included in your assessable income under this Division in relation to the \*tax preferred use of the asset if this Division applied to you and the asset.
- (3) This is how to work out the **alternative assessable amount** for the purposes of subsection (1):

*Method statement*

- Step 1. Add up the present values of the amounts that would be included in your assessable income in relation to the \*financial benefits \*provided in relation to the tax preferred use of the asset during the \*arrangement period if this Division did not apply to you and the asset.
- Step 2. Add up the present values of the amounts that you would be able to deduct in relation to the asset, or expenditure in relation to the asset, under Division 40 or Division 43 in relation to the \*arrangement period if this Division did not apply to you and the asset.
- Step 3. Deduct the amount obtained in Step 2 from the amount obtained in Step 1. The result is the **alternative assessable amount**.

- (4) To avoid doubt, the amounts referred to in subsections (2) and (3) are all the amounts that would be likely to be included in your assessable income, or deducted, for all the income years during the whole, or a part, of which the asset is \*put to the tax preferred use.
- (5) The point in time to be used in determining, for the purposes of this section:

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

Section 250-45

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- (a) the present value of an amount that is included in your assessable income for an income year; or
  - (b) the present value of an amount that you would be able to deduct for an income year;
- is the end of the income year.

**250-45 Fifth exclusion—Commissioner determination**

This Division does not apply to you and an asset at a particular time if:

- (a) you request the Commissioner to make a determination under this subsection; and
- (b) the Commissioner determines that it is unreasonable that the Division should apply to you and the asset at that time, having regard to:
  - (i) the circumstances because of which this Division would apply to you and the asset; and
  - (ii) any other relevant circumstances.

**Tax preferred use of asset**

**250-50 End user of an asset**

- (1) An entity (other than you) is an *end user* of an asset if the entity (or a \*connected entity):
  - (a) uses, or effectively controls the use of, the asset; or
  - (b) will use, or effectively control the use of, the asset; or
  - (c) is able to use, or effectively control the use of, the asset; or
  - (d) will be able to use, or effectively control the use of, the asset.
- (2) The control referred to in subsection (1) may be direct or indirect.
- (3) For the purposes of subsection (1), disregard any temporary control of the asset that is for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service.

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

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- (4) To avoid doubt, an entity is taken to be an **end user** of an asset if the entity (or a \*connected entity) holds rights as a lessee under a lease of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

### **250-55 Tax preferred end user**

An \*end user of an asset is a **tax preferred end user** if:

- (a) the end user (or a \*connected entity) is a \*tax preferred entity; or
- (b) the end user is:
  - (i) an entity that is a foreign resident; or
  - (ii) an entity that is an Australian resident, to the extent that the entity carries on \*business in a foreign country at or through a \*permanent establishment of the entity in that country.

### **250-60 Tax preferred use of an asset**

- (1) An asset is **put to a tax preferred use** at a particular time if:
- (a) an \*end user (or a \*connected entity) holds, at that time, rights as lessee under a lease of the asset; and
  - (b) either or both of the following subparagraphs is satisfied at that time:
    - (i) the asset is, or is to be, used by or on behalf of an end user who is a \*tax preferred end user because of paragraph 250-55(a) (tax preferred entity);
    - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident or business).

If this subsection applies, the **tax preferred use** of the asset is the lease referred to in paragraph (a).

Note: For particular arrangements that are treated as leases, see section 250-80.

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

Section 250-60

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- (2) An asset is also *put to a tax preferred use* at a particular time if:
- (a) at that time the asset is, or is to be, used (whether or not by you) wholly or partly in connection with:
    - (i) the production, supply, carriage, transmission or delivery of goods; or
    - (ii) the provision of services or facilities; and
  - (b) either or both of the following subparagraphs is satisfied at that time:
    - (i) some or all of the goods, services or facilities are, or are to be, produced for or supplied, carried, transmitted or delivered to or for an \*end user who is a \*tax preferred end user because of paragraph 250-55(a) (tax preferred entity) but is not an \*exempt foreign government agency;
    - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident or business).

If this subsection applies, the *tax preferred use* of the asset is the production, supply, carriage, transmission, delivery or provision referred to in paragraph (a).

- (3) To avoid doubt, the facilities referred to in subsection (2) include:
- (a) hospital or medical facilities; or
  - (b) prison facilities; or
  - (c) educational facilities; or
  - (e) transport facilities; or
  - (f) the supply of water, gas or electricity; or
  - (g) housing or accommodation; or
  - (h) premises from which to operate a \*business or other undertaking.
- (4) If the asset is being \*put to a tax preferred use:
- (a) the *members of the tax preferred end user group* are:
    - (i) the \*tax preferred end user; and

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



- (ii) the \*connected entities of the tax preferred end user; and
- (b) the **members of the tax preferred sector** are:
  - (i) the tax preferred end user (and connected entities); and
  - (ii) any \*tax preferred entity (or a connected entity); and
  - (iii) any entity that is a foreign resident.

### **250-65 Arrangement period for tax preferred use**

#### *Start of the arrangement period*

- (1) The **arrangement period** for a particular \*tax preferred use of an asset starts when that tax preferred use of the asset starts.

#### *End of the arrangement period*

- (2) Subject to subsection (3), the **arrangement period** for a particular \*tax preferred use of an asset is taken to end on the day that is the date on which the tax preferred use of the asset may reasonably be expected, or is likely, to end.
- (3) The **arrangement period** for the \*tax preferred use of the asset ends when this Division ceases to apply to you and the asset if that happens before the day referred to in subsection (2).
- (4) In determining when a particular \*tax preferred use of an asset is likely to end:
  - (a) regard must be had to:
    - (i) the terms of, and any other circumstances relating to, any \*arrangement dealing with that tax preferred use of the asset; and
    - (ii) the terms of, and any other circumstances relating to, any arrangement dealing with the \*provision of \*financial benefits in relation to that tax preferred use of the asset; and
  - (b) it must be assumed that any right that an entity has to renew or extend such an arrangement will not be exercised (unless it is reasonable to assume that the right will be exercised)

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

Section 250-70

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because of the commercial consequences for the entity (or a \*connected entity) of not exercising the right).

*Tax preferred uses of asset by entity and connected entity*

- (5) For the purposes of this section:
- (a) the \*tax preferred use of an asset by an entity; and
  - (b) the tax preferred use of the asset by a \*connected entity of that entity;
- are taken to constitute a single tax preferred use of the asset.

**250-70 New tax preferred use at end of arrangement period if tax preferred use continues**

If:

- (a) this Division applies to you and an asset because the asset is \*put to a tax preferred use; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends on a particular date (the *termination date*); and
- (c) the asset continues to be put to the tax preferred use after the termination date;

the tax preferred use of the asset after the termination date is taken to be a separate and distinct tax preferred use of the asset from the tax preferred use of the asset before the termination date.

Note: This means, among other things, that there is a new arrangement period for the tax preferred use after the termination date and that the arrangement is retested under section 250-15 against circumstances as they stand immediately after the termination date.

**250-75 What constitutes a separate asset for the purposes of this Division**

- (1) This Division applies to:
- (a) an improvement to land; or
  - (b) a fixture on land;
- whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

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

- (2) Whether a particular composite item is itself an asset or whether its components are separate assets is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is an asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate assets.

- (3) This Division applies to a renewal or extension of an asset that is a right as if the renewal or extension were a continuation of the original right.
- (4) This Division applies to an asset (the *underlying asset*) in which:
- (a) you have an interest; and
  - (b) one or more other entities also have an interest;
- as if your interest in the underlying asset were itself the underlying asset.

### **250-80 Treatment of particular arrangements in the same way as leases**

This Division applies to an \*arrangement that:

- (a) in substance or effect, depends on the use of a specific asset that is:
    - (i) real property; or
    - (ii) goods or a personal chattel (other than money or a money equivalent); and
  - (b) gives a right to control the use of the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); and
  - (c) is not a lease;
- in the same way as it applies to a lease.

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

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Section 250-85

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Note: Even if this section applies to treat an arrangement in relation to an asset as a lease, the requirements in section 250-50 still need to be satisfied before an entity can be an end user of the asset.

## Financial benefits in relation to tax preferred use

### 250-85 Financial benefits in relation to tax preferred use of an asset

- (1) For the purposes of this Division, the \*financial benefits *provided in relation to a tax preferred use of an asset* include (but are not limited to):
  - (a) a financial benefit provided in relation to:
    - (i) bringing the asset into a state, condition or location in which it can be \*put to the tax preferred use; or
    - (ii) the start of the \*tax preferred use of the asset; and
  - (b) a financial benefit provided in relation to the end of the tax preferred use of the asset; and
  - (c) a financial benefit provided in relation to the termination or expiration of an \*arrangement that deals with:
    - (i) the tax preferred use of the asset; or
    - (ii) the provision of financial benefits in relation to the tax preferred use of the asset; and
  - (d) a financial benefit provided in relation to the purchase or acquisition of the asset by, or transfer of the asset to, the \*tax preferred end user (or a \*connected entity).
- (2) Without limiting paragraph (1)(b), if the asset has a \*guaranteed residual value:
  - (a) the amount of the guaranteed residual value is taken to be a \*financial benefit *provided in relation to the tax preferred use of the asset*; and
  - (b) that financial benefit is taken to be provided when the relevant payment is made in relation to the guaranteed residual value.
- (3) The asset has a *guaranteed residual value* if there is an \*arrangement that provides to the effect that if:

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

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- (a) on or after the end of the \*arrangement period, you (or a \*connected entity) sell or otherwise dispose of the asset to any person; and
- (b) you (or a connected entity) receives in respect of the sale or disposal:
  - (i) no consideration; or
  - (ii) consideration that is less than an amount (the **guaranteed amount**) specified in, or ascertainable under, the provision;

a \*member of the tax preferred sector will pay to you (or a connected entity), or to someone else for your benefit (or for the benefit of a connected entity), an amount equal to:

- (c) the guaranteed amount if subparagraph (b)(i) applies; or
- (d) the amount by which the guaranteed amount exceeds the consideration if subparagraph (b)(ii) applies.

The amount of the guaranteed residual value is taken to be the guaranteed amount.

- (4) If:
  - (a) an asset is \*put to a tax preferred use; and
  - (b) an entity is an \*end user of the asset because the entity manages the asset or the use to which the asset is put; any \*financial benefit that the entity (or a \*connected entity) provides that is calculated by reference to the receipts, revenue or income generated by the use of the asset is also taken to be a financial benefit **provided in relation to the tax preferred use of the asset**.
- (5) For the purposes of this Division (other than this subsection), a \*financial benefit provided by a \*member of the tax preferred sector is taken not to be **provided in relation to the tax preferred use of an asset** to the extent to which the financial benefit merely passes on, or represents:
  - (a) financial benefits provided in relation to the use of the asset; or
  - (b) something derived from the use of the asset;

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

Section 250-90

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by someone who is not a member of the tax preferred sector.

- (6) For the purposes of this Division, disregard a \*financial benefit \*provided in relation to the tax preferred use of the asset to the extent to which it consists solely of routine maintenance of the asset.
- (7) For the purposes of this Division, if a \*financial benefit is provided in relation to the use of a number of assets, a separate financial benefit of an amount or value that is reasonably attributable to each asset is taken to be provided in relation to each asset.
- (8) To avoid doubt, a \*financial benefit may be *provided in relation to a tax preferred use of an asset* even though it is provided before the \*tax preferred use of the asset starts.
- (9) For the purposes of this Division:
  - (a) a \*financial benefit that is not an amount:
    - (i) is taken to become due and payable when the entity providing the financial benefit becomes liable to provide the financial benefit; and
    - (ii) is taken to be paid when it is provided; and
  - (b) a financial benefit that is paid without becoming due and payable is taken to have become due and payable on the day on which it was paid.

**250-90 Financial benefit provided directly or indirectly**

For the purposes of this Division, a person (the *provider*) is taken to provide a \*financial benefit to a person (the *recipient*) in relation to a \*tax preferred use of an asset whether the financial benefit is provided to the recipient:

- (a) directly; or
- (b) indirectly (including indirectly through an entity that is not a \*connected entity of the recipient and is not a connected entity of the provider).

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

### **250-95 Expected financial benefits in relation to an asset put to tax preferred use**

For the purposes this Division, the *expected financial benefits* at a particular time in relation to an asset that is \*put to a tax preferred use are the \*financial benefits that, at that time:

- (a) have been; or
- (b) will, assuming normal operating conditions, be; or
- (c) can, assuming normal operating conditions, reasonably be expected to be;

\*provided in relation to the tax preferred use of the asset by a \*member of the tax preferred sector to someone who is not a member of the tax preferred sector.

Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits provided in relation to the end of the tax preferred use of the asset or in relation to the purchase, disposal or transfer of the asset to be treated as financial benefits provided in relation to the tax preferred use of the asset.

### **250-100 Present value of financial benefit that has already been provided**

For the purposes of this Division, the *present value* of a \*financial benefit at a particular time is the nominal amount or value of the financial benefit if the financial benefit has been provided before that time.

### **Discount rate to be used in working out present values**

#### **250-105 Discount rate to be used in working out present values**

- (1) For the purposes of section 250-40, the discount rate to be used in working out the present value of a future amount is the \*long term bond rate for the \*financial year in which the relevant \*arrangement period starts.
- (2) For the purposes of section 250-135 and Subdivisions 250-C and 250-D, the discount rate to be used in working out the present

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

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value of a future amount is a rate that reflects a constant periodic rate of return (worked out on a compounding basis) on the investment in:

- (a) the asset referred to in subparagraph 250-15(d)(i) if that subparagraph applies; or
- (b) the expenditure referred to in paragraph 250-15(d)(ii) if that subparagraph applies;

that is implicit in the \*arrangements under which the asset is \*put to a tax preferred use and \*financial benefits are \*provided in relation to that tax preferred use.

### **Predominant economic interest**

#### **250-110 Predominant economic interest**

You lack a *predominant economic interest* in an asset at a particular time only if one or more of the following sections apply to you and the asset at that time:

- (a) section 250-115 (limited recourse debt test);
- (b) section 250-120 (right to acquire asset test);
- (c) section 250-125 (effectively non-cancellable, long term arrangement test);
- (d) section 250-135 (level of expected financial benefits test).

#### **250-115 Limited recourse debt test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if more than the allowable percentage of the cost of your acquiring or constructing the asset is financed (directly or indirectly) by a \*limited recourse debt or debts.
- (2) For the purposes of subsection (1):
  - (a) the amount of a \*limited recourse debt is to be reduced by the value of any \* debt property (other than the \*financed property) that is provided as security for the debt; and
  - (b) if the limited recourse debt finances the acquisition or construction of 2 or more assets, only the amount of the debt

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



that is reasonably attributable to the asset referred to in subsection (1) is to be taken into account.

- (3) For the purposes of subsection (1), the allowable percentage is:
- (a) 80% if the asset is taken to be \*put to a tax preferred use because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use by \*tax preferred entities); or
  - (b) 55% if the asset is taken to be put to a tax preferred use because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end use by foreign residents or businesses).
- (4) This section does not apply to the asset if:
- (a) you are a \*corporate tax entity; and
  - (b) the \*tax preferred use of the asset is not the lease or hire of the asset (and is not the use of the asset under a lease or hire arrangement); and
  - (c) the asset is \*put to the tax preferred use wholly or principally in Australia; and
  - (d) no \*member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).
- (5) Paragraph (4)(b) does not apply if:
- (a) the asset is real property (or an interest in real property); and
  - (b) the \*tax preferred use of the asset is a lease; and
  - (c) the space within the property that is occupied by tenants who are \*members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants.
- (6) This section also does not apply to the asset if:
- (a) you hold the asset as a trustee; and
  - (b) the asset is real property (or an interest in real property); and
  - (c) the \*tax preferred use of the asset is a lease; and

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

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- (d) the space within the property that is occupied by tenants who are \*members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants; and
- (e) the asset is \*put to the tax preferred use wholly or principally in Australia; and
- (f) no member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide \*financial benefits in the event of the termination of an \*arrangement).

**250-120 Right to acquire asset test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if, at that time:
  - (a) the asset is to be transferred to a \*member of the tax preferred sector after the end of the \*arrangement period; and
  - (b) the consideration for the transfer is not fixed as the \*market value of the asset at the time of the transfer.
- (2) You also lack a *predominant economic interest* in an asset at a particular time if, at that time:
  - (a) a \*member of the tax preferred end user group has, or will have:
    - (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
    - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; and
  - (b) the consideration for the purchase, acquisition or transfer is not fixed as the \*market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this section does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

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

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**250-125 Effectively non-cancellable, long term arrangement test**

- (1) You lack a *predominant economic interest* in an asset at a particular time if:
  - (a) any \*arrangement that relates to:
    - (i) the \*tax preferred use of the asset; or
    - (ii) the \*financial benefits to be \*provided by the \*members of the tax preferred sector in relation to the tax preferred use of the asset;is \*effectively non-cancellable (see section 250-130); and
  - (b) the \*arrangement period for the tax preferred use of the asset is:
    - (i) greater than 30 years; or
    - (ii) if the arrangement period is less than or equal to 30 years—75% or more of that part of the asset's \*effective life that remains when the tax preferred use of the asset starts.
- (2) Disregard section 40-102 in working out the asset's \*effective life for the purposes of subparagraph (1)(b)(ii).

**250-130 Meaning of *effectively non-cancellable* arrangement**

- (1) An \*arrangement that relates to \*financial benefits to be \*provided by a \*member of the tax preferred sector in relation to the tax preferred use of an asset is *effectively non-cancellable* if:
  - (a) the arrangement can be cancelled only with:
    - (i) your permission; or
    - (ii) the permission of a \*connected entity of yours; or
    - (iii) an agent or entity acting on your behalf (or on behalf of a connected entity of yours); or
  - (b) the arrangement can be cancelled without the permission of an entity referred to in paragraph (a) but, if the arrangement were cancelled, the member of the tax preferred sector or another member of the tax preferred sector:

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

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- (i) would be required to enter into a new arrangement for the \*provision of financial benefits in relation to the tax preferred use of the asset; or
  - (ii) would incur a penalty and the magnitude of the penalty would be such as to discourage cancellation.
- (2) For these purposes, if a \*member of the tax preferred sector defaults under an \*arrangement and the arrangement is cancelled, the arrangement is to be taken to have been cancelled without the permission of an entity referred to in paragraph (1)(a).

**250-135 Level of expected financial benefits test**

*Effective guarantee or indemnity for value of asset*

- (1) You lack a ***predominant economic interest*** in an asset at a particular time if the asset has a \*guaranteed residual value at that time.

*Likely financial benefits exceeding 70% limit*

- (2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:
- (a) the \*arrangement under which the asset is \*put to the tax preferred use (either alone or together with any other arrangement in relation to the \*tax preferred use of the asset or the \*provision of \*financial benefits in relation to the tax preferred use of the asset) is a \*debt interest; or
  - (b) the sum of the present values of the \*expected financial benefits that \*members of the tax preferred sector have provided, or are or are reasonably likely to provide, to you (or a \*connected entity) in relation to the tax preferred use of the asset exceeds 70% of:
    - (i) the \*market value of the asset if subparagraph 250-15(d)(i) applies; or

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

- (ii) so much of the market value of the asset as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

**250-140 When to retest predominant economic interest under section 250-135**

*Purpose for applying section*

- (1) This section applies for the purposes of working out whether this Division applies to you and to an asset that is \*put to a tax preferred use.

*No need to keep retesting if section 250-135 does not apply at start of tax preferred use of asset*

- (2) If section 250-135 does not apply to you and the asset at the time when the \*tax preferred use of the asset starts, that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if section 250-135 does not apply to the arrangement when the tax preferred use of the asset starts, the arrangement does not need to be retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*No need to keep retesting if section 250-135 does not apply when you do something to increase value of expected financial benefits*

- (3) If:
- (a) you (or a \*connected entity), or a \*member of the tax preferred sector, do something, or omit to do something, at a particular time that increases the value of the \*expected financial benefits in relation to the \*tax preferred use of the asset; and
  - (b) section 250-135 does not apply to the asset at that time;
- that section is taken, subject to subsection (4), to continue not to apply to you 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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Note: This subsection means that if the arrangement is retested against section 250-135 at a particular time and section 250-135 does not apply to the arrangement on that retesting, the arrangement does not need to be again retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*Retesting when you do something to increase the value of expected financial benefits*

- (4) Subsection (2) or (3) ceases to apply to you and the asset if you (or a \*connected entity), or a \*member of the tax preferred sector, do something, or omit to do something, that increases the value of the \*expected financial benefits in relation to the \*tax preferred use of the asset.

*Certain financial benefits ignored when retesting*

- (5) For the purposes of reapplying section 250-135 to the asset, disregard \*financial benefits provided before subsection (2) or (3) of this section ceased to apply to the asset.

Note: If:

- (a) subsection (2) or (3) ceases to apply to the asset at a particular time under this subsection; and
- (b) the asset is retested at that time against section 250-135; and
- (c) on the retesting, that section is found to apply to the asset at that time;

subsection (3) will start to apply to the asset again from that time because paragraph (3)(b) will have been satisfied.

*Clarification that retesting only required if you do something to increase value of expected benefits*

- (6) To avoid doubt, subsection (2) or (3) does not cease to apply merely because the value of the \*expected financial benefits in relation to the asset increase because of something other than action taken, or an omission made, by you (or a \*connected entity) or a \*member of the tax preferred sector.

Note: This subsection means that retesting under subsection (4) is not triggered by an increase in the value of expected financial benefits that happens because of external circumstances (circumstances external to

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

activities and omissions of yours, your connected entities and members of the tax preferred sector).

### **Subdivision 250-C—Denial of, or reduction in, capital allowance deductions**

#### **Table of sections**

250-145	Denial of capital allowance deductions
250-150	Apportionment rule

#### **250-145 Denial of capital allowance deductions**

- (1) If this Division applies to you and an asset at a particular time, any condition that needs to be satisfied for you to be able to deduct an amount under a \*capital allowance provision in relation to:
  - (a) a decline in the value of the asset; or
  - (b) expenditure in relation to the asset;is taken not to be satisfied at that time.
- (2) This section has effect subject to section 250-150.

#### **250-150 Apportionment rule**

- (1) This section applies if:
  - (a) this Division applies to you and an asset that is \*put to a tax preferred use; and
  - (b) it is reasonable to expect that, during the \*arrangement period for the \*tax preferred use of the asset, particular \*financial benefits will be provided to you (or a \*connected entity); and
  - (c) it is reasonable to expect that those financial benefits:
    - (i) will be provided in relation to a use of the asset that is not that tax preferred use and is not a private use; or
    - (ii) will be \*provided in relation to that tax preferred use of the asset but will not be attributable, directly or indirectly, to financial benefits that are provided by \*members of the tax preferred sector; and

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

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- (d) the amount or value of those financial benefits is known or can reasonably be estimated; and
  - (e) you choose to have this section apply to the asset.
- In applying paragraph (c), disregard financial benefits that are provided under an \*arrangement that is a \*debt interest.
- (2) A choice under paragraph (1)(e) in relation to an asset:
    - (a) must be made before the due date for you to lodge your \*income tax return for the income year in which the \*arrangement period for the \*tax preferred use of the asset starts; and
    - (b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and
    - (c) must extend to all assets that are, or are to be, \*put to a tax preferred use under the \*arrangement under which the asset is put to that use; and
    - (d) is irrevocable.
- The choice may extend to an asset referred to in paragraph (c) even if it is likely that paragraphs (1)(b) and (c) will not apply to that asset.
- (3) If this section applies, section 250-145 applies to you and the asset only to the extent of the \*disallowed capital allowance percentage.
  - (4) Subject to subsection (6), the ***disallowed capital allowance percentage*** is the following ratio (expressed as a percentage):  
$$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$
  - (5) The Commissioner may, before the due date for you to lodge your \*income tax return for the income year to which the \*arrangement period for the \*tax preferred use of the asset starts, approve an alternative method for working out the \*disallowed capital allowance percentage for you 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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- (6) If the Commissioner approves an alternative method under subsection (5), the *disallowed capital allowance percentage* is the percentage worked out in accordance with that alternative method.

### **Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use**

#### **Table of sections**

250-155	Arrangement treated as loan
250-160	Financial benefits that are <i>subject to deemed loan treatment</i>
250-180	<i>End value</i> of asset
250-185	Financial benefits subject to deemed loan treatment not assessed

#### **250-155 Arrangement treated as loan**

*Loan with characteristics provided for in this section taken to exist*

- (1) If this Division applies to you and an asset at a particular time in an income year, a \*financial arrangement in the form of a loan (with the characteristics provided for in this section) is taken to exist at that time for the purposes of working out your taxable income for that income year.

Note: See Subdivision 250-E for the taxation treatment of the financial arrangement.

*Lender*

- (2) You are taken to be the lender in relation to the loan.

*Amount lent and unpaid at the start of the arrangement period*

- (3) The amount worked out under subsection (4) is taken to be the amount that you have lent, and that the borrower has not repaid, at the start of the \*arrangement period.
- (4) The amount is worked out by taking:
- (a) the amount that, at the start of the \*arrangement period, is:

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

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- (i) the \*adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
- (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies; or
- (b) if section 250-150 applies—the amount that, at the start of the arrangement period, is the \*disallowed capital allowance percentage of:
  - (i) the adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
  - (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies;
 and deducting the sum of all \*financial benefits that are \*subject to deemed loan treatment and that have become due and payable before the start of the arrangement period.
- (5) If subparagraph 250-15(d)(ii) applies, the amount worked out under this subsection for the purposes of subsection (4) is:

<b>Item</b>	<b>If the expenditure referred to in that subparagraph is ...</b>	<b>the amount is ...</b>
1	capital expenditure under Division 40	the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40
2	capital expenditure under Division 43	the *undeducted construction expenditure in relation to the capital expenditure

*Amounts paid to you by borrower under the loan*

- (6) Any \*financial benefit that:
  - (a) a person provides; and
  - (b) is \*subject to deemed loan treatment;
 is taken to be an amount that the borrower pays you under the loan.

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

- Note 1: Section 250-160 tells you which financial benefits are subject to the deemed loan treatment.
- Note 2: These benefits may be ones that are provided either to you or to a connected entity.

*Period of the loan*

- (7) The \*arrangement period is taken to be the period of the loan.

*Applying Subdivision 250-E to the loan*

- (8) For the purposes of applying Subdivision 250-E to the loan:
- (a) you are taken to have an overall gain from the loan and that overall gain is taken to be sufficiently certain at the time when you start to have the loan; and
  - (b) the amount of that overall gain is taken to be the sum of the \*financial benefits that are \*subject to the deemed loan treatment less the amount worked out under subsection (4); and
  - (c) you are taken:
    - (i) to start to have the loan at the start of the \*arrangement period; and
    - (ii) to cease to have the loan at the end of the arrangement period; and
  - (d) any right that you (or a connected entity) have to a financial benefit that is subject to deemed loan treatment is taken to be a right that you have under the loan; and
  - (e) if a \*connected entity transfers to another person a right to a financial benefit subject to deemed loan treatment:
    - (i) you are taken to transfer the right to that other person; and
    - (ii) any consideration that the connected entity receives in relation to the transfer is taken to be consideration that you receive in relation to the transfer; and
  - (f) if a right that a connected entity has to a financial benefit subject to deemed loan treatment ceases and the connected entity receives consideration in relation to that cessation—

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

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- you are taken to receive that consideration in relation to the cessation; and
- (g) you are taken to start to have the loan, or to cease to have the loan, as consideration for something if you start to have the rights to the financial benefits that are subject to deemed loan treatment, or cease to have those rights, as consideration for that thing; and
  - (h) in applying sections 250-265 to 250-275:
    - (i) the amount that you are taken, under subsections (3), (4) and (5), to have lent are the only financial benefits that you provide under the loan; and
    - (ii) the financial benefits you have received under the loan are taken to include financial benefits that are subject to deemed loan treatment that a person is, at the end of the arrangement period, liable to provide to you.
- (9) If, under subsection 250-160(2), a particular percentage of a reasonable estimate of the \*end value of the asset was taken to be a \*financial benefit that is \*subject to the deemed loan treatment, subsection 250-275(1) applies to the loan at the end of the \*arrangement period as if you had received under the loan a financial benefit equal to the relevant percentage of the end value of the asset.

**250-160 Financial benefits that are *subject to deemed loan treatment***

*General rule*

- (1) Subject to subsections (3) and (4), a \*financial benefit is ***subject to deemed loan treatment*** if:
- (a) the financial benefit:
    - (i) has been; or
    - (ii) will, assuming normal operating conditions, be; or
    - (iii) can, assuming normal operating conditions, reasonably be expected to be;
- provided to you (or a \*connected entity); and

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

- (b) the financial benefit has been, will be or can reasonably be expected to be \*provided directly or indirectly by a \*member of the tax preferred sector in relation to the \*tax preferred use of the asset; and
- (c) the right to receive, or the obligation to provide, the financial benefit is \*cash settlable; and
- (d) the financial benefit has not been, will not be or can be expected not to be provided by one of your connected entities.

Note: Paragraph (d) stops a financial benefit passing between you and any of your connected entities from being counted twice.

*End value also taken to be financial benefit subject to deemed loan treatment*

- (2) The relevant percentage of a reasonable estimate of the \*end value of the asset is also taken to be a \*financial benefit that is **subject to deemed loan treatment** if:
  - (a) the asset is not to be purchased or acquired by, or transferred to, a \*member of the tax preferred sector at the end of the \*arrangement period under a legally enforceable \*arrangement; or
  - (b) the asset:
    - (i) is, or is to become, a \*privatised asset; or
    - (ii) would be, or would become, a privatised asset if it were a \*depreciating asset; or
    - (iii) would be a privatised asset if the asset were a depreciating asset and paragraphs 58-5(2)(a) and 58-5(4)(a) were not limited to acquisitions of depreciating assets that occurred on or after 1 July 2001.

The relevant percentage is the \*disallowed capital allowance percentage if section 250-150 applies. Otherwise it is 100%.

Note: See section 250-180 for how to work out the end value of the asset.

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

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*Financial benefits only subject to deemed loan treatment to the extent to which they represent a return on investment*

- (3) The \*financial benefit is **subject to deemed loan treatment** only to the extent to which it reasonably represents a return of, or on, an investment in the asset (as distinct, for example, from representing consideration for the provision of services or the recovery of production costs), having regard to:
- (a) the \*market value of the asset; and
  - (b) the discount rate applicable under subsection 250-105(2); and
  - (c) your costs in relation to funding your interest in the asset; and
  - (d) any other relevant matter.

The regulations may provide rules to be applied in determining the extent to which a financial benefit reasonably represents a return of or on an investment in the asset.

*Only financial benefits provided after Division starts applying to you and the asset*

- (4) If the \*tax preferred use of the asset starts before this Division starts applying to you and the asset, only \*financial benefits provided after this Division starts applying to you and the asset are **subject to deemed loan treatment**.

**250-180 End value of asset**

- (1) The **end value** of an asset is worked out in accordance with this section.
- (2) If the asset has a \*guaranteed residual value, the **end value** of the asset is:
- (a) the amount of the guaranteed residual amount if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

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

- (3) If the asset does not have a \*guaranteed residual value and is a \*depreciating asset, the **end value** of the asset is:
- (a) if subparagraph 250-15(d)(i) applies—the amount that would have been the \*adjustable value of the asset at the end of the \*arrangement period if:
    - (i) this Division had not applied to you and the asset; and
    - (ii) the decline in the asset's value were worked out on the basis of the asset's \*effective life and using the \*prime cost method; or
  - (b) if subparagraph 250-15(d)(ii) applies—so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in that subparagraph.
- (4) Disregard section 40-102 in working out the asset's \*effective life for the purposes of subparagraph (3)(a)(ii).
- (5) If neither subsection (2) nor subsection (3) applies and an estimate of the value of the asset is recognised for accounting purposes, the **end value** of the asset is:
- (a) the value of the relevant asset at the end of the \*arrangement period that would be recognised for accounting purposes if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the value of referred to in paragraph (a) as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.
- The **end value** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).
- (6) If none of subsections (2), (3) and (5) apply to the asset, the **end value** of the asset is:
- (a) a reasonable estimate of the \*market value of the asset at the end of the \*arrangement period if subparagraph 250-15(d)(i) applies; or
  - (b) so much of the estimate referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

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

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The *end value* must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

**250-185 Financial benefits subject to deemed loan treatment not assessed**

A \*financial benefit is not included in your assessable income if the financial benefit:

- (a) is \*provided to you in relation to the tax preferred use of the asset; and
- (b) is provided directly or indirectly by a \*member of the tax preferred sector; and
- (c) is \*subject to deemed loan treatment.

The financial benefit is not assessable income and is not \*exempt income.

**Subdivision 250-E—Taxation of deemed loan**

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

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**Guide to Subdivision 250-E**

**250-190 What this Subdivision is about**

This Subdivision is about the tax treatment of gains and losses from the financial arrangement that you are taken to have under section 250-155.

You recognise gains and losses from the financial arrangement, as appropriate, over the life of the financial arrangement and ignore distinctions between income and capital. You use a compounding accruals method to recognise the gain or loss.

A change in circumstances may cause a re-estimation of gains and losses that the accruals method is being applied to.

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

A balancing adjustment is made if you transfer particular rights or obligations or particular rights or obligations cease.

## **Application and objects of Subdivision**

### **250-195 Application of Subdivision**

This Subdivision applies for the purposes of working out the amount of the gain or loss that is to be included in your assessable income or allowed as a deduction in relation to the \*financial arrangement that is taken to exist under section 250-155.

### **250-200 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from the \*financial arrangement by allocating them to appropriate periods of time; and
- (b) to minimise tax deferral.

## **Tax treatment of gains and losses from financial arrangements**

### **250-205 Gains are assessable and losses deductible**

#### *Gains*

- (1) Your assessable income includes a gain you make from the \*financial arrangement.

#### *Losses*

- (2) You can deduct a loss you make from the \*financial arrangement, but only to the extent that:
  - (a) you make it in gaining or producing your assessable income; or
  - (b) you necessarily make it in carrying on a \*business for the purpose of gaining or producing your assessable income.

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

**250-210 Gain or loss to be taken into account only once under this Act**

*Purpose of this section*

- (1) The purpose of this section is to ensure that your gains that are assessable under this Subdivision, and your losses that are deductible under this Subdivision, are taken into account only once under this Act in working out your taxable income.

*Gain or loss*

- (2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Subdivision, the gain or loss is not to be (to any extent):
  - (a) included in your assessable income; or
  - (b) allowable as a deduction to you;under any other provisions of this Act for the same or any other income year.

*Associated financial benefits*

- (3) If the amount or value of a \*financial benefit is taken into account in working out whether you make, or the amount of, a gain or loss that is, or is to be, included in your assessable income or allowable as a deduction for you for an income year under this Subdivision, the benefit is not to be (to any extent):
  - (a) included in your assessable income; or
  - (b) allowable as a deduction to you;under any other provision of this Act for the same or any other income year.

**Method to be applied to take account of gain or loss**

**250-215 Methods for taking gain or loss into account**

The methods that can be applied to take account of a gain or loss you make from the \*financial arrangement you have are:

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

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- (a) the accruals method provided for in sections 250-235 to 250-255; or
- (b) a balancing adjustment provided for in sections 250-265 to 250-275.

A gain or loss is not taken into account under the method referred to in paragraph (a) to the extent to which the gain or loss is taken into account under sections 250-265 to 250-275.

## General rules

### 250-220 Consistency in working out gains or losses (integrity measure)

*Object of section*

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

*Consistent treatment for particular financial arrangement*

- (2) If:
  - (a) this Subdivision provides that a particular method applies to gains or losses you make from the \*financial arrangement; and
  - (b) that method allows you to choose the particular manner in which you apply that method;you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

- (3) If:
  - (a) this Subdivision provides that a particular method applies to gains or losses you make from 2 or more \*financial arrangements; and

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

- (b) that method allows you to choose the particular manner in which you apply that method;  
you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

### **250-225 Rights and obligations include contingent rights and obligations**

To avoid doubt:

- (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and  
(b) an obligation is treated as an obligation for the purpose of this Division even if it is subject to a contingency.

### **The accruals method**

#### **250-230 Application of accruals method**

The accruals method provided for in sections 250-235 to 250-255 applies to a gain or loss you make from the \*financial arrangement if:

- (a) the gain or loss is an overall gain or loss from the arrangement; and  
(b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

#### **250-235 Overview of the accruals method**

If the accruals method applies to a gain or loss you make from the \*financial arrangement:

- (a) you use section 250-240 to work out the period over which the gain or loss is to be spread; and  
(b) you use section 250-245 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and  
(c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 250-250 to work

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

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out how to allocate that part of the gain or loss allocated between those 2 income years.

**250-240 Applying accruals method to work out period over which gain or loss is to be spread**

If you have a sufficiently certain overall gain or loss from the \*financial arrangement, the period over which the gain or loss is to be spread is the period that:

- (a) starts when you start to have the arrangement; and
- (b) ends when you will cease to have the arrangement.

In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

**250-245 How gain or loss is spread**

*How to spread gain or loss*

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

*Compounding accruals or approximation*

- (2) The gain or loss is to be spread using:
  - (a) compounding accruals (with the intervals to which parts of the gain or loss are allocated complying with subsection (3));  
or
  - (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).

*Intervals to which parts of gain or loss allocated*

- (3) The intervals to which parts of the gain or loss are allocated must:
  - (a) not exceed 12 months; and
  - (b) all be of the same length.

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

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

*Assumption of continuing hold arrangement for the rest of its life*

- (4) The gain or loss is to be spread assuming that you will continue to have the \*financial arrangement for the rest of its life.

### **250-250 Allocating gain or loss to income years**

- (1) You are taken, for the purposes of section 250-205, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
- (a) that part of the gain or loss is allocated to an interval under section 250-245; and
  - (b) that interval falls wholly within that income year.
- (2) If:
- (a) a part of a gain or loss is allocated to an interval under section 250-245; and
  - (b) that interval straddles 2 income years;
- you are taken, for purposes of section 250-205, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (3) If:
- (a) a \*consolidated group or \*MEC group has a \*financial arrangement; and
  - (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *exit time*); and
  - (c) immediately after the exit time, the subsidiary member has the financial arrangement;
- an income year of the group is taken, for the purposes of applying this section to the group and the financial arrangement, to end at the exit time.

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

Section 250-255

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**250-255 When to re-estimate**

*When re-estimation necessary*

- (1) You re-estimate a gain or loss from the \*financial arrangement under subsection (4) if circumstances arise that materially affect:
  - (a) the amount or value; or
  - (b) the timing;of \*financial benefits that were taken into account in working out the amount of the gain or loss. You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (b).
- (2) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
  - (a) a material change in market conditions that are relevant to the amount or value of the \*financial benefits to be received or provided under the \*financial arrangement;
  - (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimated is not insignificant;
  - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt.
- (3) You do not re-estimate a gain or loss from a \*financial arrangement under subsection (4) merely because of any one or more of the following:
  - (a) a change in the credit rating, or the creditworthiness, of a party or parties to the financial arrangement;
  - (b) the impairment (within the meaning of the \*accounting standards) of the arrangement or a debt that forms part of the arrangement.

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

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*Nature of re-estimation*

- (4) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss; and
  - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:
- (a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;
  - (b) adjusting the rate of return and maintaining the amount to which you apply the rate of return.

The object to be achieved by both bases is allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

- (6) If you adopt a particular basis under subsection (5) for a gain or loss from the \*financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

*Balancing adjustment if rate of return maintained*

- (7) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph (5)(a), you must make the following balancing adjustment:
- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the

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

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- \*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
- (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
  - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, the income year in which you make the re-estimation, equal to the amount of the decrease.

**250-260 Re-estimation if balancing adjustment on partial disposal**

*Re-estimation if balancing adjustment on partial disposal*

- (1) You also re-estimate a gain or loss from a \*financial arrangement under subsection (2) if a balancing adjustment is made in relation to the financial arrangement under sections 250-265 to 250-275 because you transfer to another person:
  - (a) a proportionate share of all of your rights and/or obligations under a \*financial arrangement; or
  - (b) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or
  - (c) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

*Nature of re-estimation*

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:

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

- (a) a fresh determination of the amount of the gain or loss disregarding:
  - (i) \*financial benefits; and
  - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;  
to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
- (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

*Basis for re-estimation*

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is allow you to bring the remainder of the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

## **Balancing adjustment**

### **250-265 When balancing adjustment made**

*When balancing adjustment made*

- (1) A balancing adjustment is made under section 250-275 if:
  - (a) you transfer to another person all of your rights and/or obligations under the \*financial arrangement; or
  - (b) all of your rights and/or obligations under the financial arrangement otherwise substantially cease; or

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

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- (c) you transfer to another person:
  - (i) a proportionate share of all of your rights and/or obligations under the financial arrangement; or
  - (ii) a right or obligation that you have under the financial arrangement to a specifically identified \*financial benefit; or
  - (iii) a proportionate share of a right or obligation that you have under the financial arrangement to a specifically identified financial benefit.

*Modifications for arrangements that are assets*

- (2) The following modifications are made if the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:
  - (a) paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other person substantially all the risks and rewards of ownership of the interest transferred;
  - (b) for the purposes of applying section 250-275 to the arrangement, you are treated as transferring a right under the arrangement to another person if:
    - (i) you retain the right but assume a new obligation; and
    - (ii) your assumption of the new obligation has the same effect, in substance, as transferring the right to another person; and
    - (iii) the new obligation arises only to the extent to which the right to \*financial benefits under the financial arrangement is satisfied; and
    - (iv) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
    - (v) you must, under the new obligation, provide financial benefits you receive in relation to the right to the person to whom you owe the new obligation without delay.

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

### **250-270 Exception for subsidiary member leaving consolidated group**

A balancing adjustment is not made under section 250-275 in relation to a subsidiary member of a \*consolidated group or a \*MEC group that has the \*financial arrangement ceasing to be a member of the group.

### **250-275 Balancing adjustment**

*Complete cessation or transfer*

- (1) Use the following method statement to make the balancing adjustment if paragraph 250-265(1)(a) or (b) applies:

*Method statement for balancing adjustment*

Step 1. Add up the following:

- (a) the total of all the \*financial benefits provided to you under the \*financial arrangement;
- (b) the amount or value of any other consideration you receive in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;
- (d) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions.

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

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Step 2. Add up the following:

- (a) the total of all the \*financial benefits you have provided under the \*financial arrangement;
- (b) the amount or value of any other consideration you provide in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;
- (d) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable.

Step 3. Compare the amount obtained under Step 1 (the ***Step 1 amount***) with the amount obtained under Step 2 (the ***Step 2 amount***). If the Step 1 amount exceeds the Step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the \*financial arrangement for the purposes of this Subdivision. If the Step 2 amount exceeds the Step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the Step 1 amount and the Step 2 amount are equal, no balancing adjustment is made.

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

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*Proportionate transfer of all rights and/or obligations under financial arrangement*

- (2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
  - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;
- by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

- (3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
  - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;
- were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

- (4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
    - (i) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
    - (ii) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

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

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were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(iii); and

- (b) by reducing those amounts by applying the proportion referred to in subparagraph 250-265(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:
  - (a) the nature of the rights and obligations under the \*financial arrangement; and
  - (b) the risks associated with each \*financial benefit, right and obligation under the arrangement; and
  - (c) the time value of money.

*Income year for which gain or loss is made*

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 250-265(1) occurs.

## **Other provisions**

### **250-280 Financial arrangement received or provided as consideration**

- (1) If:
  - (a) this Subdivision applies in relation to your gains and losses from the \*financial arrangement; and
  - (b) you start to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:
    - (i) something (the ***thing provided***) that you provided, or are to provide, to someone else; or

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



- (ii) something (the *thing acquired*) that someone else has provided, or is to provide, to you; and
- (c) the thing provided or the thing acquired is not money; the amount of the benefit (or that part of the benefit) that you obtained for the thing provided, or gave for the thing acquired, is taken, for the purposes of applying this Act to you, to be the \*market value of the financial arrangement (or that part of the financial arrangement) at the time when you start to have the financial arrangement.
- Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing provided or the thing acquired.
- Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.
- (2) If subsection (1) applies, you are taken to have received, or provided, as consideration for starting to have the \*financial arrangement (or the part of the financial arrangement), \*financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you started to have the financial arrangement.
- (3) If, but for this subsection:
- (a) subsection (2) would apply to your starting to have a \*financial arrangement; and
- (b) subsection (1) or (4) would also apply to your starting to have the financial arrangement;
- subsection (2) applies to your starting to have the financial arrangement and subsection (1) or (4) does not.
- (4) If:
- (a) this Subdivision applies in relation to your gains and losses from the \*financial arrangement; and
- (b) you cease to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:

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

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- (i) something (the *thing acquired*) that someone else provides, or is to provide, to you; or
  - (ii) something (the *thing provided*) that you provided, or are to provide, to someone else; and
  - (c) the thing acquired or the thing provided is not money; the amount of the benefit (or that part of the benefit) that you provided for the thing acquired, or obtained for the thing provided, is taken, for the purposes of applying this Act to you, to be the \*market value of the financial arrangement (or that part of the financial arrangement) at the time when you cease to have the financial arrangement (or that part of the financial arrangement).
- Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing acquired or the thing provided.
- Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.
- (5) If subsection (4) applies, you are taken to have provided, or received, as consideration for ceasing to have the \*financial arrangement (or the part of the financial arrangement), \*financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you ceased to have the financial arrangement.
  - (6) If, but for this subsection:
    - (a) subsection (5) would apply to your ceasing to have a \*financial arrangement; and
    - (b) subsection (1) or (4) would also apply to your ceasing to have the financial arrangement;subsection (5) applies to your ceasing to have the financial arrangement and subsection (1) or (4) does not.
  - (7) Without limiting subsections (1) and (4), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

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

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**Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset**

**Table of sections**

250-285	Treatment of asset after Division ceases to apply to the asset
250-290	Balancing adjustment under Subdivision 40-D in some circumstances

**250-285 Treatment of asset after Division ceases to apply to the asset**

- (1) For the purposes of Division 40, if:
- (a) this Division applies to you and an asset; and
  - (b) the \*arrangement period for the \*tax preferred use of the asset ends at a particular time; and
  - (c) the asset would have had an \*adjustable value at that time, for the purposes of Division 40, if this Division had never applied to the asset;

the adjustable value of the asset, immediately after the end of the arrangement period, is taken to be equal to the amount worked out using the following method statement:

*Method statement*

Step 1. Work out whether section 250-150 applies.

Step 2. If section 250-150 does not apply, the amount is the \*end value of the asset at the end of the arrangement period.

Step 3. If section 250-150 does apply, the amount is worked out by:

- (a) multiplying the \*end value of the asset at the end of the \*arrangement period by the \*disallowed capital percentage; and

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

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- (b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and
- (c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).

(2) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is included in your assessable income in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the \*cost base, and the \*reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

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

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the \*cost base, and the \*reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(4) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is included in your assessable income in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the difference between the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(5) If:

- (a) this Division applies to you and an asset; and
- (b) the \*arrangement period for the \*tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the \*financial benefits that are \*subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

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

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then, in determining the profit or loss on the sale of the asset, a deduction equal to the sum of the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

- (6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard subsection 250-160(2) (reasonable estimate of end value treated as financial benefit subject to deemed loan treatment).

**250-290 Balancing adjustment under Subdivision 40-D in some circumstances**

- (1) This section applies if:
  - (a) this Division applies to you and an asset; and
  - (b) the \*arrangement period for the \*tax preferred use of the asset ends because a particular event happens; and
  - (c) the event would have been a \*balancing adjustment event for the asset for the purposes of Subdivision 40-D if this Division had not applied to you and the asset when the event happened.
- (2) A balancing adjustment is made under Subdivision 40-D as if:
  - (a) the event were a \*balancing adjustment event for the asset; and
  - (b) the \*adjustable value of the asset, just before the event happened, were the adjustable value worked out under subsection 250-285(1); and
  - (c) sections 40-290, 40-292 and 40-293 did not apply.

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

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**Subdivision 250-G—Objections against determinations and decisions by the Commissioner**

**Table of sections**

250-295 Objections against determinations and decisions by the Commissioner

**250-295 Objections against determinations and decisions by the Commissioner**

- (1) This section applies to a determination by the Commissioner under section 250-45.
- (2) This section also applies to a decision by the Commissioner under subsection 250-150(5).
- (3) A person who is dissatisfied with a determination or decision to which this section applies may object against the determination or decision in the manner set out in Part IVC 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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## **Division 253—Financial claims scheme for account-holders with insolvent ADIs**

### **Table of Subdivisions**

253-A Tax treatment of entitlements under financial claims scheme

### **Subdivision 253-A—Tax treatment of entitlements under financial claims scheme**

#### **Guide to Subdivision 253-A**

#### **253-1 What this Subdivision is about**

This Act applies to a payment of an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* as if the payment were made by the ADI under the agreement for the account concerned.

Special rules prevent the arising and payment of such an entitlement from creating inappropriate capital gains or losses affecting assessable income.

#### **Table of sections**

##### **Operative provisions**

- |        |  |
|--------|--|
| 253-5  | Payment of entitlement under financial claims scheme treated as payment from ADI                                 |
| 253-10 | Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects    |
| 253-15 | Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement |

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

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## Operative provisions

### **253-5 Payment of entitlement under financial claims scheme treated as payment from ADI**

- (1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* connected with an account with an \*ADI had been paid to you by the ADI under the terms and conditions of the agreement for keeping the account.

Note: This section has effect subject to more detailed provisions about:

- (a) entitlements relating to retirement savings accounts (see section 306-25); and
  - (b) entitlements relating to farm management deposits (see Subdivision 393-C).
- (2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Division 2AA of Part II of the *Banking Act 1959*.

### **253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects**

Disregard a \*capital gain or \*capital loss you make:

- (a) because of the operation of section 16AI of the *Banking Act 1959*; or
- (b) because your entitlement under Subdivision C of Division 2AA of Part II of that Act is met.

Note: Section 16AI of the *Banking Act 1959* reduces the right of an account-holder who has a protected account with a declared ADI to be paid an amount by the ADI, by the account-holder's entitlement under Subdivision C of Division 2AA of Part II of that Act to be paid an amount by APRA in connection with the account.

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

Section 253-15

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**253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement**

- (1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account-holder's account with an \*ADI.
- (2) The \*cost base and \*reduced cost base of the \*CGT asset consisting of the entitlement are each the amount of the entitlement.
- (3) The \*cost base of the \*CGT asset representing the part (if any) of the account-holder's right to be paid an amount by the \*ADI in connection with the account that remains after the reduction of that right by section 16AI of the *Banking Act 1959* (by the amount of the entitlement) is the difference (if any) between:
  - (a) the cost base of the right as it was immediately before the reduction; and
  - (b) the amount of the entitlement.The \*reduced cost base is worked out similarly.
- (4) This section has effect despite:
  - (a) Division 110 (Cost base and reduced cost base); and
  - (b) subsections 112-30(2), (3), (4) and (5) (which are about apportioning a \*cost base if a \*CGT event happens to only part of a \*CGT asset).

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

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## **Part 3-25—Particular kinds of trusts**

### **Division 275—Australian managed investment trusts: general**

#### **Table of Subdivisions**

##### Guide to Division 275

- 275-A Meaning of managed investment trust
- 275-B Choice for capital treatment of managed investment trust gains and losses
- 275-C Carried interests in managed investment trusts
- 275-L Modification for non-arm's length income

#### **Guide to Division 275**

##### **275-1 What this Division is about**

The trustee of certain Australian managed investment trusts may make a choice that certain assets of the trust be dealt with under CGT rules. If the trustee does not make such a choice, those assets will be treated as revenue assets (see Subdivision 275-B).

Gains and profits from carried interests held in entities that are or were Australian managed investment trusts (or certain other trusts) are included in the assessable income of the holder of the interests. The holder is entitled to a deduction from losses from such interests (see Subdivision 275-C).

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

Section 275-5

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**Subdivision 275-A—Meaning of managed investment trust**

**Guide to Subdivision 275-A**

**275-5 What this Subdivision is about**

This Subdivision sets out the requirements for a trust to be a managed investment trust in relation to an income year.

**Table of sections**

**Operative provisions**

275-10	Meaning of <i>managed investment trust</i>
275-15	Trusts with wholesale membership
275-20	Widely-held requirements—ordinary case
275-25	Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)
275-30	Closely-held restrictions
275-35	Licensing requirements for unregistered MIS
275-40	MIT participation interest
275-45	Meaning of <i>managed investment trust</i> —every member of trust is a managed investment trust etc.
275-50	Extended definition of <i>managed investment trust</i> —no fund payment made in relation to the income year
275-55	Extended definition of <i>managed investment trust</i> —temporary circumstances outside the control of the trustee

**Operative provisions**

**275-10 Meaning of *managed investment trust***

- (1) A trust is a *managed investment trust* in relation to an income year if any of the following requirements are met:
- (a) the trust is covered under subsection (3) of this section in relation to the income year (ordinary case);

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

- (b) the trust is covered under section 275-45 in relation to the income year (only members of trust are managed investment trusts etc.).
- (2) A trust is also a **managed investment trust** in relation to an income year if any of the following requirements are met:
- (a) the trust is covered under section 275-50 in relation to the income year (no fund payment made in relation to the income year);
  - (b) the trust is covered under section 275-55 in relation to the income year (temporary circumstances outside the control of the trustee).
- (3) A trust is covered under this subsection in relation to an income year if:
- (a) at the time the trustee of the trust makes the first \*fund payment in relation to the income year, or at an earlier time in the income year:
    - (i) the trustee of the trust was an Australian resident; or
    - (ii) the central management and control of the trust was in Australia; and
  - (b) the trust is not a trust covered by subsection (4) (trading trust etc.) in relation to the income year; and
  - (c) at the time the payment is made, the trust is a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*); and
  - (d) at the time the payment is made:
    - (i) the trust is covered by section 275-15 (trusts with wholesale membership); or
    - (ii) if the trust is *not* covered by section 275-15—the trust is registered under section 601EB of the *Corporations Act 2001*; and
  - (e) the trust satisfies, in relation to the income year:
    - (i) if, at the time the payment is made, the trust is registered under section 601EB of the *Corporations Act 2001* and is covered by section 275-15—either or both

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

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- of the widely-held requirements in subsections 275-20(1) and 275-25(1); or
- (ii) if, at the time the payment is made, the trust is so registered and is *not* covered by section 275-15—either or both of the widely-held requirements in subsections 275-20(2) and 275-25(1); or
  - (iii) if, at the time the payment is made, the trust is *not* so registered and is covered by section 275-15—the widely-held requirements in subsection 275-20(1); and
- (f) the trust satisfies the closely-held restrictions in subsection 275-30(1) in relation to the income year; and
  - (g) if the trust is covered by section 275-15 at the time the payment is made—it satisfies the licensing requirements in section 275-35 in relation to the income year.

*Trading unit trust or other trust carrying on trading business etc. cannot be managed investment trust*

- (4) A trust is covered by this subsection in relation to an income year if:
    - (a) in the case of a unit trust—the trust is a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or
    - (b) in any other case—the trust at any time in the income year:
      - (i) carried on a trading business (within the meaning of that Division); or
      - (ii) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division).
- (4A) In determining whether a trust is covered by subsection (4), disregard any interest that the trust has in a \*VCLP or an \*ESVCLP unless:
- (a) the trust is a \*general partner of the VCLP or ESVCLP; or
  - (b) the trust has \*committed capital in the partnership that, taken together with the sum of the amounts of committed capital in

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

the partnership of any of that partner's \*associates (other than associates to whom subsection (4B) applies), exceeds 30% of the partnership's committed capital.

- (4B) This subsection applies to:
- (a) an \*ADI; or
  - (b) a \*life insurance company; or
  - (c) a public authority:
    - (i) that is constituted by a law of a State or internal Territory; and
    - (ii) that carries on life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*; or
  - (d) a widely-held complying superannuation fund within the meaning of section 4A of the *Pooled Development Funds Act 1992*; or
  - (e) a \*widely held foreign venture capital fund of funds.

*Crown entities etc.*

- (5) For the purposes of paragraphs (3)(d) and (e), treat an entity as registered under section 601EB of the *Corporations Act 2001* at the time the payment is made if at that time the trust is operated by:
- (a) an entity that would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme; or
  - (b) an entity that:
    - (i) is a \*wholly-owned subsidiary of an entity of a kind mentioned in paragraph (a); and
    - (ii) would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and operation of the scheme mentioned in paragraph (3)(c), be required under that Act to be a financial services licensee (within the meaning of section 761A of that

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

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Act) whose licence would cover operating such a managed investment scheme.

*Start-up and wind-down phases*

- (6) Treat the requirements in paragraphs (3)(e) and (f) as being satisfied if:
- (a) the trust is created during the period:
    - (i) starting 12 months before the start of the income year; and
    - (ii) ending at the end of the income year; or
  - (b) the trust ceases to exist during the income year, and was a \*managed investment trust (disregarding paragraph (a) of this section) in relation to the previous income year.

**275-15 Trusts with wholesale membership**

A trust is covered by this section at a time if, at that time:

- (a) the trust is not required to be registered in accordance with section 601ED of the *Corporations Act 2001* (whether or not it is actually so registered) because of subsection 601ED(2) of that Act (no product disclosure statement required) or because it is operated or managed by an entity covered by subsection 275-35(2) (Crown entities); and
- (b) the total number of entities that had become a \*member of the trust because a financial product or a financial service was provided to, or acquired by, the entity as a retail client (within the meaning of sections 761G and 761GA of the *Corporations Act 2001*) is no more than 20; and
- (c) the entities mentioned in paragraph (b) have a total \*MIT participation interest in the trust of no more than 10%.

**275-20 Widely-held requirements—ordinary case**

- (1) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made, the trust has at least 25 \*members.

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



- (2) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made:
- (a) units in the trust are listed for quotation in the official list of an \*approved stock exchange in Australia; or
  - (b) the trust has at least 50 \*members (ignoring objects of a trust).
- (3) For the purposes of subsection (1) and paragraph (2)(b), determine the number of \*members of the trust as follows:
- (a) first, by applying the rules in subsection (5), identify:
    - (i) the members of the trust that are not entities covered by subsection (4); and
    - (ii) the members of the trust that are entities covered by subsection (4);
  - (b) next, work out the number of members mentioned in subparagraph (a)(i);
  - (c) next:
    - (i) work out the \*MIT participation interest in the trust of each entity mentioned in subparagraph (a)(ii); and
    - (ii) for each of those entities, multiply the total of its MIT participation interest in the trust by 50 and round the result upwards to the nearest whole number; and
    - (iii) work out the total of the results of subparagraph (ii) for all of those entities;
  - (d) next, work out the total of the results of paragraphs (b) and (c).
- (4) This subsection covers the following kinds of entity:
- (a) a \*life insurance company;
  - (b) a \*foreign life insurance company that is regulated under a \*foreign law;
  - (c) a \*complying superannuation fund, a \*complying approved deposit fund or a \*foreign superannuation fund, being a fund that has at least 50 \*members;

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

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- (d) a \*pooled superannuation trust that has at least one member that is a complying superannuation fund that has at least 50 members;
- (e) a \*managed investment trust in relation to the income year;
- (f) an entity:
  - (i) that is recognised under a foreign law as being used for collective investment by pooling the contributions of its members as consideration to acquire rights to benefits produced by the entity; and
  - (ii) that has at least 50 members; and
  - (iii) the contributing members of which do not have day-to-day control over the entity's operation;
- (g) an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:
  - (i) the entity is a fund established by an \*exempt foreign government agency; or
  - (ii) the entity is established under a foreign law for an exempt foreign government agency; or
  - (iii) the entity is a \*wholly-owned subsidiary of an entity mentioned in subparagraph (i) or (ii);
- (h) an investment entity that satisfies all of these requirements:
  - (i) the entity is wholly-owned by one or more \*foreign government agencies, or is a wholly-owned subsidiary of one or more foreign government agencies;
  - (ii) the entity is established using only the public money or public property of the foreign government concerned;
  - (iii) all economic benefits obtained by the entity have passed, or are expected to pass, to the foreign government concerned;
- (i) an entity established and wholly-owned by an \*Australian government agency, if the capital of the entity, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or

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

obligations (such as superannuation liabilities and liabilities arising from compensation or workcover claims);

- (j) a \*limited partnership, if, throughout the income year:
    - (i) at least 95% of the \*membership interests in the limited partnership are owned by entities mentioned in the preceding paragraphs of this subsection, or by entities that are wholly-owned by entities so mentioned; and
    - (ii) the remaining membership interests (if any) in the limited partnership are owned by a \*general partner of the limited partnership that habitually exercises the management power of the limited partnership;
  - (k) an entity, all the membership interests in which are owned by any of the following:
    - (i) entities mentioned in the preceding paragraphs of this subsection;
    - (ii) entities that are wholly-owned by entities mentioned in the preceding paragraphs of this subsection;
    - (iii) entities that are covered under this subsection because of a previous operation of this paragraph;
  - (l) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.
- (5) The rules are as follows:
- (a) if an entity that is not a trust holds interests in the trust indirectly, through a \*chain of trusts:
    - (i) treat the entity as a member of the trust; and
    - (ii) do not treat a trust in the chain of trusts as a member of the trust;
  - (b) do not treat an object of the trust as a member of the trust;
  - (c) if the trust is mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—do not treat an individual as a member of the trust (other than an individual who became a member of the trust because a financial product or a financial service was provided to, or acquired

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

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by, the individual as a wholesale client (within the meaning of section 761G of the *Corporations Act 2001*);

- (d) the rules in subsection (7).
- (6) For the purposes of paragraph (5)(a), treat an entity covered by subsection (4) as an entity that is not a trust.
- (7) The rules are as follows:
  - (a) treat the following entities as together being one entity:
    - (i) an individual;
    - (ii) each of his or her \*relatives;
    - (iii) each entity acting in the capacity of nominee of an individual mentioned in subparagraph (i) or (ii);
  - (b) treat the following entities as together being one entity (the **notional entity**):
    - (i) an entity that is not an individual;
    - (ii) each entity acting in the capacity of nominee of the entity mentioned in subparagraph (i).
- (8) For the purposes of subsection (5), if the entity mentioned in subparagraph (7)(b)(i) is an entity covered by subsection (4), treat the notional entity as an entity covered by subsection (4).

**275-25 Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)**

- (1) The trust satisfies the requirements in this subsection in relation to the income year if:
  - (a) one or more entities covered by subsection 275-20(4) have a total \*MIT participation interest in the trust of more than 25% at the time the payment mentioned in paragraph 275-10(3)(a) is made; and
  - (b) at no time in the income year does an entity (other than an entity covered by subsection 275-20(4)) have a MIT participation interest in the trust of more than 60%.
- (2) For the purposes of paragraphs (1)(a) and (b):

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

- (a) if:
- (i) an entity covered by subsection 275-20(4) has a \*MIT participation interest (the *first interest*) in the trust; and
  - (ii) another entity covered by subsection 275-20(4) also has a MIT participation interest (the *second interest*) in the trust;
- disregard the second interest to the extent that it arises through the existence of the first interest; and
- (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a \*chain of trusts—do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

### **275-30 Closely-held restrictions**

- (1) The trust satisfies the requirements in this subsection in relation to the income year unless, at any time in the income year, any of the following situations exist:
- (a) for a trust mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—10 or fewer persons have a total \*MIT participation interest in the trust of 75% or more;
  - (b) if paragraph (a) does not apply—20 or fewer persons have a total MIT participation interest in the trust of 75% or more;
  - (c) a foreign resident individual has a MIT participation interest in the trust of 10% or more.
- (2) For the purposes of paragraphs (1)(a) and (b):
- (a) if an entity covered by subsection 275-20(4) has a \*MIT participation interest in the trust—treat that entity as *not* having a MIT participation interest in the trust; and

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

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- (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a \*chain of trusts:
  - (i) if the entity is covered by subsection 275-20(4)—do not treat it as having a MIT participation interest in the trust; and
  - (ii) do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

**275-35 Licensing requirements for unregistered MIS**

- (1) The trust satisfies the requirements in this section in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made (the time of the first fund payment for the income year):
  - (a) the trust is operated or managed by:
    - (i) a financial services licensee (within the meaning of section 761A of the *Corporations Act 2001*) holding an Australian financial services licence whose licence covers it providing financial services (within the meaning of section 766A of that Act) to wholesale clients (within the meaning of section 761G of that Act); or
    - (ii) an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or
  - (b) the trust is operated or managed by an entity covered by subsection (2); or
  - (c) the trust is operated or managed by an entity that:
    - (i) is a \*wholly-owned subsidiary of an entity covered by subsection (2); and

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

- (ii) is an entity covered by subsection (3).
- (2) An entity is covered by this subsection if it would, but for subsection 5A(4) of the *Corporations Act 2001* (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).
- (3) An entity is covered by this subsection if it would, but for any instrument issued by ASIC under the *Corporations Act 2001* that has effect in relation to the entity and the operation of the scheme mentioned in paragraph 275-10(3)(c), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).

#### **275-40 MIT participation interest**

- (1) An entity has a ***MIT participation interest*** in a trust if the entity, directly or indirectly:
- (a) holds, or has the right to \*acquire, interests representing a percentage of the value of the interests in the trust; or
  - (b) has the control of, or the ability to control, a percentage of the rights attaching to \*membership interests in the trust; or
  - (c) has the right to receive a percentage of any distribution of income that the trust may make.
- (2) The ***MIT participation interest*** of the entity in the trust is the greatest of the percentages mentioned in paragraphs (1)(a), (b) and (c).

#### **275-45 Meaning of *managed investment trust*—every member of trust is a managed investment trust etc.**

- (1) A trust is covered under this section in relation to an income year if:
- (a) the condition in paragraph 275-10(3)(a) is satisfied; and
  - (b) the condition in paragraph 275-10(3)(b) is satisfied; and
  - (c) either:

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

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- (i) the only \*members of the trust are entities that are covered by subsection 275-20(4) (other than entities mentioned in paragraph 275-20(4)(f)); or
  - (ii) the only members of the trust are entities that are \*managed investment trusts in relation to the income year because of subsection 275-10(2); and
  - (d) the trust satisfies the licensing requirements in section 275-35 in relation to the income year.
- (2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is satisfied:
- (a) at the time the trustee of the trust makes the first \*fund payment in relation to the income year; or
  - (b) if the trustee does not make such a payment in relation to the income year—at both the start and the end of the income year.

**275-50 Extended definition of *managed investment trust*—no fund payment made in relation to the income year**

A trust is covered under this section in relation to an income year if:

- (a) the trustee of the trust does not make a \*fund payment in relation to the income year; and
- (b) the trust would be a \*managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year when it was in existence; and
- (c) the trust would be a managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year on which it was in existence.

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



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**275-55 Extended definition of *managed investment trust*—temporary circumstances outside the control of the trustee**

A trust is covered under this section in relation to an income year if:

- (a) apart from a particular circumstance, the trust would be a \*managed investment trust in relation to the income year; and
- (b) the circumstance is temporary; and
- (c) the circumstance arose outside the control of the trustee of the trust; and
- (d) it is fair and reasonable to treat the trust as a managed investment trust in relation to the income year, having regard to the following matters:
  - (i) the matters in paragraphs (a) and (b);
  - (ii) the nature of the circumstance;
  - (iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;
  - (iv) the extent to which treating the trust as a managed investment trust in relation to the income year would increase or reduce the amount of tax otherwise payable by the trustee, the \*members of the trust or any other entity;
  - (v) any other relevant matter.

**Subdivision 275-B—Choice for capital treatment of managed investment trust gains and losses**

**Table of sections**

275-100	Consequences of making choice—CGT to be primary code for calculating MIT gains or losses
275-105	Covered assets
275-110	MIT not to be trading trust
275-115	MIT CGT choices
275-120	Consequences of not making choice—revenue account treatment

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

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Section 275-100

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**275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses**

- (1) The modifications in subsection (2) apply if:
- (a) a \*CGT event happens at a time involving a \*CGT asset; and
  - (b) the CGT asset is owned at that time by an entity that is a \*managed investment trust in relation to the income year in which the time occurs; and
  - (c) the CGT event happens because the managed investment trust \*disposes of, ceases to own or otherwise realises the asset; and
  - (d) the asset is covered by section 275-105; and
  - (e) the entity meets the requirement in section 275-110 at the time; and
  - (f) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.
- (1A) Without limiting paragraph (1)(b), if:
- (a) a \*VCLP or an \*ESVCLP owns a \*CGT asset at the time referred to in that paragraph; and
  - (b) at that time, the \*managed investment trust has an interest in the asset as a \*limited partner of the VCLP or ESVCLP; for the purposes of that paragraph, the managed investment trust is taken to own the asset to the extent of that interest.
- (2) These provisions do not apply to the \*CGT event:
- (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes);
  - (c) section 118-20 (about reducing capital gains if amount otherwise assessable);
  - (d) Division 70 and section 118-25 (about trading stock).

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

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*General exceptions*

- (3) The provisions referred to in subsection (2) can apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of one of the provisions in this table:

<b>Where gain or loss disregarded because of CGT provision</b>		
<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-13	Shares in a PDF
3	Section 118-60	Certain gifts

*Trading stock and profit-making undertakings or plans involving land etc.*

- (4) The provisions referred to in subsection (2) can also apply to the \*CGT event if:
- (a) where the \*CGT asset is land (including an interest in land), or a right or option to \*acquire or \*dispose of land (including an interest in land):
    - (i) the CGT asset is \*trading stock; or
    - (ii) the circumstances existing at the time of the event would, disregarding this Subdivision, give rise to an amount being included in the assessable income of the entity under section 15-15 or to a deduction for the entity under section 25-40 (about profit-making undertakings or plans); or
  - (b) where paragraph (a) does not apply:
    - (i) the \*managed investment trust acquired the CGT asset in an income year for which the choice mentioned in paragraph (1)(f) was not in force; and
    - (ii) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the start of the income year in which that choice first came into force; and

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

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- (iii) the CGT asset was treated as trading stock in the \*income tax return for the managed investment trust for the most recent income year ending before the start of the income year in which that choice first came into force; and
- (iv) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the time of the event; and
- (v) the CGT asset was treated as trading stock in the income tax return for the managed investment trust for the most recent income year ending before the time of the event.

*Treatment of outgoings to acquire trading stock*

- (5) The modifications in subsection (6) apply if:
  - (a) an entity that is a \*managed investment trust in relation to the income year \*acquires a \*CGT asset at a time in that income year; and
  - (b) the CGT asset is an item of \*trading stock; and
  - (c) the CGT asset is *not* land (including an interest in land), or a right or option to acquire or \*dispose of land (including an interest in land); and
  - (d) the entity incurs an outgoing in connection with acquiring the asset; and
  - (e) the asset is covered by section 275-105; and
  - (f) the entity meets the requirement in section 275-110 at the time; and
  - (g) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.
- (6) The modifications are as follows:
  - (a) section 8-1 (about amounts you can deduct) does not apply to the \*acquisition;
  - (b) Division 70 (about trading stock) does not apply in relation to the asset in respect of:

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

- (i) the income year in which the time occurs; and
- (ii) any later income year in relation to which the entity is a \*managed investment trust and throughout which the entity meets the requirement in section 275-110.

### **275-105 Covered assets**

- (1) An asset is covered by this section if it is any of the following:
  - (a) a \*share in a company (including a share in a \*foreign hybrid company);
  - (b) a \*non-share equity interest in a company;
  - (c) a unit in a unit trust;
  - (d) land (including an interest in land);
  - (e) a right or option to \*acquire or \*dispose of an asset of a kind mentioned in paragraph (a), (b), (c) or (d).
- (2) However, the asset is *not* covered by this section if it is any of the following:
  - (a) a \*Division 230 financial arrangement;
  - (b) a \*debt interest.

### **275-110 MIT not to be trading trust**

- (1) An entity that is a trust meets the requirement in this section at a time if the entity is not, at that time, a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to that income year.
- (2) If, apart from a particular circumstance, a trust would meet the requirement in subsection (1) at a time, the trust also meets the requirement in this section at a time if:
  - (a) the circumstance is temporary; and
  - (b) the circumstance arose outside the control of the trustee of the trust; and
  - (c) the trustee of the trust is *not* liable to pay income tax on the net income of the trust under section 102S of the *Income Tax*

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

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*Assessment Act 1936* for the income year in which the time occurs; and

- (d) it is fair and reasonable to treat the trust as meeting the requirement in this section at that time, having regard to the following matters:
  - (i) the matters in paragraphs (a), (b) and (c);
  - (ii) the nature of the circumstance;
  - (iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;
  - (iv) the extent to which treating the trust as meeting the requirement in this section at that time would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;
  - (v) any other relevant matter.

**275-115 MIT CGT choices**

- (1) The trustee of an entity that is a \*managed investment trust may make a choice under this section that covers the managed investment trust.
- (2) The choice must be made in the \*approved form.
- (3) The choice can be made only:
  - (a) if the entity became a \*managed investment trust in the 2009-10 income year or a later income year (whether or not the entity existed before it became a managed investment trust)—on or before the latest of the following days:
    - (i) the day it is required to lodge its \*income tax return for the income year in which it became a managed investment trust;
    - (ii) if the Commissioner allows a later day for the managed investment trust—that later day; or
  - (b) otherwise—on or before the latest of the following days:
    - (i) the last day in the 3 month period starting on the day on which this section commences;

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

- (ii) the last day of the 2009-10 income year;
  - (iii) if the Commissioner allows a later day for the managed investment trust—that later day.
- (4) The choice, once made, cannot be revoked.
- (5) The choice is in force:
- (a) in the circumstances mentioned in paragraph (3)(a)—for the income year in which the entity became a \*managed investment trust (whether or not the entity existed before it became a managed investment trust) and later income years; or
  - (b) in the circumstances mentioned in paragraph (3)(b)—for the 2008-09 income year and later income years.

### **275-120 Consequences of not making choice—revenue account treatment**

- (1) This section applies if:
- (a) the requirements in subsection 275-100(1) are met in relation to a \*CGT asset held by a \*managed investment trust, apart from the requirement in paragraph 275-100(1)(f); and
  - (b) the CGT asset is not:
    - (i) land (including an interest in land); or
    - (ii) a right or option to \*acquire or \*dispose of land (including an interest in land); and
  - (c) the managed investment trust disposes of, ceases to own or otherwise realises the asset; and
  - (d) disregarding this section:
    - (i) the net proceeds (if any) from the disposal, cessation or realisation would not be reflected in an amount being included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and
    - (ii) the gain or profit (if any) on the disposal, cessation or realisation would not be reflected in an amount being

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

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- included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and
- (iii) the loss (if any) on the disposal, cessation or realisation would not be reflected in an amount being deductible by the managed investment trust.

- (2) For the purposes of this Act, treat the disposal, cessation of ownership of or realisation of the asset in the same way as the disposal, cessation of ownership of or realisation of a \*revenue asset.

**Subdivision 275-C—Carried interests in managed investment trusts**

**Table of sections**

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

**275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction**

- (1) This section applies if:
- (a) you hold a \*CGT asset in an income year that carries an entitlement to a distribution from an entity; and
  - (b) the entitlement to such a distribution is contingent upon the attainment of profits by the entity; and
  - (c) the entity satisfies any of these requirements:
    - (i) it is a \*managed investment trust in relation to the income year;
    - (ii) it was a managed investment trust in relation to a previous income year; and
  - (d) you acquired the asset because of services you or your \*associate provided, or will provide, to the entity; and
  - (e) you or your associate provided, or will provide, those services:

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



- (i) as a manager of the entity; or
  - (ii) as an associate of a manager of the entity; or
  - (iii) as an employee of a manager of the entity; or
  - (iv) as an associate of an employee of a manager of the entity; and
  - (f) any of the following apply:
    - (i) you become entitled in the income year to such a distribution (regardless of whether the distribution is made immediately, or is to be made in the future);
    - (ii) a \*CGT event happens in relation to the asset in the income year.
- (1A) For the purposes of paragraph (1)(c), in determining whether the entity satisfies any of the requirements mentioned in that paragraph:
- (a) disregard paragraph 275-10(3)(b) (requirement of not being a trading trust etc.); and
  - (b) disregard subsection 102T(16) of the *Income Tax Assessment Act 1936* (exclusion of public trading trust etc.).
- (2) Include in your assessable income for the income year:
- (a) the amount of the distribution (except to the extent that it represents a return of capital that you or your associate contributed in order for you to \*acquire the asset); or
  - (b) the amount of your gain or profit (if any) on the \*CGT event.
- (3) Subsection (2) does not apply to the extent that the amount is included in your assessable income as:
- (a) \*ordinary income under section 6-5; or
  - (b) \*statutory income under a section of this Act, other than a provision in Part 3-1 or 3-3.
- (4) An amount to which subsection (2) applies is taken, for the purposes of the \*income tax laws, to have a source in Australia. For the purposes of this subsection, disregard subsection (3).

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

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- (5) You are entitled to a deduction for the income year for the amount of your loss (if any) on the \*CGT event.
- (6) Subsection (5) does not apply to the extent that you can deduct the amount under another provision of this Act.
- (7) Subdivision 115-C does not apply to the amount of a distribution mentioned in subparagraph (1)(f)(i) if:
  - (a) that amount is included in your assessable income under subsection (2); or
  - (b) an amount referable to that amount is included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936*.

**Subdivision 275-L—Modification for non-arm’s length income**

**Guide to Subdivision 275-L**

**275-600 What this Subdivision is about**

The trustee of a managed investment trust in relation to an income year is taxed on amounts related to the managed investment trust’s non-arm’s length income for the income year.

**Table of sections**

**Operative provisions**

275-605	Trustee taxed on amount of non-arm’s length income of managed investment trust
275-610	Non-arm’s length income
275-615	Commissioner’s determination in relation to amount of non-arm’s length income

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

## Operative provisions

### **275-605 Trustee taxed on amount of non-arm's length income of managed investment trust**

- (1) Subsections (2), (3) and (4) apply if the Commissioner has made a determination under section 275-615 that specifies an amount of \*non-arm's length income for a specified \*managed investment trust in relation to a specified income year.

#### *Excess amount to be taxed*

- (2) The trustee of the \*managed investment trust is liable to pay income tax at the rate declared by the Parliament on the amount mentioned in subsection (5).

Note: The rate is set out in subsection 12(10) of the *Income Tax Rates Act 1986*.

#### *Excess amount to be adjusted*

- (3) If the trust is an \*AMIT for the income year:
- (a) if paragraph (b) does not apply—treat the trust as having an \*over in the income year in which the determination is made, for the specified income year, of a character relating to \*ordinary income, or \*statutory income, from an \*Australian source, equal to the amount mentioned in subsection (5); or
  - (b) if the trust already has such an over in the income year in which the determination is made, for the specified income year—increase the amount of that over by the amount mentioned in subsection (5).
- (4) If the trust is *not* an \*AMIT for the income year, reduce the trust's \*net income for the income year in which the determination is made by the amount mentioned in subsection (5), to the extent that the net income is attributable 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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*Excess amount*

- (5) The amount is the excess mentioned in paragraph 275-610(1)(b) in respect of the \*non-arm's length income, reduced by deductions (if any) that:
- (a) are reflected in:
    - (i) if the trust is an \*AMIT for the income year—the amounts of its \*trust components for the income year (disregarding subsection (3)); or
    - (ii) otherwise—its \*net income for the income year (disregarding subsection (4)); and
  - (b) are attributable only to the amount of non-arm's length income.

**275-610 Non-arm's length income**

- (1) An amount of \*ordinary income or \*statutory income is **non-arm's length income** of a \*managed investment trust if:
- (a) it is derived from a \*scheme the parties to which were not dealing with each other at \*arm's length in relation to the scheme; and
  - (b) that amount exceeds the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme; and
  - (c) the amount is none of the following:
    - (i) a distribution from a \*corporate tax entity;
    - (ii) a distribution from a trust that is *not* a party to the scheme mentioned in paragraph (a);
    - (iii) a \*return covered by subsection (2).
- (2) This subsection covers a \*return that an entity pays or provides on a \*debt interest, if the rate (expressed on an annual basis) of the return does not exceed the greater of:
- (a) the \*benchmark rate of return for the interest; and
  - (b) the \*base interest rate for the day on which the return is paid or provided, plus 3 percentage points.

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

- (3) Subsection (4) applies if:
- (a) an amount would be \*non-arm's length income of the \*managed investment trust (disregarding that subsection); and
  - (b) the amount is a distribution from a trust, or a share of the \*net income of a trust, if the trust is a party to the scheme mentioned in paragraph (1)(a).
- (4) The amount is \*non-arm's length income of the \*managed investment trust only to the extent that the distribution or share of \*net income is attributable to non-arm's length income of the trust mentioned in paragraph (3)(b) (on that assumption that the trust were a managed investment trust) because of another operation of this section.
- (5) Subsection (6) applies if:
- (a) an amount (the **first amount**) of \*ordinary income or \*statutory income of the \*managed investment trust that would be \*non-arm's length income of the managed investment trust (disregarding that subsection) is:
    - (i) a distribution from a trust that is a party to the scheme mentioned in paragraph (1)(a); or
    - (ii) a share of the \*net income of a trust that is a party to that scheme; and
  - (b) another amount (the **second amount**) of ordinary income or statutory income of the managed investment trust is:
    - (i) a distribution from another trust (whether or not the other trust is a party to that scheme); or
    - (ii) a share of the net income of another trust (whether or not the other trust is a party to that scheme); and
  - (c) it is reasonable to conclude that the second amount would have been higher but for the first amount.
- (6) The first amount is *not* \*non-arm's length income of the \*managed investment trust to the extent that the second amount would have been higher as mentioned in paragraph (5)(c).

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

Section 275-615

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**275-615 Commissioner's determination in relation to amount of non-arm's length income**

- (1) The Commissioner may make a determination in writing that specifies an amount of \*non-arm's length income for a specified \*managed investment trust in relation to a specified income year if the Commissioner is satisfied that:
- (a) the amount of non-arm's length income for the managed investment trust in relation to the income year is reflected in:
    - (i) if the trust is an \*AMIT for the income year—one or more of its \*trust components for the income year; or
    - (ii) otherwise—its \*net income for the income year; and
  - (b) the managed investment trust is a party to the \*scheme mentioned in paragraph 275-610(1)(a) at a time in the income year in which the amount is derived; and
  - (c) at least one the parties to that scheme is *not* a managed investment trust in relation to the income year.

*Determination does not form part of assessment*

- (2) A determination under subsection (1) does not form part of an assessment.

*Notice by Commissioner of determination*

- (3) If the Commissioner makes a determination under subsection (1), the Commissioner must give a copy of the determination to the \*managed investment trust concerned.

*Evidence of determination*

- (4) The production of:
- (a) a notice of a determination; or
  - (b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;
- is:

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

- (c) conclusive evidence of the due making of the determination;  
and
- (d) conclusive evidence that the determination is correct (except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination).

*Objections*

- (5) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC 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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## **Division 276—Australian managed investment trusts: attribution managed investment trusts**

### **Table of Subdivisions**

#### Guide to Division 276

- 276-A What is an attribution managed investment trust?
- 276-B Member's vested and indefeasible interest in share of income and capital of AMIT
- 276-C Taxation etc. of member components
- 276-D Member components
- 276-E Trust components
- 276-F Unders and overs
- 276-G Shortfall and excess taxation
- 276-H AMMA statements
- 276-J Debt-like trust instruments
- 276-K Ceasing to be an AMIT

### **Guide to Division 276**

#### **276-1 What this Division is about**

A managed investment trust in relation to an income year is an attribution managed investment trust (or AMIT) for the income year if certain criteria are satisfied. In particular, for the trust to be an AMIT, the interests of the members of the trust need to be clearly defined at all times during which the trust is in existence in the income year (see Subdivision 276-A).

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



Section 276-5

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An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year (see Subdivision 276-B).

Amounts related to income and tax offsets of an AMIT, determined by the trustee to be of a particular tax character, are attributed to members, generally retaining that tax character (see Subdivision 276-C).

Underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is done on a character-by-character basis. An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character. Unders and overs arise, and are dealt with, in the income year in which they are discovered (see Subdivision 276-F).

The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets (see Subdivision 276-G).

Special rules apply to a trust that ceases to be an AMIT (see Subdivision 276-K).

### **Subdivision 276-A—What is an attribution managed investment trust?**

#### **Guide to Subdivision 276-A**

#### **276-5 What this Subdivision is about**

A managed investment trust in relation to an income year is an *attribution managed investment trust* (or *AMIT*) for the income year if certain criteria are satisfied. In particular:

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

Section 276-10

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- (a) the interests of the members of the trust need to be clearly defined at all times when the trust is in existence in the income year; and
- (b) the trustee of the trust needs to have made a choice for the trust to be an AMIT in respect of that income year or an earlier income year.

**Table of sections**

**Operative provisions**

276-10	Meaning of <i>attribution managed investment trust</i> (or <i>AMIT</i> )
276-15	Clearly defined interests
276-20	Trust with classes of membership interests—each class treated as separate AMIT

**Operative provisions**

**276-10 Meaning of *attribution managed investment trust* (or *AMIT*)**

- (1) A trust is an *attribution managed investment trust* (or *AMIT*) for an income year if:
  - (a) the trust is a \*managed investment trust in relation to the income year; and
  - (b) the rights to income and capital arising from each of the \*membership interests in the trust are clearly defined (see section 276-15) at all times when the trust is in existence in the income year; and
  - (c) if the trust is a managed investment trust in relation to the income year solely because of paragraph 275-10(1)(b)—the only members of the trust are managed investment trusts in relation to the income year; and
  - (d) if the regulations specify criteria for the purposes of this paragraph—those criteria are satisfied in relation to the trust; and
  - (e) either:

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

- (i) the trustee of the trust has made a choice for the purposes of this subparagraph in respect of that income year; or
  - (ii) the trust was an AMIT for an earlier income year.
- (2) A choice for the purposes of subparagraph (1)(e)(i) cannot be revoked.

### **276-15 Clearly defined interests**

- (1) Without limiting the circumstances in which the rights to income and capital arising from the \*membership interests in a trust are clearly defined for the purposes of paragraph 276-10(1)(b), treat such rights as being clearly defined at a particular time for those purposes if any of the following conditions are satisfied at that time:
- (a) the trust is registered under section 601EB of the *Corporations Act 2001*;
  - (b) the rights to income and capital arising from each of the membership interests in the trust are the same.
- (2) For the purposes of working out whether the condition in paragraph (1)(b) is satisfied, disregard the following:
- (a) fees or charges imposed by the trustee on the \*members of the trust;
  - (b) issue and redemption prices of \*membership interests in the trust;
  - (c) exposure of the membership interests in the trust to foreign exchange gains and losses.

### **276-20 Trust with classes of membership interests—each class treated as separate AMIT**

- (1) Subsections (2) and (3) apply if:
- (a) the \*membership interests in an \*AMIT for an income year are divided into classes; and

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

Section 276-50

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- (b) the rights arising from each of those membership interests in a particular class are the same as the rights arising from every other of those membership interests in that class; and
  - (c) each of those membership interests in a particular class is distinct from each of those membership interests in another class; and
  - (d) the trustee of the AMIT has made a choice for the purposes of this paragraph that applies to the income year.
- (2) For the purposes of this Division (other than this Subdivision), treat each class of those \*membership interests in the \*AMIT as being a separate AMIT for that income year.
- (3) For the purposes of this Division, allocate assessable income, \*exempt income, \*non-assessable non-exempt income, \*tax losses, \*net capital losses and other similar amounts in respect of the \*AMIT between each of the separate classes mentioned in subsection (1) on a fair and reasonable basis.

*Making of choice by trustee*

- (4) A choice for the purposes of paragraph (1)(d) applies to the income year for which it is made and every subsequent income year.
- (5) A choice for the purposes of paragraph (1)(d) cannot be revoked.

**Subdivision 276-B—Member’s vested and indefeasible interest in share of income and capital of AMIT**

**Guide to Subdivision 276-B**

**276-50 What this Subdivision is about**

An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

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

## Table of sections

### Operative provisions

276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital

## Operative provisions

### **276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital**

For the purposes of this Act:

- (a) treat an \*AMIT for an income year as a \*fixed trust; and
- (b) treat an entity that is a \*member of the AMIT in respect of the income year as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

## **Subdivision 276-C—Taxation etc. of member components**

### **Guide to Subdivision 276-C**

#### **276-75 What this Subdivision is about**

Amounts related to income and tax offsets of an AMIT, of a particular tax character, are attributed to members of the AMIT on the basis of their determined member components of that tax character.

This attribution does not apply to the extent that amounts have been withheld etc. in relation to those components under Subdivision 12-F, 12-H or 12A-C 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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Section 276-80

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The trustee of an AMIT that is not a withholding MIT may be liable to pay income tax in respect of a determined member component of a foreign resident member (including where that member is acting in the capacity of a trustee). As a result, the member may be entitled to a tax offset.

**Table of sections**

**Taxation etc. of member on determined member components**

- 276-80 Member's assessable income or tax offsets for determined member components—general rules
- 276-85 Member's assessable income or tax offsets for determined member components—specific rules
- 276-90 Commissioner's determination as to status of member as qualified person
- 276-95 Relationship between section 276-80 and withholding rules
- 276-100 Relationship between section 276-80 and other charging provisions in this Act

**Foreign resident members—taxation of trustee and corresponding tax offset for members**

- 276-105 Trustee taxed on foreign resident's determined member components
- 276-110 Refundable tax offset for foreign resident member—member that is not a trustee

**Special rule for interposed custodian**

- 276-115 Custodian interposed between AMIT and member

**Taxation etc. of member on determined member components**

**276-80 Member's assessable income or tax offsets for determined member components—general rules**

*Components of income character*

- (1) Subsection (2) applies if a \*member of an \*AMIT in respect of an income year has, for the income year, a \*determined member component of:

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

Section 276-80

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- (a) a character relating to assessable income; or
  - (b) a character relating to \*exempt income; or
  - (c) a character relating to \*non-assessable non-exempt income.
- (2) For the purpose of working out the effects mentioned in subsection (3) for the \*member, treat the member as having derived, received or made the amount reflected in the \*determined member component:
- (a) in the member's own right (rather than as a member of a trust); and
  - (b) in the same circumstances as the \*AMIT derived, received or made that amount, to the extent that those circumstances gave rise to the particular character of that component.
- (3) The effects are as follows:
- (a) including an amount in the assessable income of the \*member;
  - (b) including an amount in the \*exempt income of the member;
  - (c) including an amount in the \*non-assessable non-exempt income of the member;
  - (d) determining whether the member has made a \*capital gain from a \*CGT event;
  - (e) determining the extent to which the member's \*net capital loss has been \*utilised.

*Components of tax offset character*

- (4) Subsection (5) applies if a \*member of an \*AMIT in respect of an income year has, for the income year, a \*determined member component of a character relating to a \*tax offset.
- (5) For the purpose of working out the effects mentioned in subsection (6) for the \*member, treat the member as having paid or received the amount reflected in the \*determined member component:
- (a) in the member's own right (rather than as a member of a trust); and

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

Section 276-85

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- (b) in the same circumstances as the \*AMIT paid or received that amount.
- (6) The effects are as follows:
  - (a) entitling the member to a \*tax offset;
  - (b) entitling the member to a credit under Division 18 in Schedule 1 to the *Taxation Administration Act 1953*.

**276-85 Member's assessable income or tax offsets for determined member components—specific rules**

- (1) This section makes clarifications and modifications of the operation of section 276-80 in respect of a \*member of an \*AMIT in respect of an income year.
- (2) For the purposes of this Act, if an amount is included in the \*member's assessable income because of the operation of this section, treat that amount as being so included because of the operation of subsection 276-80(2).

*Discount capital gains*

- (3) Subsection (4) applies if the \*member has, for the income year, a \*determined member component of the character of:
  - (a) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
  - (b) a discount capital gain from a CGT asset that is *not* taxable Australian property.
- (4) For the purposes of section 276-80 and this section, treat the amount of the component as being double what it would be apart from this subsection.

*Franking credit gross-up*

- (5) Subsection (6) applies if the \*member has, for the income year, a \*determined member component (the ***franking credit gross-up***

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



*component*) of the character of assessable income under subsection 207-20(1) (franking credit gross-up).

- (6) For the purposes of subsection 207-20(1) (franking credit gross-up), treat the reference in that subsection to the amount of the \*franking credit on the distribution as instead being a reference to the amount of the franking credit gross-up component.

*Limitation on circumstances in paragraph 276-80(2)(b)*

- (7) The circumstances mentioned in paragraph 276-80(2)(b) or (5)(b) do not include the following:
- (a) the residence of the trustee of the \*AMIT;
  - (b) the place of the central management and control of the AMIT.

### **276-90 Commissioner's determination as to status of member as qualified person**

- (1) Subsection (2) applies to a \*member of an \*AMIT in respect of an income year if:
- (a) the AMIT is specified in a determination under subsection (3); and
  - (b) the income year is specified in the determination; and
  - (c) the member:
    - (i) is specified in the determination; or
    - (ii) is included in a class of members specified in the determination.
- (2) Treat the \*member as *not* being a qualified person in relation to a distribution in relation to the \*AMIT for the income year, for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*.
- (3) For the purposes of this section, the Commissioner may make a determination in writing that identifies any of the following:
- (a) a specified \*member of a specified \*AMIT;

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

**Section 276-95**

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- (b) a specified class of members of a specified AMIT.
- (4) The determination may specify one or more income years.
- (5) In deciding whether to make a determination under subsection (3), the Commissioner may have regard to any of the following:
  - (a) arrangements (if any) entered into by the \*member that directly or indirectly reduce the economic exposure of the member to changes in the value of the \*membership interests held by the member in the \*AMIT;
  - (b) the lack of such arrangements;
  - (c) the length of time that the member has been a member of the AMIT;
  - (d) any other matter that the Commissioner considers relevant.
- (6) A determination under subsection (3) is not a legislative instrument.
- (7) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**276-95 Relationship between section 276-80 and withholding rules**

- (1) Subsection 276-80(2) does *not* apply to the extent that the \*determined member component is reflected in an \*AMIT DIR payment or a \*fund payment, if an amount in respect of the payment:
  - (a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or
  - (c) has been paid under Division 12A in that Schedule; or

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

- (d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.
- (2) However, if the \*determined member component is reflected in a \*fund payment, subsection (1) applies only to the extent to which an amount attributable to the fund payment is treated under section 840-815 as not assessable income and not \*exempt income.
- (3) Subsection 276-80(2) does not affect the operation of the following:
- (a) Division 11A of Part III of the *Income Tax Assessment Act 1936*;
  - (b) Subdivision 840-M of this Act;
  - (c) Division 12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: See Division 12A in Schedule 1 to the *Taxation Administration Act 1953* for provisions about withholding tax that apply specifically to AMITs.

### **276-100 Relationship between section 276-80 and other charging provisions in this Act**

- (1) This section applies if:
- (a) an amount is included in the assessable income of a \*member of an \*AMIT in respect of an income year in respect of the member's interest in the AMIT; and
  - (b) that amount is so included otherwise than because of the operation of subsection 276-80(2).
- (2) Reduce the amount included in the assessable income of the \*member as mentioned in subsection (1) to the extent (if any) that a corresponding amount is included in the assessable income of the member in respect of the member's interest in the \*AMIT because of the operation of subsection 276-80(2).
- (3) To avoid doubt, this section is subject to section 230-20 (financial arrangements).

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

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Section 276-105

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**Foreign resident members—taxation of trustee and corresponding tax offset for members**

**276-105 Trustee taxed on foreign resident's determined member components**

- (1) This section applies if:
- (a) a \*member of an \*AMIT in respect of an income year has, for the income year, a \*determined member component of a character relating to assessable income in respect of the AMIT; and
  - (b) either:
    - (i) unless subparagraph (ii) applies—the member is a foreign resident at the end of the income year; or
    - (ii) if the member is, in respect of that determined member component, a beneficiary in the capacity of a trustee of another trust—a trustee of the other trust is a foreign resident at the end of the income year; and
  - (c) the AMIT is not a \*withholding MIT.
- (2) The trustee of the \*AMIT is to be assessed and is liable to pay income tax:
- (a) if subparagraph (1)(b)(i) applies and the \*member is *not* a company—in respect of the amount mentioned in subsection (3) as if it were the income of an individual and were not subject to any deduction; or
  - (b) if subparagraph (1)(b)(i) applies and the member is a company—in respect of the amount mentioned in subsection (3) at the rate declared by the Parliament for the purposes of this paragraph; or
  - (c) if subparagraph (1)(b)(ii) applies—in respect of the amount mentioned in subsection (4) or (5) at the rate declared by the Parliament for the purposes of this paragraph.

Note: The rates are set out in the following provisions:

- (a) for paragraph (a)—subsection 12(6A) of the *Income Tax Rates Act 1986* and Schedule 10A to that Act;

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

Section 276-105

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- (b) for paragraph (b)—paragraph 28A(a) of that Act;
  - (c) for paragraph (c)—paragraph 28A(b) of that Act.
- (3) The amount is the \*determined member component, to the extent that the component:
- (a) is attributable to a period when the \*member was an Australian resident; or
  - (b) is attributable to a period when the member was not an Australian resident and is attributable to sources in Australia.
- (4) The amount is the \*determined member component, to the extent that the component is attributable to sources in Australia.
- (5) For the purposes of subsection (4), treat the entire amount of the \*determined member component as not being attributable to sources in Australia if it is of the character of:
- (a) a \*discount capital gain from a \*CGT asset that is not \*taxable Australian property; or
  - (b) a \*capital gain (other than a discount capital gain) from a CGT asset that is not taxable Australian property.

*Exception for component reflected in AMIT DIR payment or fund payment*

- (6) Subsection (2) does *not* apply to the extent that the \*determined member component is reflected in an \*AMIT DIR payment or a \*fund payment, if an amount in respect of the payment:
- (a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or
  - (c) has been paid under Division 12A in that Schedule; or
  - (d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.

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

**Chapter 3** Specialist liability rules

**Part 3-25** Particular kinds of trusts

**Division 276** Australian managed investment trusts: attribution managed investment trusts

**Section 276-110**

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*Gross-up for discount capital gain*

- (7) Subsection (8) applies if a \*determined member component is of the character of:
- (a) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
  - (b) a discount capital gain from a CGT asset that is *not* taxable Australian property.
- (8) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

**276-110 Refundable tax offset for foreign resident member—  
member that is not a trustee**

- (1) This section applies if a trustee is assessed and liable to pay income tax under section 276-105 in respect of a \*member because of paragraph 276-105(2)(a) or (b).
- (2) The \*member is entitled to a \*tax offset for the income year equal to the tax paid by the trustee in accordance with subsection 276-105(2).

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23.

**Special rule for interposed custodian**

**276-115 Custodian interposed between AMIT and member**

- (1) This section applies if:
- (a) a trust that is a \*custodian is a \*member of an \*AMIT in respect of an income year; and
  - (b) the custodian has, for the income year, a \*determined member component of a particular character for the AMIT; and
  - (c) the custodian is interposed between the AMIT and another entity (the *subsequent recipient*); and

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

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- (d) the subsequent recipient:
- (i) starts to have, at a time in the income year, an entitlement to an amount that is reasonably attributable to all or part of the determined member component; or
  - (ii) would start to have, at a time in the income year, such an entitlement if the determined member component were an actual payment of an amount.
- (2) For the purposes of this Subdivision, reduce the \*custodian's \*determined member component by the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

Note: This subsection may operate to reduce the amount of the determined member component multiple times if there is more than one subsequent recipient in respect of which the requirements in paragraphs (1)(c) and (d) are satisfied.

- (3) For the purposes of this Subdivision:
- (a) treat the subsequent recipient as being a \*member of the \*AMIT in respect of the income year; and
  - (b) treat the subsequent recipient as having, for the income year, a \*determined member component for the AMIT that:
    - (i) is of the character mentioned in paragraph (1)(b); and
    - (ii) is equal to the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

## **Subdivision 276-D—Member components**

### **Guide to Subdivision 276-D**

#### **276-200 What this Subdivision is about**

A member's *member component* of a particular character is so much of an AMIT's determined trust component of that character (see Subdivision 276-E) as is attributable to membership interests held by the member, worked out in accordance with certain requirements.

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

Section 276-205

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A member's **determined member component** of a particular character is the amount stated to be the member's member component of that character in an AMMA statement (see Subdivision 276-H).

**Table of sections**

**Member-level concepts**

276-205 Meaning of *determined member component*

276-210 Meaning of *member component*

**Member-level concepts**

**276-205 Meaning of *determined member component***

- (1) The **determined member component** of a particular character for an income year of a \*member of an \*AMIT in respect of the income year is the amount of the member's \*member component of that character as reflected in the AMIT's latest \*AMMA statement for the member for the income year.
- (2) Subsection (3) applies if:
  - (a) the \*member makes a choice for the purposes of this paragraph that complies with subsection (5); and
  - (b) the member gives a copy of the choice to the Commissioner within 4 months after:
    - (i) unless subparagraph (ii) applies—the end of the member's income year; or
    - (ii) if the \*AMIT gives the member a revised \*AMMA statement for the income year at a time after the end of that income year—that time; and
  - (c) the member gives a notice of the choice, in accordance with subsection (7), to the trustee of the AMIT within those 4 months.

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



Section 276-205

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- (3) Despite subsection (1), if the \*determined member component of that character for the income year (disregarding this subsection) does *not* accord with subsections 276-210(2), (3) and (4), that ***determined member component*** is instead the member's \*member component of that character for the income year.
- (4) For the purposes of subsection (3), in working out the member's \*member component of that character for the income year, if the \*trust component of that character differs from the \*determined trust component of that character, treat the references in section 276-210 to determined trust component as instead being references to trust component.

Example: The determined trust component exceeds the trust component because of an unintentional mistake by the trustee of the AMIT. As a result, a member's corresponding determined member component under subsection (1) exceeds what it would have been if the trustee had not made the mistake.

If the member makes a choice under subsection (2), the amount of the determined member component will be determined according to the amount of the trust component.

- (5) The choice must:
- (a) be in writing; and
  - (b) state the following matters:
    - (i) the income year to which the choice relates;
    - (ii) what the \*member considers to be the member's \*member component of that character for the income year;
    - (iii) the reason why the member considers that the \*determined member component of that character for the income year does *not* accord with subsections 276-210(2), (3) and (4).
- (6) The way the \*member's \*income tax return is prepared is sufficient evidence of the making of the choice.
- (7) The notice must:
- (a) be in writing; and

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

Section 276-210

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- (b) state the matters mentioned in paragraph (5)(b).

**276-210 Meaning of *member component***

- (1) This section applies to a \*member of an \*AMIT in respect of an income year and sets out how to work out the member's \*member components for the year.

*Meaning of member component*

- (2) The \*member's ***member component*** of a character is so much of the \*AMIT's \*determined trust component of that character as is attributable to the \*membership interests in the AMIT held by the member, worked out in accordance with the requirements in subsections (3) and (4).

*Attribution must be fair and reasonable and accord with constituent documents*

- (3) The attribution must be worked out on a fair and reasonable basis, in accordance with the constituent documents of the \*AMIT. This requirement is subject to the requirement in subsection (4).

*Attribution must not involve streaming of character amounts*

- (4) The attribution must not attribute any part of a \*determined trust component of a particular character to a \*member's \*membership interests because of the tax characteristics of the member.

*Safe harbour rules*

- (5) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:
- (a) the constituent documents of the \*AMIT give the trustee of the AMIT the power to direct an amount arising from the sale of an asset to a particular \*member, if:

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

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- (i) the member redeems one or more \*membership interests in the AMIT; and
    - (ii) the direction of the amount is made to fund the redemption; and
  - (b) the trustee exercises that power.
- (6) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:
- (a) either:
    - (i) an amount of an \*under, relating to a base year (as mentioned in subsection 276-345(1)) increases a \*trust component of the \*AMIT for a later income year under section 276-305; or
    - (ii) an amount of an \*over, relating to a base year (as mentioned in subsection 276-345(1)) decreases a trust component of the AMIT for a later income year under section 276-305; and
  - (b) an entity is a \*member of the AMIT at a time in the later income year, but was *not* a member of the AMIT in respect of the base year.
- (7) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:
- (a) the trustee made a \*capital gain or \*capital loss in an income year (for the purposes of working out the amount of a \*trust component of the \*AMIT for an income year in accordance with the rules in section 276-265); and
  - (b) an entity was a \*member of the AMIT in respect of the income year, but was *not* a member of the AMIT at the time the capital gain or capital loss was made.

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

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Section 276-250

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**Subdivision 276-E—Trust components**

**Guide to Subdivision 276-E**

**276-250 What this Subdivision is about**

An AMIT's *trust component* of a particular character is worked out on the basis of the AMIT's assessable income, exempt income, non-assessable non-exempt income and tax offsets (on the assumption that the AMIT were an Australian resident liable to pay tax).

An AMIT's *determined trust component* of a particular character is the amount stated to be its trust component of that character in a document that meets certain requirements.

**Table of sections**

**Trust-level concepts**

276-255 Meaning of *determined trust component*

276-260 Meaning of *trust component*

276-265 Rules for working out trust components—general rules

276-270 Rules for working out trust components—allocation of deductions

**Trust-level concepts**

**276-255 Meaning of *determined trust component***

- (1) An \*AMIT's *determined trust component* of a particular character for an income year is the amount stated to be its \*trust component of that character in a document that meets the requirements in subsection (2).
- (2) The requirements are as follows:
  - (a) the document was created by the \*AMIT;

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

- (b) the document states expressly the amount of the \*trust component;
  - (c) at a time after the document was created, the AMIT sent \*AMMA statements for the income year to entities that were \*members of the AMIT in respect of the income year;
  - (d) the amount of the trust component stated in the document reflects the amount of the \*determined member components reflected in those AMMA statements.
- (3) If, apart from this subsection, there are 2 or more documents that meet the requirements in subsection (2), treat the most recently created of those documents as being the only document that meets those requirements.

Example: The income year for the AMIT ends on 30 June. The trustee creates a document stating the amount for the income year on 1 July. It sends all AMMA statements on 10 July. The trustee creates another document stating a different amount for the income year on 1 September. It sends revised AMMA statements reflecting that amount on 10 September. The document created on 1 September is the only document that meets the requirements in this section in respect of the amount for the income year.

### **276-260 Meaning of *trust component***

- (1) The object of this section is to ensure that an \*AMIT's amounts of assessable income, \*exempt income, \*non-assessable non-exempt income and \*tax offsets for an income year are allocated, according to their character, into separate components for the purposes of this Act.
- (2) An \*AMIT's ***trust component*** for an income year:
- (a) of a character relating to assessable income; or
  - (b) of a character relating to \*exempt income; or
  - (c) of a character relating to \*non-assessable non-exempt income; or
  - (d) of a character relating to a \*tax offset;

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

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is the amount of that character for the income year worked out for the AMIT in accordance with the rules in sections 276-265 and 276-270.

- (3) This section is subject to Subdivision 276-F (which deals with the effect of \*unders and \*overs).
- (4) The rules in sections 276-265 and 276-270 apply only for the purposes of determining the amounts of \*trust components.

**276-265 Rules for working out trust components—general rules**

*General taxability and residence assumptions to be made*

- (1) Work out the amount of the \*trust component of each character in relation to the \*AMIT assuming that the AMIT's trustee:
  - (a) was liable to pay \*tax; and
  - (b) was an Australian resident.

*Trust components of assessable income character are net of deductions*

- (2) The sum of all of the \*trust components of a character relating to assessable income of the \*AMIT for the income year equals the total assessable income of the AMIT for the income year, reduced by all deductions of the AMIT for the year. To avoid doubt, for the purposes of this subsection, apply subsection (1).
- (3) However, if that total assessable income does not exceed those deductions, the amount of each \*trust component of a character relating to assessable income of the \*AMIT for the income year is nil.

**276-270 Rules for working out trust components—allocation of deductions**

- (1) An amount of a deduction that relates directly only to one or more amounts of assessable income can be deducted only against that

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

amount or those amounts of assessable income. If there are 2 or more such amounts of assessable income, the amount of the deduction is allocated against those amounts on a reasonable basis.

- (2) If an amount of a deduction remains after applying the rules in subsection (1), the remainder can be deducted against other amounts of assessable income. The amount of the remainder is allocated against those amounts on a reasonable basis.
- (3) For the purposes of this section, determine whether a deduction relates directly to an amount of assessable income on a reasonable basis.

### **Subdivision 276-F—Unders and overs**

#### **Guide to Subdivision 276-F**

#### **276-300 What this Subdivision is about**

This Subdivision sets out how underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is generally done on a character-by-character basis.

An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character.

Unders and overs arise, and are dealt with, in the income year in which they are discovered.

#### **Table of sections**

##### **Adjustment of trust component for unders and overs etc.**

- 276-305 Adjustment of trust component for unders and overs
- 276-310 Rounding adjustment deficit increases trust component
- 276-315 Rounding adjustment surplus decreases trust component
- 276-320 Meaning of *trust component deficit*

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

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- 276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount
- 276-330 Meaning of *cross-character allocation amount* and *carry-forward trust component deficit*
- 276-335 Meaning of *FITO allocation amount*
- 276-340 Trust component character relating to tax offset—taxation of trust component deficit

**Unders and overs**

- 276-345 Meaning of *under* and *over* of a character
- 276-350 Limited discovery period for unders and overs

**Adjustment of trust component for unders and overs etc.**

**276-305 Adjustment of trust component for unders and overs**

*Object*

- (1) The object of this section is to adjust an \*AMIT's \*trust component of a particular character for an income year to take account of any \*unders or \*overs of that character that the AMIT has in the income year.

*Unders increase trust component*

- (2) If the \*AMIT has an \*under of that character in the income year (relating to any earlier income year), increase the amount of the \*trust component by that under.

Note: Those earlier income years are referred to in section 276-345 as base years.

*Overs decrease trust component*

- (3) If the \*AMIT has an \*over of that character in the income year (relating to any earlier income year), decrease the amount of the \*trust component by that over.

Note: Those earlier income years are referred to in section 276-345 as base years.

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

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### **276-310 Rounding adjustment deficit increases trust component**

- (1) If the \*AMIT has a \*rounding adjustment deficit of that character for the income year, increase the amount of the \*trust component by the amount of that rounding adjustment deficit.
- (2) The \*AMIT has a ***rounding adjustment deficit*** of a particular character for an income year if:
  - (a) the AMIT has a shortfall for the previous income year under subsection 276-415(1); and
  - (b) the shortfall results wholly or partly from the trustee of the AMIT rounding down amounts in working out \*determined member components for the previous income year.The amount of the rounding adjustment deficit is the amount of the shortfall, to the extent that it results from that rounding down.

### **276-315 Rounding adjustment surplus decreases trust component**

- (1) If the \*AMIT has a \*rounding adjustment surplus of that character for the income year, decrease the amount of the \*trust component by the amount of that rounding adjustment surplus.
- (2) The \*AMIT has a ***rounding adjustment surplus*** of a particular character for an income year if:
  - (a) the AMIT has an excess for the previous income year under subsection (3); and
  - (b) the excess results wholly or partly from the trustee of the AMIT rounding up amounts in working out \*determined member components for the previous income year.The amount of the rounding adjustment surplus is the amount of the excess, to the extent that it results from that rounding up.
- (3) The \*AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:
  - (a) the sum of all the \*determined member components of all the \*members of the AMIT of a particular character relating to

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

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assessable income, \*exempt income or \*non-assessable non-exempt income for the income year;

exceeds:

- (b) the \*determined trust component of that character of the AMIT for the income year.
- (4) Subsection (5) applies if a \*determined member component is of the character of:
- (a) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
  - (b) a discount capital gain from a CGT asset that is *not* taxable Australian property.
- (5) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

**276-320 Meaning of *trust component deficit***

If the amount of the \*trust component, worked out after applying sections 276-305, 276-310 and 276-315 (and, if applicable, section 276-325), falls short of nil:

- (a) despite those provisions, the \*trust component of that character is nil; and
- (b) the shortfall is the \*AMIT's *trust component deficit* of that character for the income year.

**276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount**

*Section applies to trust component of assessable income character*

- (1) This section applies if the \*trust component is of a character relating to assessable income.

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

*Cross-character allocation amount decreases trust component*

- (2) If the \*AMIT has a \*cross-character allocation amount of that character for the income year, decrease the amount of the \*trust component by that amount.

Note: A cross-character allocation amount of a character for the income year is allocated from a trust component deficit of another character for the income year in accordance with subsections 276-330(2), (3) and (4).

*Carry-forward trust component deficit decreases trust component*

- (3) If the \*AMIT has a \*carry-forward trust component deficit of that character for the income year, decrease the amount of the \*trust component by the amount of that deficit.

Note: A carry-forward trust component deficit for the income year is worked out in respect of the previous income year under subsection 276-330(5).

*FITO allocation amount increases trust component with the character of foreign source income*

- (4) If:
- (a) the character of the \*trust component is a character relating to \*ordinary income, or \*statutory income, from a source *other than* an \*Australian source; and
  - (b) the \*AMIT has a \*FITO allocation amount for the income year;
- increase the amount of the trust component by that FITO allocation amount.

Note: A FITO allocation amount for the income year is worked out in accordance with section 276-335.

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

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Section 276-330

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**276-330 Meaning of *cross-character allocation amount* and *carry-forward trust component deficit***

*Section applies to trust component of assessable income character*

- (1) This section applies if the \*trust component is of a character relating to assessable income.

*Cross-character allocation amount*

- (2) The trustee may, in accordance with subsection (3), allocate a \*trust component deficit (if any) of that character for the income year against the \*AMIT's *other* trust components for that income year that are also of a character relating to assessable income.
- (3) For the trustee to make an allocation under subsection (2) the trustee:
- (a) must allocate that \*trust component deficit between those other \*trust components on a reasonable basis; and
  - (b) cannot allocate more to a trust component than the amount of that trust component.
- (4) If the trustee allocates an amount under subsection (2) to a \*trust component of a character for that income year, the amount allocated is a ***cross-character allocation amount*** of that character for that income year.

*Carry-forward trust component deficit*

- (5) If there is an amount of that \*trust component deficit remaining after allocating it in accordance with subsection (2), the remaining amount is the \*AMIT's ***carry-forward trust component deficit*** of the character mentioned in subsection (1) for the *next* income year.

**276-335 Meaning of *FITO allocation amount***

- (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 \*AMIT has a \*trust component of the character of \*foreign income tax paid that counts towards a \*tax offset under Division 770; and
  - (b) the AMIT has a \*trust component deficit for the income year of that character.
- (2) The \*AMIT has a ***FITO allocation amount*** for the income year equal to the sum of:
- (a) that \*trust component deficit; and
  - (b) the product of:
    - (i) that trust component deficit; and
    - (ii) the \*corporate tax gross-up rate.

**276-340 Trust component character relating to tax offset—taxation of trust component deficit**

- (1) This section applies if:
- (a) the \*AMIT has a \*trust component of a character relating to a \*tax offset; and
  - (b) the character of the trust component is *not* the character of \*foreign income tax paid that counts towards a tax offset under Division 770; and
  - (c) the AMIT has a \*trust component deficit for the income year of that character.

*Offset trust component deficit (other than FITO character) taxed*

- (2) The trustee of the \*AMIT is liable to pay tax at the rate declared by the Parliament on the amount of the \*trust component deficit.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

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

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Section 276-345

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**Unders and overs**

**276-345 Meaning of *under* and *over* of a character**

- (1) This section sets out how to work out the amount (if any) of an \*AMIT's \*under or \*over of a particular character for an income year (the *base year*) in a later income year (the *discovery year*).
- (2) The time (the *discovery time*) at which this is worked out for the discovery year is just before the trustee works out the \*determined trust component of that character for the discovery year.

Note: This allows unders and overs to be included in the determined trust component for the discovery year: see section 276-305.

- (3) Compare the following amounts:
  - (a) the \*AMIT's \*trust component of that character for the base year, worked out on the basis of the trustee's knowledge at the discovery time (the *discovery year amount*);
  - (b) this amount (the *base year running balance*):
    - (i) if the discovery year is the first income year after the base year—the AMIT's \*determined trust component of that character for the base year; or
    - (ii) otherwise—the discovery year amount worked out under a previous operation of this section for the most recent income year before the discovery year.

*A shortfall is an under*

- (4) If the base year running balance *falls short* of the discovery year amount, the amount of the shortfall is an *under* of that character, for the base year, that the \*AMIT has in the discovery year.

*An excess is an over*

- (5) If the base year running balance *exceeds* the discovery year amount, the amount of the excess is an *over* of that character, for the base year, that the \*AMIT has in the discovery year.

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

## 276-350 Limited discovery period for unders and overs

Despite section 276-345, an \*AMIT does not have an \*under or an \*over of a particular character for an income year (the *base year*) if:

- (a) assuming the Commissioner made an assessment of the \*trust component of that character on the day on which the document stating the AMIT's \*determined trust component of that character for the base year was created; and
- (b) assuming the assessment had not been amended at the discovery time mentioned in subsection 276-345(2) for the under or over;

section 170 of the *Income Tax Assessment Act 1936* would prevent the assessment from being amended to take account of the under or over.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

## Subdivision 276-G—Shortfall and excess taxation

### Guide to Subdivision 276-G

#### 276-400 What this Subdivision is about

The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets.

#### Table of sections

##### Ensuring determined trust components are properly taxed

- 276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)
- 276-410 Trustee taxed on excess in determined member component (character relating to tax offset)

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

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276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components

**Ensuring unders and overs are properly taxed**

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward

276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward

**Commissioner may remit tax under this Subdivision**

276-430 Commissioner may remit tax under this Subdivision

**Ensuring determined trust components are properly taxed**

**276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)**

*Income character shortfall*

- (1) An \*AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:
- (a) the \*determined member component of a \*member of the AMIT of a character relating to assessable income for the income year;
- falls short of:
- (b) the \*member component of the member of that character for the income year.

*Liability to tax*

- (2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the \*AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(11) of the *Income Tax Rates Act 1986*.

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



**276-410 Trustee taxed on excess in determined member component  
(character relating to tax offset)**

- (1) An \*AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:
- (a) the \*determined member component of a \*member of the AMIT of a character relating to a \*tax offset for the income year;
- exceeds:
- (b) the \*member component of the member of that character for the income year.

*Liability to tax*

- (2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each excess of the \*AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

**276-415 Trustee taxed on amounts of determined trust component  
that are not reflected in determined member components**

- (1) An \*AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:
- (a) the sum of all the \*determined member components of all the \*members of the AMIT of a particular character relating to assessable income, \*exempt income or \*non-assessable non-exempt income for the income year;
- falls short of:
- (b) the \*determined trust component of that character of the AMIT 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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*Liability to tax*

- (2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount worked out as follows:
- (a) first, work out the sum of each shortfall of the \*AMIT under subsection (1) for the income year;
  - (b) next, work out the extent (if any) to which each of those shortfalls gives rise to a \*rounding adjustment deficit (see subsection 276-310(2));
  - (c) next, subtract the result of paragraph (b) from the result of paragraph (a);
  - (d) next, work out the extent (if any) to which the result of paragraph (c) is referable to one or more shortfalls under subsection 276-405(1);
  - (e) next, subtract the result of paragraph (d) from the result of paragraph (c).

Note: The rate is set out in subsection 12(12) of the *Income Tax Rates Act 1986*.

*Gross-up for discount capital gain*

- (3) Subsection (4) applies if a \*determined member component is of the character of:
- (a) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
  - (b) a discount capital gain from a CGT asset that is *not* taxable Australian property.
- (4) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

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

## Ensuring unders and overs are properly taxed

### 276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward

- (1) An \*AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:
- (a) an \*under of the AMIT of a character relating to assessable income in the income year for an earlier income year (the **base year**) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));
- falls short of:
- (b) what the under would have been if it had been worked out on the basis of what the trustee should have known at that time.

#### *Liability to tax*

- (2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the \*AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(13) of the *Income Tax Rates Act 1986*.

#### *Adjustment for later unders relating to the same base year*

- (3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later income year, increase the amount mentioned in subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.
- (4) Subsection (5) applies if:
- (a) there is a shortfall under subsection (1) for a particular character for an income year; 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 \*AMIT has an \*under of that character in a later income year for the base year mentioned in subsection (1); and
  - (c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the under.
- (5) Reduce the shortfall by the extent to which the \*under in the later income year reflects the amount mentioned in paragraph (1)(b).

**276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward**

- (1) An \*AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:
- (a) an \*over of the AMIT of a character relating to a \*tax offset in the income year relating to an earlier income year (the **base year**) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));
- falls short of:
- (b) what the over would have been if it had been worked out on the basis of what the trustee should have known at that time.

*Liability to tax*

- (2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the \*AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

*Adjustment for later overs relating to the same base year*

- (3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later income year, decrease the amount mentioned in

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

subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.

- (4) Subsection (5) applies if:
- (a) there is a shortfall under subsection (1) of a particular character relating to a \*tax offset for an income year; and
  - (b) the \*AMIT has an \*over of that character in a later income year relating to the base year mentioned in subsection (1); and
  - (c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the over.
- (5) Reduce the shortfall by the extent to which the \*over in the later income year reflects the amount mentioned in paragraph (1)(b).

### **Commissioner may remit tax under this Subdivision**

#### **276-430 Commissioner may remit tax under this Subdivision**

The Commissioner may remit the whole or any part of income tax for which a liability arises under this Subdivision if the Commissioner is satisfied that doing so does not result in a detriment to the revenue.

### **Subdivision 276-H—AMMA statements**

#### **Guide to Subdivision 276-H**

#### **276-450 What this Subdivision is about**

An AMIT for an income year must give each member of the AMIT in respect of the income year an AMIT member annual statement (or AMMA statement) for the income year.

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

Section 276-455

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**Operative provisions**

276-455 Obligation to give an AMMA statement

276-460 *AMIT member annual statement* (or *AMMA statement*)

**Operative provisions**

**276-455 Obligation to give an AMMA statement**

- (1) An \*AMIT for an income year must give each \*member of the AMIT in respect of the income year an \*AMMA statement for the income year.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

- (2) The statement must be given no later than 3 months after the end of the income year.
- (3) However, the \*AMIT need not give an \*AMMA statement under subsection (1) to a \*member if:
- (a) all of the member's \*determined member components for the AMIT for the income year are nil; and
  - (b) all of the member's \*membership interests in the AMIT have an \*AMIT cost base net amount for the income year of nil.
- (4) To avoid doubt, the \*AMIT does not fail to comply with subsection (1) merely because:
- (a) the AMIT gives \*AMMA statements for the income year to \*members in accordance with subsection (1) by the time required under subsection (2); and
  - (b) after that time, the AMIT gives those members further AMMA statements for the income year that replace the AMMA statements mentioned in paragraph (a).

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

**276-460 AMIT member annual statement (or AMMA statement)**

- (1) An *AMIT member annual statement* (or *AMMA statement*) is a statement made by an \*AMIT for an income year in accordance with this section.
- (2) The statement must:
  - (a) include information that reflects the amount and character of each \*member component of the \*member for the income year; and
  - (b) state what the trustee reasonably estimates to be the amount of the excess or shortfall mentioned in section 104-107C (AMIT cost base net amount) for the income year in respect of the \*CGT asset that is the member's unit or interest in the \*AMIT.
- (3) The statement is *not an AMMA statement* if the \*AMIT fails to give it to the \*member to whom it is addressed within 4 years after the end of the income year.

Note: The AMIT must give each member an AMMA statement for the income year no later than 3 months after the end of the income year (see section 276-455).

**Subdivision 276-J—Debt-like trust instruments**

**Guide to Subdivision 276-J**

**276-500 What this Subdivision is about**

A debt-like trust instrument in an AMIT is treated as a debt interest in the AMIT. A distribution in relation to the instrument is treated as interest for the purposes of provisions relating to interest withholding tax, and may be treated as a deduction in working out the trust components of the AMIT.

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

Section 276-505

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**Table of sections**

**Operative provisions**

276-505 Meaning of *debt-like trust instrument*

276-510 Debt-like trust instruments treated as debt interests etc.

276-515 Distribution on debt-like trust instrument could be deductible in working out trust components

**Operative provisions**

**276-505 Meaning of *debt-like trust instrument***

- (1) An instrument that gives rise to an interest in a trust is a *debt-like trust instrument* in relation to the trust if:
- (a) the amount of any distribution relating to the interest is fixed, at the time the interest is created, by reference to the amount subscribed for the interest; and
  - (b) any distribution relating to the interest is made solely at the discretion of the trustee of the trust; and
  - (c) rights to distributions of capital or profits arising from all interests in the trust that are in the same \*class as the interest, rank above all such rights arising from other interests in the trust (other than those covered under subsection (2)) if:
    - (i) the trust ceases to exist; or
    - (ii) where the trust is a \*managed investment scheme—the scheme is under administration or is being wound up; and
  - (d) in a case where, in relation to a particular period, the trustee of the trust does *not* make a distribution relating to the interest—making a distribution of any of the following kinds, in relation to that period, is prohibited by the constituent documents of the trust:
    - (i) a distribution relating to any membership interest in the trust;

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



- (ii) a distribution relating to a membership interest in another entity, if that interest is stapled together with a membership interest in the trust.
- (2) This subsection covers an interest in the trust that:
- (a) is *not* a \*membership interest in the trust; or
  - (b) satisfies the requirements in paragraphs (1)(a) and (b).

### **276-510 Debt-like trust instruments treated as debt interests etc.**

- (1) For the purposes of this Act:
- (a) treat a \*debt-like trust instrument in relation to an \*AMIT as a \*debt interest in the AMIT; and
  - (b) treat a distribution on a debt-like trust instrument in relation to an AMIT as a cost incurred by the AMIT in relation to a debt interest issued by the AMIT.
- (2) If a trust is an \*AMIT for an income year (disregarding this subsection), paragraph (1)(a) applies for the purposes of:
- (a) determining whether the trust is a \*managed investment trust in relation to the income year; and
  - (b) determining whether the trust is an AMIT for the income year.
- (3) For the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, if an entity is the holder of a \*debt-like trust instrument in an \*AMIT, treat a distribution to the entity in accordance with the instrument as interest.

### **276-515 Distribution on debt-like trust instrument could be deductible in working out trust components**

- (1) If an entity is the holder of a \*debt-like trust instrument in relation to an \*AMIT, for the purposes of sections 276-265 and 276-270, treat a distribution to the entity in accordance with the instrument as a \*return that the AMIT pays or provides on a \*debt interest.

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

**Chapter 3** Specialist liability rules

**Part 3-25** Particular kinds of trusts

**Division 276** Australian managed investment trusts: attribution managed investment trusts

Section 276-800

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- (2) For the purposes of subsection (1), disregard the distribution to the extent (if any) that it is referable to any of the following:
- (a) \*exempt income of the \*AMIT;
  - (b) \*non-assessable non-exempt income of the AMIT.

**Subdivision 276-K—Ceasing to be an AMIT**

**Guide to Subdivision 276-K**

**276-800 What this Subdivision is about**

If a trust ceases to be an AMIT, and discovers an under or over from an income year when it was an AMIT, the under or over will have taxation consequences for the trust in the discovery year.

**Table of sections**

**Operative provisions**

276-805	Application of Subdivision to former AMIT
276-810	Continue to work out trust components, unders, overs etc.
276-815	Effect of increase
276-820	Effect of decrease

**Operative provisions**

**276-805 Application of Subdivision to former AMIT**

This Subdivision applies if:

- (a) a trust was an \*AMIT for an income year; and
- (b) the trust is *not* an AMIT for a later income year (the *discovery year*).

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

**276-810 Continue to work out trust components, unders, overs etc.**

- (1) For the purposes of this section, assume that the trust is an \*AMIT for the discovery year.
- (2) If the trust has an \*under or \*over of a character in the discovery year for an earlier income year when the trust was an \*AMIT, work out the extent to which the under or over:
  - (a) increases the amount of the AMIT's \*trust component of that character for the discovery year; or
  - (b) decreases the amount of the AMIT's trust component of that character for the discovery year.

**276-815 Effect of increase**

- (1) This section applies if there is an increase as mentioned in paragraph 276-810(2)(a).
- (2) If the character mentioned in subsection 276-810(2) relates to assessable income, treat the amount of the increase as assessable income of the trust for the discovery year.
- (3) Subsection (4) applies if the character mentioned in subsection 276-810(2) is the character of:
  - (a) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
  - (b) a discount capital gain from a CGT asset that is *not* taxable Australian property.
- (4) For the purposes of subsection (2), treat the amount of the increase as being double what it would be apart from this subsection.
- (5) If that character relates to \*exempt income, treat the amount of the increase as exempt income of the trust for the discovery year.
- (6) If that character relates to \*non-assessable non-exempt income, treat the amount of the increase as non-assessable non-exempt income of the trust for the discovery year.

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

Section 276-820

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- (7) If that character relates to a \*tax offset, treat the amount of the increase as a tax offset of the trust for the discovery year of a kind corresponding to that character (in addition to any other tax offsets of that kind that the trust may have for the discovery year).

**276-820 Effect of decrease**

- (1) This section applies if there is a decrease as mentioned in paragraph 276-810(2)(b).
- (2) If the character mentioned in subsection 276-810(2) relates to assessable income:
- (a) in the case of a character of:
    - (i) a \*discount capital gain from a \*CGT asset that is \*taxable Australian property; or
    - (ii) a discount capital gain from a CGT asset that is *not* taxable Australian property;treat half the amount of the decrease as a \*capital loss of the trust for the discovery year; or
  - (b) in the case of a character of:
    - (i) a \*capital gain (other than a discount capital gain) from a CGT asset that is taxable Australian property; or
    - (ii) a capital gain (other than a discount capital gain) from a CGT asset that is *not* taxable Australian property;treat the amount of the decrease as a capital loss of the trust for the discovery year; or
  - (c) in any other case—treat the amount of the decrease as a deduction of the trust for the discovery year.
- (3) If that character relates to \*exempt income, treat the amount of the decrease as reducing the exempt income of the trust for the discovery year.
- (4) If that character relates to \*non-assessable non-exempt income, treat the amount of the decrease as reducing the non-assessable non-exempt income of the trust for the discovery year.

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

- (5) If that character relates to a \*tax offset, treat the amount of the decrease as reducing the tax offset or offsets (the ***existing offset or offsets***) of the trust for the discovery year of a kind corresponding to that character.
- (6) If that character relates to a \*tax offset and exceeds the total of the existing offset or offsets (before the reduction under subsection (5)):
- (a) unless paragraph (b) applies—the trustee is liable to pay tax at the rate declared by the Parliament on the excess; or
- Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.
- (b) if that character is the character of \*foreign income tax paid that counts towards a tax offset under Division 770—subsection (7) applies.
- (7) Increase the trust's assessable income for the discovery year by the sum of:
- (a) the excess mentioned in subsection (6); and
  - (b) the product of:
    - (i) that excess; and
    - (ii) the \*corporate tax gross-up rate.

Treat the amount of that increase as assessable income from a source *other than an* \*Australian source.

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

## Part 3-30—Superannuation

### Division 280—Guide to the superannuation provisions

#### Table of sections

280-1	Effect of this Division
280-5	Overview

#### Contributions phase

280-10	Contributions phase—deductibility
280-15	Contributions phase—limits on superannuation tax concessions

#### Investment phase

280-20	Investment phase
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#### Benefits phase

280-25	Benefits phase—different types of superannuation benefit
280-30	Benefits phase—taxation varies with age of recipient and type of benefit
280-35	Benefits phase—roll-overs

#### The regulatory scheme outside this Act

280-40	Other relevant legislative schemes
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#### 280-1 Effect of this Division

- (1) This Division is a \*Guide.
- (2) Tax concessions in this Part are intended to encourage Australians to save in order to make provision for their retirement, recognising that superannuation investments, and the income from them, are quarantined for retirement.

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

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## 280-5 Overview

- (1) There are 3 phases in the tax treatment of superannuation, as follows:
  - (a) the contributions phase;
  - (b) the investment phase;
  - (c) the benefits phase.
- (2) In the contributions phase, contributions are made to a superannuation plan in respect of a member of the plan.
- (3) In the investment phase, these contributions are invested by the superannuation provider.
- (4) In the benefits phase, these contributions, plus earnings from investing them, are usually paid as benefits to the member when he or she retires after reaching preservation age. In the event of death, the benefits are usually paid to the member's dependants.
- (5) There is also a regulatory scheme outside this Act that is relevant to the taxation treatment of superannuation. For example, other Acts set out prudential and operating standards for superannuation providers.

## Contributions phase

### 280-10 Contributions phase—deductibility

#### *Contributions that can be deducted*

- (1) Employers can usually deduct contributions they make in respect of their employees. Individuals can usually deduct contributions they make in respect of themselves to most complying superannuation funds.

#### *Other contributions cannot be deducted*

- (2) Other contributions cannot be deducted. These include contributions made by others in respect of individuals (such as

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

Section 280-15

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contributions by a spouse or family member, or Government co-contributions).

**280-15 Contributions phase—limits on superannuation tax concessions**

- (1) There is a limit to contributions that can be made in respect of an individual in a year that receive favourable tax treatment.
- (2) If concessional contributions exceed an indexed cap, the excess is included in the individual's assessable income and gives rise to a tax offset. The individual can release the excess concessional contributions from his or her superannuation interests. Unused cap can be carried forward for 5 years.
- (3) If non-concessional contributions exceed an indexed cap, the individual can:
  - (a) elect to release an amount corresponding to that excess, and 85% of the associated earnings on that excess, from the individual's superannuation interests; or
  - (b) elect not to release such an amount if the value of the individual's superannuation interests is nil.

An amount corresponding to those associated earnings is then included in the individual's assessable income and gives rise to a tax offset.

- (4) The individual is taxed:
  - (a) if the amount released as described in paragraph (3)(a) fell short of that excess—on that shortfall; or
  - (b) on that excess, if the individual did not make either of those elections.

An amount equal to this tax liability must be released from the individual's superannuation interests.

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



## **Investment phase**

### **280-20 Investment phase**

- (1) Contributions that can be deducted are assessable income of the superannuation provider. Contributions that cannot be deducted are not assessable income of the superannuation provider. (There are some exceptions.)
- (2) Earnings on the investment of amounts in a superannuation plan are assessable income of the superannuation provider.
- (3) The superannuation provider's taxable income is generally taxed at the concessional rate of 15%.
- (4) However, superannuation providers pay no tax on earnings from the assets that support the payment of benefits in the form of income streams, once the income streams have commenced.

## **Benefits phase**

### **280-25 Benefits phase—different types of superannuation benefit**

Superannuation benefits can be drawn down as lump sums, income streams (such as pensions or annuities), or combinations of both. Different tax treatment may apply depending on whether a lump sum or income stream is paid.

### **280-30 Benefits phase—taxation varies with age of recipient and type of benefit**

- (1) The taxation of superannuation benefits depends primarily on the age of the member.
- (2) If the member is aged 60 or over, superannuation benefits (both lump sums and income streams) are tax free if the benefits have already been subject to tax in the fund (that is, where the benefits comprise a taxed element). This covers the great majority of superannuation members.

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

Section 280-35

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- (3) Where a superannuation benefit contains an amount that has not been subject to tax in the fund (an untaxed element), this element is subject to tax for those aged 60 or over, though at concessional rates. This is relevant generally to those people (for example, public servants), who are members of a superannuation fund established by the Australian Government or a state government.
- (4) If the member is less than 60, superannuation benefits may receive concessional taxation treatment, though the treatment is less concessional than for those aged 60 and over.
- (5) Superannuation benefits may also include a “tax free component”; this component of the benefit is always paid tax free.
- (6) Additional tax concessions may apply when superannuation benefits are paid after a member’s death.

**280-35 Benefits phase—roll-overs**

A member can “roll over” their superannuation benefits from one complying superannuation plan to another, or between different interests in the same plan. This is usually done to keep the benefits invested in the superannuation system, or to convert a lump sum to a superannuation income stream. No tax is generally payable until the benefits are finally drawn down.

**The regulatory scheme outside this Act**

**280-40 Other relevant legislative schemes**

- (1) The *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* regulate the prudential and operating standards for superannuation providers. Concessional tax treatment is generally available only if providers comply with these standards.
- (2) Other legislative schemes relevant to superannuation include the following:

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

- (a) the *Superannuation Guarantee (Administration) Act 1992*, which requires that employers provide a minimum level of superannuation contributions for each of their eligible employees;
- (b) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, which provides for Government co-contributions to low income earners' superannuation;
- (c) the *Small Superannuation Accounts Act 1995*, which provides a facility to accept payments of superannuation guarantee shortfalls;
- (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which provides for the payment of unclaimed superannuation money, and the maintenance of a register of lost members.

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

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## Division 285—General concepts relating to superannuation

### 285-5 Transfers of property

- (1) Any of the following payments covered by this Part can be or include a transfer of property:
  - (a) a contribution;
  - (b) a \*superannuation lump sum.
- (2) The amount of the payment is or includes the \*market value of the property.
- (3) The \*market value is reduced by the value of any consideration given for the transfer of the property.

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

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## **Division 290—Contributions to superannuation funds**

### **Table of Subdivisions**

	Guide to Division 290
290-A	General rules
290-B	Deduction of employer contributions and other employment-connected contributions
290-C	Deducting personal contributions
290-D	Tax offsets for spouse contributions

### **Guide to Division 290**

#### **290-1 What this Division is about**

This Division sets out the rules for deductions and tax offsets for superannuation contributions.

#### **Subdivision 290-A—General rules**

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

290-5	Non-application to roll-over superannuation benefits etc.
290-10	No deductions other than under this Division

#### **290-5 Non-application to roll-over superannuation benefits etc.**

This Division does not apply to a contribution that is any of the following:

- (a) a \*roll-over superannuation benefit;
- (b) a \*superannuation lump sum that is paid from a \*foreign superannuation fund;
- (c) an amount transferred to a \*complying superannuation fund or an \*RSA from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

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

Section 290-10

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- (i) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
- (ii) was not established in Australia; and
- (iii) is not centrally managed or controlled in Australia.

**290-10 No deductions other than under this Division**

- (1) You cannot deduct under this Act an amount you pay as a contribution to a \*complying superannuation fund or \*RSA, except as provided by this Division.
- (2) You cannot deduct under this Act an amount you pay as a contribution to a \*non-complying superannuation fund, except as provided by this Division.

Note: Under Subdivision 290-B (Deduction of employer contributions and other employment-connected contributions), you may be able to deduct contributions you make to a non-complying fund that you believe to be a complying fund.

**Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions**

**Table of sections**

**Deducting employer contributions**

- 290-60 Employer contributions deductible
- 290-65 Application to employees etc.

**Conditions for deducting an employer contribution**

- 290-70 Employment activity conditions
- 290-75 Complying fund conditions
- 290-80 Age related conditions

**Other employment-connected deductions**

- 290-85 Contributions for former employees etc.
- 290-90 Controlling interest deductions

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

290-95 Amounts offset against superannuation guarantee charge

**Returned contributions**

290-100 Returned contributions assessable

## **Deducting employer contributions**

### **290-60 Employer contributions deductible**

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for another person who is your employee when the contribution is made (regardless whether the benefits are payable to a \*SIS dependant of the employee if the employee dies before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see sections 85-25 and 86-75 of this Act.

- (2) However, the conditions in sections 290-70, 290-75 and 290-80 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) You cannot deduct the contribution if it is an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a \*regulated superannuation fund, or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.

### **290-65 Application to employees etc.**

- (1) At a time when an individual is an employee of an entity within the expanded meaning of **employee** given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*, this Subdivision applies as if the individual were an employee of the entity.

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

Section 290-70

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- (2) For the purposes of this Subdivision:
- (a) in relation to a contribution by a partnership in respect of an employee of the partnership—treat the employee as an employee of the partnership; and
  - (b) in relation to a contribution by a partner in a partnership in respect of an employee of the partnership—treat the employee as an employee of the partner.

**Conditions for deducting an employer contribution**

**290-70 Employment activity conditions**

To deduct the contribution, the employee must be:

- (aa) your employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*); or
- (a) engaged in producing your assessable income; or
- (b) an Australian resident who is engaged in your business.

**290-75 Complying fund conditions**

- (1) If the contribution was made to a \*superannuation fund, at least one of these conditions must be satisfied:
- (a) the fund was a \*complying superannuation fund for the income year of the fund in which you made the contribution;
  - (b) at the time you made the contribution, you had reasonable grounds to believe that the fund was a complying superannuation fund for that income year;
  - (c) at or before the time you made the contribution, you obtained a written statement (given by or on behalf of the trustee of the fund) that the fund:
    - (i) was a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and

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



- (ii) was not subject to a direction under section 63 of that Act (which prevents a fund from accepting employer contributions).
- (2) However, the condition in paragraph (1)(b) or (c) cannot be satisfied if, when the contribution was made:
  - (a) you were:
    - (i) the trustee or the manager of the fund; or
    - (ii) an \*associate of the trustee or the manager of the fund; and
  - (b) you had reasonable grounds to believe that:
    - (i) the fund was not a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
    - (ii) the fund was operating in contravention of a regulatory provision (within the meaning of section 38A of that Act).
- (3) For the purposes of subparagraph (2)(b)(ii), a contravention of the *Superannuation Industry (Supervision) Act 1993* or regulations made under it is to be ignored unless the contravention is:
  - (a) an offence; or
  - (b) a contravention of a civil penalty provision of that Act or those regulations.
- (4) For the purposes of subparagraph (2)(b)(ii), it is sufficient if a contravention is established on the balance of probabilities.

### **290-80 Age related conditions**

- (1) To deduct the contribution:
  - (a) you must have made the contribution on or before the day that is 28 days after the end of the month in which the employee turns 75; or
  - (b) you must have been required to make the contribution by an industrial award, determination or notional agreement preserving State awards (within the meaning of the *Fair*

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

Section 290-80

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*Work (Transitional Provisions and Consequential Amendments) Act 2009*) that is in force under an \*Australian law; or

(c) the contribution must reduce your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

(2) If only paragraph (1)(b) applies, you can deduct only the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards.

Note: An industrial agreement, such as an enterprise agreement within the meaning of the *Fair Work Act 2009*, or a similar agreement made under a State law, is not an award or determination.

(2A) If only paragraph (1)(c) applies, you can deduct only the amount of the contribution that reduces your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

(2B) If both paragraphs (1)(b) and (c) apply and paragraph (1)(a) does not apply, you can deduct only the greater of the following amounts (or only one of them if they are equal):

(a) the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards;

(b) the amount of the contribution that reduces your charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the employee.

Note: If paragraph (1)(a) applies, you can deduct the whole of the contribution (whether or not paragraph (1)(b) or (1)(c) also applies).

(3) For the purposes of this section, a reference to a determination does not include a reference to a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

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

## Other employment-connected deductions

### 290-85 Contributions for former employees etc.

- (1) Section 290-60 applies as modified by this section if a contribution you make in respect of another person:
- (a) reduces your charge percentage under sections 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
  - (b) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was your employee.
- (1AA) Section 290-60 also applies as modified by this section if:
- (a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and
  - (b) you make the contribution within 4 months after the person stops being your employee; and
  - (c) you would have been entitled to a deduction in relation to the contribution if:
    - (i) you had made it at a time when the other person was your employee; and
    - (ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.
- (1AB) Section 290-60 also applies as modified by this section if:
- (a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and
  - (b) the contribution relates to a \*defined benefit interest of the other person; and
  - (c) you are at \*arm's length with the other person in relation to the contribution; and

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

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- (d) you obtain an \*actuary's certificate that:
    - (i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and
    - (ii) is to the effect that the contribution does not exceed the amount required by the relevant \*superannuation fund to meet the fund's liabilities in connection with defined benefit interests; and
  - (e) you would have been entitled to a deduction in relation to the contribution if:
    - (i) you had made it at a time when the other person was your employee; and
    - (ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.
- (1A) Section 290-60 also applies as modified by this section if:
- (a) you make a contribution in respect of another person at a time; and
  - (b) the other person had been employed by a company or other entity before that time; and
  - (c) section 290-90 would apply in relation to the contribution if the other person were employed by the company or entity at that time; and
  - (d) the contribution:
    - (i) reduces the company's or entity's charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
    - (ii) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was the company's or entity's employee; or
    - (iii) if subsection (1B) or (1C) applies—relates to a period of service during which the other person was the company's or entity's employee.
- (1B) This subsection applies if:

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

- (a) you make the contribution within 4 months after the person stops being the company's or entity's employee; and
  - (b) you would have been entitled to a deduction in relation to the contribution if you had made it while the other person was the company's or entity's employee.
- (1C) This subsection applies if:
- (a) the contribution relates to a \*defined benefit interest of the other person; and
  - (b) you and the company are at \*arm's length with the other person in relation to the contribution; and
  - (c) you obtain an \*actuary's certificate that:
    - (i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and
    - (ii) is to the effect that the contribution does not exceed the amount required by the relevant \*superannuation fund or \*RSA to meet the fund's or RSA's liabilities in connection with defined benefit interests; and
  - (d) you would have been entitled to a deduction in respect of the contribution if you had made it while the other person was the company's or entity's employee.
- (2) Treat the other person as your employee for the purposes of subsection 290-60(1).
- (3) Despite subsection 290-60(2):
- (a) if subsection (1) or (1AA) applies—the condition in section 290-70 must be satisfied at the most recent time when the other person was your employee (apart from subsection (2) of this section); or
  - (b) if subsection (1A) applies:
    - (i) the condition in section 290-70 need not be satisfied; and
    - (ii) instead, the condition in subsection 290-90(4) must be satisfied at the most recent time when the other person was the company's or entity's employee.

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

Section 290-90

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**290-90 Controlling interest deductions**

- (1) Section 290-60 applies as modified by this section if you make a contribution in respect of another person at a time, and at that time:
- (a) the other person is an employee of a company in which you have a controlling interest; or
  - (b) you are connected to the other person in the circumstances set out in subsection (5); or
  - (c) you are a company connected to the other person in the circumstances described in subsection (6).

- (2) Treat the other person as your employee at that time for the purposes of subsection 290-60(1).

Note 1: A deduction may be denied by section 85-25 if the employee is your associate.

Note 2: Section 86-60 (read together with section 86-75) limits the extent to which superannuation contributions by personal service entities are deductions.

- (3) Despite subsection 290-60(2), for you to deduct the contribution the condition in subsection (4) needs to be satisfied instead of the condition in section 290-70.

- (4) The other person must be:

(aa) an employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*) of the other person's employer; or

(a) engaged in producing the assessable income of the other person's employer; or

(b) an Australian resident engaged in the business of the other person's employer.

- (5) For the purposes of paragraph (1)(b), the circumstances are:

(a) you are the beneficial owner of shares in a company of which the other person is an employee, but you do not have a controlling interest in the company; and

(b) you are at \*arm's length with the other person in relation to the contribution; and

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

- (c) neither the other person, nor a \*relative of the other person:
  - (i) has set apart an amount as a fund, or has made a contribution to a fund, for the purpose of providing \*superannuation benefits for you or a relative of yours; or
  - (ii) has made an \*arrangement under which the other person or relative will or may do so.

*Company controlling interest deductions*

- (6) For the purposes of paragraph (1)(c), the circumstances are:
  - (a) the other person is an employee of an entity that has a controlling interest in the company; or
  - (b) an entity that has a controlling interest in the company also has a controlling interest in a company of which the other person is an employee.

**290-95 Amounts offset against superannuation guarantee charge**

You cannot deduct a contribution under this Act if you elect under subsection 23A(1) of the *Superannuation Guarantee (Administration) Act 1992* that the contribution be offset against your liability to pay superannuation guarantee charge.

Note: You cannot deduct a charge imposed by the *Superannuation Guarantee Charge Act 1992*: see section 26-95.

**Returned contributions**

**290-100 Returned contributions assessable**

- (1) Your assessable income includes a payment, or the value of a benefit, you receive in the income year so far as it reasonably represents the direct or indirect return of:
  - (a) a contribution for which you or another entity have deducted or can deduct an amount for any income year; or
  - (b) earnings on a contribution of that kind.

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

Section 290-150

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Note: An example of an indirect return of a contribution is if the fund to which it was made transfers to another fund assets that include the contribution, and the other fund returns the contribution to the person who made it.

- (2) Subsection (1) does not apply if you receive the payment, or the value of the benefit, as a \*superannuation benefit.

**Subdivision 290-C—Deducting personal contributions**

**Table of sections**

290-150 Personal contributions deductible

**Conditions for deducting a personal contribution**

290-155 Complying superannuation fund condition  
290-165 Age-related conditions  
290-170 Notice of intent to deduct conditions  
290-175 Deduction limited by amount specified in notice  
290-180 Notice may be varied but not revoked or withdrawn

**290-150 Personal contributions deductible**

- (1) You can deduct a contribution you make to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for yourself (regardless whether the benefits are payable to your \*SIS dependants if you die before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see section 26-55 of this Act.

- (2) However, the conditions in sections 290-155, 290-165 and 290-170 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) If the contribution is attributable in whole or part to a \*capital gain from a \*CGT event:

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



- (a) if you disregarded all or part of the capital gain from the CGT event under subsection 152-305(1) and you were under 55 just before you made the choice mentioned in that subsection—you cannot deduct the contribution to the extent that it is attributable to the capital gain; or
- (b) if a company or trust disregarded all or part of the capital gain from the CGT event under subsection 152-305(2) and you were under 55 just before the contribution was made—you cannot deduct the contribution to the extent that it is attributable to the capital gain.

## **Conditions for deducting a personal contribution**

### **290-155 Complying superannuation fund condition**

- (1) If the contribution is made to a \*superannuation fund:
  - (a) the fund must be a \*complying superannuation fund, for the income year of the fund in which you made the contribution, that is not:
    - (i) a \*Commonwealth public sector superannuation scheme in which you have a \*defined benefit interest; or
    - (ii) a superannuation fund that would not include the contribution in its assessable income under section 295-190; or
    - (iii) a superannuation fund of a kind prescribed by the regulations for the purposes of this subparagraph; and
  - (b) the contribution must not be a contribution of a kind prescribed by the regulations that is made to a superannuation fund of a kind prescribed by the regulations for the purposes of this paragraph.
- (2) In determining for the purposes of subparagraph (1)(a)(ii) whether section 295-190 would apply in relation to a contribution, disregard Subdivision 295-D.
- (3) The Commissioner may publish, in such manner as the Commissioner thinks fit, lists of:

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

Section 290-165

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- (a) the \*superannuation funds to which subparagraph (1)(a)(i), (ii) or (iii) applies for an income year; and
- (b) the kinds of contributions to which paragraph (1)(b) applies for an income year, and the superannuation funds to which those contributions have been or would be made.

**290-165 Age-related conditions**

- (1) If you were under the age of 18 at the end of the income year in which you made the contribution, you must have \*derived income in the income year:
  - (a) from the carrying on of a \*business; or
  - (b) attributable to activities, or circumstances, that result in you being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).
- (2) In any other case, you must have made the contribution on or before the day that is 28 days after the end of the month in which you turn 75.

**290-170 Notice of intent to deduct conditions**

*Deductibility of contributions*

- (1) To deduct the contribution, or a part of the contribution:
  - (a) you must give to the trustee of the fund or the \*RSA provider a valid notice, in the \*approved form, of your intention to claim the deduction; and
  - (b) the notice must be given before:
    - (i) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
    - (ii) otherwise—the end of the next income year; and

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

- (c) the trustee or provider must have given you an acknowledgment of receipt of the notice.

*Validity of notices*

- (2) The notice is not valid if at least one of these conditions is satisfied:
  - (a) the notice is not in respect of the contribution;
  - (b) the notice includes all or a part of an amount covered by a previous notice;
  - (c) when you gave the notice:
    - (i) you were not a member of the fund or the holder of the \*RSA; or
    - (ii) the trustee or \*RSA provider no longer holds the contribution; or
    - (iii) the trustee or RSA provider has begun to pay a \*superannuation income stream based in whole or part on the contribution;
  - (d) before you gave the notice:
    - (i) you had made a contributions-splitting application (within the meaning given by the regulations) in relation to the contribution; and
    - (ii) the trustee or RSA provider to which you made the application had not rejected the application;
  - (e) if the contribution is made to a \*superannuation fund—the condition in section 290-155 is not satisfied in relation to the fund and the contribution.

*Acknowledgment of notice*

- (3) The trustee or provider must, without delay, give you an acknowledgment of a valid notice, subject to subsection (4).
- (4) The trustee or provider may refuse to give you an acknowledgment of receipt of a valid notice if the \*value of the \*superannuation interest to which the notice relates, at the end of the day on which the trustee or \*RSA provider received the notice, is less than the tax

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

Section 290-170

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that would be payable in respect of your contribution (or part of the contribution) if the trustee or provider were to acknowledge receipt of the notice.

*Application to successor funds*

- (5) Subsections (1) to (4) and section 290-180 apply as if:
- (a) references in those provisions to the fund or \*RSA were references to a \*successor fund; and
  - (b) references in those provisions to the trustee or \*RSA provider were references to the trustee or RSA provider of the successor fund;
- if:
- (c) after making your contribution, all of the \*superannuation interest to which the notice relates is transferred to the successor fund; and
  - (d) you have not previously given a valid notice under this section to any \*superannuation provider in relation to the contribution.

*Amounts transferred to a MySuper product in another complying superannuation fund*

- (6) If:
- (a) under an \*arrangement, the fund (the **original fund**) transfers an \*accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):
    - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
    - (ii) under section 388 of that Act;to another superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and
  - (b) the arrangement takes effect after the making of your contribution; and
  - (c) you are a member (within the meaning of that Act) of the continuing fund immediately after the arrangement takes effect; and

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

(d) you did not give a notice under subsection (1) in relation to the contribution while you were a member (within the meaning of that Act) of the original fund;  
then subsections (1) to (4) of this section, and section 290-180, apply as if references in those provisions to the original fund (or the trustee of the original fund) were references to the continuing fund (or the trustee of the continuing fund).

**290-175 Deduction limited by amount specified in notice**

You cannot deduct more for the contribution (or a part of the contribution) than the amount stated in the notice.

**290-180 Notice may be varied but not revoked or withdrawn**

- (1) You cannot revoke or withdraw a valid notice in relation to the contribution (or a part of the contribution).
- (2) You can vary a valid notice, but only so as to reduce the amount stated in relation to the contribution (including to nil). You do so by giving notice to the trustee or the \*RSA provider in the \*approved form.
- (3) However, you cannot vary a valid notice after:
  - (a) if you have lodged your \*income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
  - (b) otherwise—the end of the next income year.
- (3A) The variation is not effective if, when you make it:
  - (a) you were not a member of the fund or the holder of the \*RSA; or
  - (b) the trustee or \*RSA provider no longer holds the contribution; or
  - (c) the trustee or RSA provider has begun to pay a \*superannuation income stream based in whole or part on the contribution.

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

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Section 290-180

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- (4) Subsection (3) does not apply to a variation if:
- (a) you claimed a deduction for the contribution (or a part of the contribution); and
  - (b) the deduction is not allowable (in whole or in part); and
  - (c) the variation reduces the amount stated in relation to the contribution by the amount not allowable as a deduction.

*Application to successor funds*

- (5) Subsections (2) and (3A) apply as if:
- (a) the reference in subsection (3A) to the fund or \*RSA were a reference to a \*successor fund; and
  - (b) references in those subsections to the trustee or \*RSA provider were references to the trustee or RSA provider of the successor fund;
- if, after a valid notice is given under section 290-170 in relation to the contribution, all of the \*superannuation interest to which the notice relates is transferred to the successor fund.

*Amounts transferred to a MySuper product in another complying superannuation fund*

- (6) If:
- (a) under an \*arrangement, the fund (the **original fund**) transfers an \*accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):
    - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
    - (ii) under section 388 of that Act;to another superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and
  - (b) the arrangement takes effect after a valid notice is given under section 290-170; and
  - (c) you are a member (within the meaning of that Act) of the continuing fund immediately after the arrangement takes effect; and

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

(d) you seek to vary the valid notice after you cease to be a member (within the meaning of that Act) of the original fund; then subsections (2) and (3A) apply as if references in those subsections to the original fund (or the trustee of the original fund) were references to the continuing fund (or the trustee of the continuing fund).

### **Subdivision 290-D—Tax offsets for spouse contributions**

#### **Table of sections**

290-230	Offset for spouse contribution
290-235	Limit on amount of tax offsets
290-240	Tax file number

#### **290-230 Offset for spouse contribution**

- (1) You are entitled to a \*tax offset for an income year for a contribution you make in the income year to a \*superannuation fund, or an \*RSA, for the purpose of providing \*superannuation benefits for your \*spouse (regardless whether the benefits are payable to your spouse's \*SIS dependants if your spouse dies before or after becoming entitled to receive the benefits).
- (2) You are entitled to the \*tax offset only if:
  - (a) he or she was your \*spouse when you made the contribution; and
  - (b) both you and your spouse were Australian residents when you made the contribution; and
  - (c) the total of your spouse's:
    - (i) assessable income; and
    - (ii) \*reportable fringe benefits total; and
    - (iii) \*reportable employer superannuation contributions; for the income year is less than \$40,000; and
  - (d) you have not deducted and cannot deduct an amount for the contribution under section 290-60 (employer contributions); and

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

Section 290-235

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- (e) if the contribution is made to a \*superannuation fund—it is a \*complying superannuation fund for the income year of the fund in which you make the contribution.
- (3) You are *not* entitled to the \*tax offset if, when you make the contribution, you are living separately and apart from your \*spouse on a permanent basis.
- (4) You are *not* entitled to the \*tax offset for an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a \*regulated superannuation fund, or to an \*RSA, to be held for the benefit of your \*non-member spouse in satisfaction of his or her entitlement in respect of the \*superannuation interest concerned.
- (4A) You are *not* entitled to the \*tax offset for an income year if:
  - (a) your \*spouse's \*non-concessional contributions for the \*financial year corresponding to the income year exceed your spouse's \*non-concessional contributions cap for the financial year; or
  - (b) immediately before the start of the financial year, your spouse's \*total superannuation balance equals or exceeds the \*general transfer balance cap for the financial year.
- (5) For the purposes of subparagraph (2)(c)(iii), reduce (but not below zero) the \*reportable employer superannuation contributions by the amount of any \*excess concessional contributions your \*spouse has for the \*financial year corresponding to the income year.

**290-235 Limit on amount of tax offsets**

- (1) The total of the amounts of \*tax offset to which you are entitled for contributions you make for an income year cannot exceed 18% of the lesser of the following:
  - (a) \$3,000 reduced by the amount (if any) by which the total mentioned in paragraph 290-230(2)(c) for the income year exceeds \$37,000;
  - (b) the sum of the \*spouse contributions you make in the income year.

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



- (2) The maximum \*tax offset to which you are entitled for an income year is \$540, even if you are entitled to a tax offset for more than 1 \*spouse.

**290-240 Tax file number**

If you are entitled to the \*tax offset for the contribution, you may, with your \*spouse's consent, quote your spouse's \*tax file number to the trustee (or \*RSA provider) of the \*superannuation fund (or \*RSA) to which the contribution is made.

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

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## **Division 291—Excess concessional contributions**

### **Table of Subdivisions**

	Guide to Division 291
291-A	Object of this Division
291-B	Excess concessional contributions
291-C	Modifications for defined benefit interests
291-CA	Contributions that do not result in excess contributions
291-D	Other provisions

### **Guide to Division 291**

#### **291-1 What this Division is about**

There is a cap on the amount of superannuation contributions that may receive concessional tax treatment for an individual in a financial year.

You can carry forward unused concessional contributions cap from the previous 5 financial years and use it to increase your cap in a later financial year (unless your total superannuation balance equals or exceeds \$500,000).

Superannuation contributions that exceed your concessional contributions cap are included in your assessable income for the corresponding income year.

A tax offset compensates for the tax that generally applies to the contributions in the superannuation fund.

Note: Part 2-35 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about a charge you may be liable to pay, and about releasing the excess concessional contributions from superannuation.

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

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## Subdivision 291-A—Object of this Division

### Table of sections

291-5 Object of this Division

### 291-5 Object of this Division

The object of this Division is to ensure, in relation to *concessional* contributions to superannuation, that the amount of concessionally taxed \*superannuation benefits that an individual receives results from contributions that have been made gradually over the course of the individual's life.

Note: Division 292 has the same object, in relation to non-concessional contributions.

## Subdivision 291-B—Excess concessional contributions

### Guide to Subdivision 291-B

#### 291-10 What this Subdivision is about

This Subdivision includes excess concessional contributions in your assessable income and provides a tax offset.

### Table of sections

#### Operative provisions

291-15 Excess concessional contributions—assessable income, 15% tax offset  
291-20 Your *excess concessional contributions* for a financial year  
291-25 Your *concessional contributions* for a financial year

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

Section 291-15

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## Operative provisions

### 291-15 Excess concessional contributions—assessable income, 15% tax offset

If you have \*excess concessional contributions for a \*financial year:

- (a) an amount equal to the excess concessional contributions is included in your assessable income for your corresponding income year; and
- (b) you are entitled to a \*tax offset for that income year equal to 15% of the excess concessional contributions.

Note 1: This offset cannot be refunded, transferred or carried forward: see item 20 of the table in subsection 63-10(1).

Note 2: You may be liable to pay excess concessional contributions charge: see Division 95 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 3: You can elect to release excess concessional contributions from superannuation: see Division 96 in that Schedule.

### 291-20 Your excess concessional contributions for a financial year

- (1) You have *excess concessional contributions* for a \*financial year if the amount of your \*concessional contributions for the year exceeds your \*concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.
- (2) Your *concessional contributions cap* is:
  - (a) for the 2017-2018 financial year—\$25,000; or
  - (b) for the 2018-2019 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (a).

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

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

*Five year carry forward of unused concessional contributions cap*

- (3) However, your **concessional contributions cap** for the \*financial year is increased in accordance with subsection (4) if:
- (a) your \*concessional contributions for the year would otherwise exceed your concessional contributions cap for the year; and
  - (b) your \*total superannuation balance just before the start of the financial year is less than \$500,000; and
  - (c) you have previously unapplied \*unused concessional contributions cap for one or more of the previous 5 financial years.
- (4) Apply your unapplied \*unused concessional contributions cap for each of the previous 5 \*financial years to increase your \*concessional contributions cap (but not by more than the excess from paragraph (3)(a)).
- (5) For the purposes of increasing your \*concessional contributions cap under subsection (4), apply amounts of \*unused concessional contributions cap for previous \*financial years in order from the earliest year to the most recent year.

*Your unused concessional contributions cap*

- (6) You have **unused concessional contributions cap** for a \*financial year if the amount of your \*concessional contributions for the year falls short of your \*concessional contributions cap for the year. The amount of the unused concessional contributions cap is the amount of the shortfall.
- (7) However, you do not have **unused concessional contributions cap** for a \*financial year earlier than the 2018-2019 financial year.

**291-25 Your concessional contributions for a financial year**

- (1) The amount of your **concessional contributions** for a \*financial year is the sum of:

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

Section 291-155

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- (a) each contribution covered under subsection (2); and
- (b) each amount covered under subsection (3).

Note: For rules about defined benefit interests, see Subdivision 291-C.

- (2) A contribution is covered under this subsection if:
  - (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is included in the assessable income of the \*superannuation provider in relation to the plan, or, by way of a \*roll-over superannuation benefit, in the assessable income of a \*complying superannuation fund or \*RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds) or subsection 290-170(6) (about MySuper products); and
  - (c) it is *not* an amount mentioned in subsection 295-200(2); and
  - (d) it is *not* an amount mentioned in item 2 of the table in subsection 295-190(1).
- (3) An amount in a \*complying superannuation plan is covered under this subsection if it is allocated by the \*superannuation provider in relation to the plan for you for the year in accordance with conditions specified in the regulations.
- (4) For the purposes of paragraph (2)(b), disregard:
  - (a) table item 5.3 in section 50-25 (about income tax exemption for constitutionally protected funds); and
  - (b) Subdivision 295-D (about excluded contributions).

**Subdivision 291-C—Modifications for defined benefit interests**

**Guide to Subdivision 291-C**

**291-155 What this Subdivision is about**

This Subdivision modifies the meaning of *concessional contributions* relating to defined benefits interests.

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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

291-160	Application
291-165	Concessional contributions—special rules for defined benefit interests
291-170	<i>Notional taxed contributions</i>
291-175	<i>Defined benefit interest</i>

## Operative provisions

### 291-160 Application

This Subdivision applies if, in a \*financial year, you have:

- (a) a \*superannuation interest that is or includes a \*defined benefit interest; or
- (b) more than one superannuation interest that is or includes a defined benefit interest.

### 291-165 Concessional contributions—special rules for defined benefit interests

- (1) Despite section 291-25, the amount of your *concessional contributions* for the \*financial year is the sum of:
  - (a) the contributions covered by subsection 291-25(2), and the amounts covered by subsection 291-25(3), to the extent to which they do *not* relate to the \*defined benefit interest or interests; and
  - (b) your \*notional taxed contributions for the financial year in respect of the defined benefit interest or interests; and
  - (c) the amount (if any) by which your \*defined benefit contributions for the financial year in respect of the defined benefit interest or interests exceed those notional taxed contributions.

Note: Section 291-370 prevents some contributions from causing your concessional contributions for a financial year to exceed the concessional contributions cap.

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

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Section 291-170

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- (2) In working out your \*defined benefit contributions for the \*financial year for the purposes of paragraph (1)(c):
- (a) if Subdivision 293-E applies to you for the income year corresponding to the financial year—disregard subsection 293-150(3); and
  - (b) if Subdivision 293-F applies to you—disregard subsection 293-195(2).

Note: Section 291-370 prevents some contributions from causing your concessional contributions for a financial year to exceed the concessional contributions cap.

**291-170 Notional taxed contributions**

- (1) Your **notional taxed contributions** for a \*financial year in respect of a \*defined benefit interest has the meaning given by the regulations.

Note: For transitional provisions about notional taxed contributions that were previously in former subsections 292-170(6) to (9), see Subdivision 291-C of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the **notional taxed contributions**.
- (3) Regulations made for the purposes of subsection (1) may define the \*notional taxed contributions, and the amount of notional taxed contributions, in different ways depending on any of the following matters:
- (a) the individual who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.

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



- (4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of \*notional taxed contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.

**291-175 *Defined benefit interest***

- (1) An individual's \*superannuation interest is a ***defined benefit interest*** to the extent that it defines the individual's entitlement to \*superannuation benefits payable from the interest by reference to one or more of the following matters:
  - (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
  - (c) a specified amount;
  - (d) specified conversion factors.
- (2) However, an individual's \*superannuation interest is *not* a ***defined benefit interest*** if it defines that entitlement solely by reference to one or more of the following:
  - (a) \*disability superannuation benefits;
  - (b) \*superannuation death benefits;
  - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

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

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## **Subdivision 291-CA—Contributions that do not result in excess contributions**

### **Guide to Subdivision 291-CA**

#### **291-365 What this Subdivision is about**

Some contributions and other amounts are treated as always being within your concessional contributions cap, and therefore cannot be excess concessional contributions.

#### **Table of sections**

##### **Operative provisions**

291-370 Contributions that do not result in excess contributions

#### **Operative provisions**

##### **291-370 Contributions that do not result in excess contributions**

- (1) In working out your \*concessional contributions for a \*financial year, treat the sum of the following as an amount equal to your \*concessional contributions cap under subsection 291-20(2) for the financial year:
  - (a) contributions made in respect of you for the financial year to a \*constitutionally protected fund that would (disregarding this section) be concessional contributions;
  - (b) if any of your \*notional taxed contributions for the financial year:
    - (i) are worked out under section 291-170 of the *Income Tax (Transitional Provisions) Act 1997*; or
    - (ii) are not worked out under that section, but only because those notional taxed contributions did not meet the requirements of paragraph 291-170(2)(b) or (4)(b) of that Act;

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

the amount of those notional taxed contributions;

- (c) if your \*defined benefit contributions for the financial year (worked out excluding contributions and amounts covered by paragraph (a)) exceed your notional taxed contributions for the financial year (also worked out excluding contributions and amounts covered by paragraph (a))—the amount of that excess;

if that sum would otherwise exceed your concessional contributions cap under subsection 291-20(2) for the financial year.

Note: This subsection does *not* take into account any increase in your concessional contributions cap under subsection 291-20(4).

- (2) For the purposes of paragraph (1)(a), treat any amounts covered by subsection 291-25(3) or paragraph 291-165(1)(b) or (c) for the \*financial year that relate to a \*superannuation interest of yours in the fund as if they were contributions made in respect of you for the financial year to the fund.
- (3) This section has effect despite sections 291-25 and 291-165 of this Act and section 291-170 of the *Income Tax (Transitional Provisions) Act 1997*.

## Subdivision 291-D—Other provisions

### Guide to Subdivision 291-D

#### 291-460 What this Subdivision is about

The Commissioner has a discretion to disregard concessional contributions or allocate them to a different financial year.

#### Table of sections

##### Operative provisions

291-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

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

## Operative provisions

### 291-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

- (1) The Commissioner may make a written determination that, for the purposes of working out the amount of your \*excess concessional contributions for a \*financial year, all or part of your \*concessional contributions for a financial year is to be:
- (a) disregarded; or
  - (b) allocated instead for the purposes of another financial year specified in the determination.

#### *Conditions for making of determination*

- (2) The Commissioner may make the determination only if:
- (a) you apply for the determination in accordance with this section; and
  - (b) the Commissioner considers that:
    - (i) there are special circumstances; and
    - (ii) making the determination is consistent with the object of this Division and Division 292.

#### *Matters to which regard may be had*

- (3) In making the determination the Commissioner may have regard to the following:
- (a) whether a contribution made in the relevant \*financial year would more appropriately be allocated towards another financial year instead;
  - (b) whether it was reasonably foreseeable, when a relevant contribution was made, that you would have \*excess concessional contributions or \*excess non-concessional contributions for the relevant financial year, and in particular:
    - (i) if the relevant contribution is made in respect of you by another individual—the terms of any agreement or

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

- arrangement between you and that individual as to the amount and timing of the contribution; and
- (ii) the extent to which you had control over the making of the contribution;
  - (c) any other relevant matters.

*Requirements for application*

- (4) The application:
  - (a) must be in the \*approved form; and
  - (b) can only be made after all of the contributions sought to be disregarded or reallocated have been made; and
  - (c) if you receive an \*excess concessional contributions determination for the \*financial year—must be given to the Commissioner within:
    - (i) 60 days after receiving the determination; or
    - (ii) a further period allowed by the Commissioner.

*Notification*

- (5) The Commissioner must give you:
  - (a) a copy of the determination; or
  - (b) if the Commissioner decides not to make a determination—notice of that decision.

*Review*

- (7) If you are dissatisfied with:
  - (a) a determination made under this section in relation to you; or
  - (b) a decision the Commissioner makes not to make such a determination;you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (8) To avoid doubt:

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

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Section 291-465

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- (a) subject to subsection 14ZVB(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a determination or decision, relating to all or part of your \*concessional contributions for a \*financial year:
  - (i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or
  - (ii) under section 97-10 in Schedule 1 to the *Taxation Administration Act 1953* against an \*excess concessional contributions determination made in relation to you for the financial year; and
- (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a determination under this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

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

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## **Division 292—Excess non-concessional contributions**

### **Table of Subdivisions**

	Guide to Division 292
292-A	Object of this Division
292-B	Assessable income and tax offset
292-C	Excess non-concessional contributions tax
292-E	Excess non-concessional contributions tax assessments
292-F	Amending excess non-concessional contributions tax assessments
292-G	Collection and recovery
292-H	Other provisions

### **Guide to Division 292**

#### **292-1 What this Division is about**

This Division limits the superannuation contributions made in a financial year that receive concessional tax treatment.

You become liable for tax if:

- (a) your non-concessional contributions exceed an indexed cap; and
- (b) you do not release a corresponding amount from your superannuation interests;

unless the value of your superannuation interests is nil.

An amount will be included in your assessable income, and you will become entitled to a tax offset, if you release such an amount or if the value of your superannuation interests is nil.

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

Section 292-5

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**Subdivision 292-A—Object of this Division**

**Table of sections**

292-5 Object of this Division

**292-5 Object of this Division**

The object of this Division is to ensure, in relation to *non-concessional* contributions to superannuation, that the amount of concessional taxed \*superannuation benefits that an individual receives results from contributions that have been made gradually over the course of the individual's life.

Note: Division 291 has the same object, in relation to concessional contributions.

**Subdivision 292-B—Assessable income and tax offset**

**292-15 What this Subdivision is about**

An amount is included in your assessable income, and you are entitled to a tax offset, if your non-concessional contributions exceed an indexed cap and:

- (a) as a result, you release an amount from your superannuation interests; or
- (b) the value of your superannuation interests is nil.

This amount included in your assessable income corresponds to your associated earnings on those excess contributions.

**Table of sections**

292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions  
292-25 Amount included in assessable income  
292-30 Amount of the tax offset

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



**292-20 Amount in assessable income, and tax offset, relating to your non-concessional contributions**

Your assessable income for an income year includes an amount, and you are entitled to a \*tax offset for the income year, if:

- (a) you receive one or more \*excess non-concessional contributions determinations for a \*financial year that corresponds to the income year; and
- (b) you make one or more elections under paragraph 96-7(1)(a) or (b) in Schedule 1 to the *Taxation Administration Act 1953* in relation to those determinations.

**292-25 Amount included in assessable income**

- (1) The amount included in your assessable income for the income year is equal to the amount of associated earnings stated in the most recent of those determinations.
- (2) However, if:
  - (a) the sum of any amounts paid to you in response to release authorities issued in relation to those determinations (the **total amount**) is less than the amount of the excess stated in the most recent of those determinations; and
  - (b) section 292-467 does not apply to you for the \*financial year; the amount included in your assessable income for the income year is equal to the amount of associated earnings that would have been stated in that most recent determination if the total amount had been the amount of the excess stated in that determination.

Note 1: The amount included in your assessable income may be nil.

Note 2: Any amounts paid to you in response to those release authorities are non-assessable non-exempt income (see section 303-17).

**292-30 Amount of the tax offset**

The \*tax offset is equal to 15% of the amount included in your assessable income for the income year under section 292-25.

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

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 292** Excess non-concessional contributions

**Section 292-75**

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Note 1: This tax offset compensates for any tax liability of the superannuation provider on earnings from investments made with the contributions making up the excess amount stated in the most recent determination.

Note 2: This offset cannot be refunded, transferred or carried forward (see item 20 of the table in subsection 63-10(1)).

**Subdivision 292-C—Excess non-concessional contributions tax**

**292-75 What this Subdivision is about**

This Subdivision defines *non-concessional contributions* and *excess non-concessional contributions*, and sets liability to pay excess non-concessional contributions tax.

**Table of sections**

**Operative provisions**

- 292-80 Liability for excess non-concessional contributions tax
- 292-85 Your *excess non-concessional contributions* for a financial year
- 292-90 Your *non-concessional contributions* for a financial year
- 292-95 Contributions arising from structured settlements or orders for personal injuries
- 292-100 Contribution relating to some CGT small business concessions
- 292-105 CGT cap amount

**Operative provisions**

**292-80 Liability for excess non-concessional contributions tax**

You are liable to pay \*excess non-concessional contributions tax imposed by the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* if you have \*excess non-concessional contributions for a \*financial year.

Note: The amount of the tax is set out in that Act.

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

**292-85 Your excess non-concessional contributions for a financial year**

*Your excess non-concessional contributions*

- (1) You have **excess non-concessional contributions** for a \*financial year if:
- (a) you receive one or more \*excess non-concessional contributions determinations for the financial year; and
  - (b) the excess amount stated in the most recent of those determinations exceeds the sum of any amounts paid to you in response to release authorities issued, in relation to those determinations, under section 96-12 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (c) section 292-467 of this Act does not apply to you for the financial year.
- (1A) The amount of your **excess non-concessional contributions** is:
- (a) if no amounts were paid to you as described in paragraph (1)(b)—the excess amount stated in that most recent determination; or
  - (b) otherwise—the amount of the excess worked out under paragraph (1)(b).

Note: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

*Your non-concessional contributions cap—general rule*

- (2) Your **non-concessional contributions cap** for a \*financial year is:
- (a) unless paragraph (b) applies—the amount (the **general non-concessional contributions cap** for the year) that is 4 times your \*concessional contributions cap under subsection 291-20(2) for the year; or
  - (b) if, immediately before the start of the year, your \*total superannuation balance equals or exceeds the \*general transfer balance cap for the year—nil.

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

Section 292-85

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Note: This subsection does *not* take into account any increase in your concessional contributions cap under subsection 291-20(4).

*When you can bring forward your non-concessional contributions cap*

- (3) Despite subsection (2), work out your ***non-concessional contributions cap*** for a \*financial year (the ***first year***) under subsection (5), and your ***non-concessional contributions caps*** for the following 2 financial years (the ***second year*** and ***third year***) under subsections (6) and (7), if:
- (a) your \*non-concessional contributions for the first year exceed the general non-concessional contributions cap for that year; and
  - (b) paragraph (2)(b) does not apply to you in relation to the first year; and
  - (c) you are under 65 years at any time in the first year; and
  - (d) a previous operation of subsection (6) or (7) does not determine your non-concessional contributions cap for the first year; and
  - (e) the difference (the ***first year cap space***) between the \*general transfer balance cap for the first year and your \*total superannuation balance immediately before the start of the first year exceeds the general non-concessional contributions cap for the first year.
- (4) However, do not work out your \*non-concessional contributions cap for the third year under subsection (7) if the first year cap space does not exceed an amount equal to twice the general non-concessional contributions cap for the first year.

Note: If this subsection applies, your non-concessional contributions cap for the third year will be worked out under subsection (2) (unless the third year becomes a new first year under a further application of subsection (3)).

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

*First year of bring forward*

- (5) Your **non-concessional contributions cap** for the first year is an amount equal to:
- (a) if the first year cap space does not exceed an amount equal to twice the general non-concessional contributions cap for the first year—twice the general non-concessional contributions cap for the first year; or
  - (b) otherwise—3 times the general non-concessional contributions cap for the first year.

*Second year of bring forward*

- (6) Your **non-concessional contributions cap** for the second year is:
- (a) if:
    - (i) your \*total superannuation balance immediately before the start of the second year is less than the \*general transfer balance cap for the second year; and
    - (ii) your \*non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));that shortfall; or
  - (b) otherwise—nil.

*Third year of bring forward*

- (7) Your **non-concessional contributions cap** for the third year is:
- (a) if:
    - (i) your \*total superannuation balance immediately before the start of the third year is less than the \*general transfer balance cap for the third year; and
    - (ii) your \*non-concessional contributions for the second year fall short of your cap for the second year (worked out under subsection (6));that shortfall; or
  - (b) if:

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

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- (i) your total superannuation balance immediately before the start of the third year is less than the general transfer balance cap for the third year; and
- (ii) your cap for the second year is nil; and
- (iii) your non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));  
that shortfall; or
- (c) otherwise—nil.

**292-90 Your *non-concessional contributions* for a financial year**

- (1) The amount of your *non-concessional contributions* for a \*financial year is the sum of:
  - (a) each contribution covered under subsection (2); and
  - (aa) each amount covered under subsection (4); and
  - (b) the amount of your \*excess concessional contributions (if any) for the financial year.

*Modification for released excess concessional contributions*

- (1A) However, if:
  - (a) you make a valid election under section 96-5 in Schedule 1 to the *Taxation Administration Act 1953* in relation to \*excess concessional contributions you have for the \*financial year; and
  - (b) a \*superannuation provider pays an amount in relation to the release authority issued under section 96-10 in that Schedule in relation to that election;the amount paid is first increased, by dividing it by 85%, and the increased amount is applied to reduce the amount of excess concessional contributions mentioned in paragraph (1)(b) of this section.

*Non-concessional contributions and amounts*

- (2) A contribution is covered under this subsection if:

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

- (a) it is made in the \*financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is *not* included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan, or, by way of a \*roll-over superannuation benefit, in the assessable income of any \*complying superannuation fund or \*RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds) or subsection 290-170(6) (about MySuper products); and
  - (c) it is *not* any of the following:
    - (i) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
    - (ii) a contribution covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries);
    - (iii) a contribution covered under section 292-100 (certain CGT-related payments), to the extent that it does not exceed your \*CGT cap amount when it is made;
    - (iv) a contribution made to a \*constitutionally protected fund (other than a contribution included in the \*contributions segment of your \*superannuation interest in the fund);
    - (v) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180;
    - (vi) a contribution that is a \*roll-over superannuation benefit.
- (3) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).
- (4) An amount is covered under this subsection if it is any of the following:
- (a) an amount in a \*complying superannuation plan that is allocated by the \*superannuation provider in relation to that plan for you for the year in accordance with conditions specified in the regulations;

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

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- (b) the amount of any contribution made to that plan in respect of you in the year that is covered by a valid and acknowledged notice under section 290-170, to the extent that it is not allowable as a deduction for the person making the contribution;
- (c) the sum of each contribution made to that plan in respect of you at a time on or after 10 May 2006 when that plan was not a complying superannuation plan (other than a contribution covered under this paragraph in relation to a previous financial year).

**292-95 Contributions arising from structured settlements or orders for personal injuries**

- (1) A contribution is covered under this section if:
  - (a) the contribution arises from:
    - (i) the settlement of a claim that satisfies the conditions in subsection (3); or
    - (ii) the settlement of a claim in relation to a personal injury suffered by you under a law of the Commonwealth or of a State or Territory relating to workers compensation; or
    - (iii) the order of a court that satisfies the conditions in subsection (4); and
  - (b) the contribution is made within 90 days, or such longer period as the Commissioner allows, after the later of the following:
    - (i) the day of receipt of the payment from which the contribution is made; or
    - (ii) in relation to subparagraph (a)(i) or (iii)—the day mentioned in subsection (2); and
  - (c) 2 legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that you can ever be \*gainfully employed in a capacity for which you are reasonably qualified because of education, experience or training; and

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



- (d) no later than the time the contribution is made to a \*superannuation plan, you or your \*legal personal representative notify the \*superannuation provider in relation to the plan, in the \*approved form, that this section is to apply to the contribution.
- (2) For the purposes of subparagraph (1)(b)(ii), the day is:
- (a) for a settlement mentioned in subparagraph (a)(i):
- (i) the day on which the agreement mentioned in paragraph (3)(c) was entered into; or
- (ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court—the day on which that order was made; or
- (b) for an order mentioned in subparagraph (1)(a)(iii)—the day on which the order was made.
- (3) For the purposes of subparagraph (1)(a)(i), the conditions are as follows:
- (a) the claim:
- (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
- (ii) is made by you or your \*legal personal representative;
- (b) the claim is based on the commission of a wrong, or on a right created by statute;
- (c) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court).
- (4) For the purposes of subparagraph (1)(a)(iii), the conditions are as follows:
- (a) the order is made in respect of a claim that:
- (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
- (ii) is made by you or your \*legal personal representative;

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

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- (b) the claim is based on the commission of a wrong, or on a right created by statute;
  - (c) the order is not an order approving or endorsing an agreement as mentioned in paragraph (3)(c).
- (5) If a claim is both:
- (a) for compensation or damages for personal injury suffered by you; and
  - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);
- subsections (3) and (4) apply to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to amounts that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.
- (6) If:
- (a) you requested the Commissioner to allow a longer period under paragraph (1)(b); and
  - (b) you are dissatisfied with:
    - (i) a decision under that paragraph allowing a longer period; or
    - (ii) a decision the Commissioner makes not to allow a longer period;
- you may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (7) To avoid doubt:
- (a) subject to subsection 14ZVC(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a decision, relating to all or part of your contributions for a \*financial year:
    - (i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or
    - (ii) under section 97-35 in Schedule 1 to the *Taxation Administration Act 1953* against an \*excess

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

non-concessional contributions determination made in relation to you for the financial year; and

- (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a decision under paragraph (1)(b) of this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

### **292-100 Contribution relating to some CGT small business concessions**

- (1) A contribution is covered under this section if:
- (a) the contribution is made by you to a \*complying superannuation plan in respect of you in a \*financial year; and
  - (b) the requirement in subsection (2), (4), (7) or (8) is met; and
  - (c) you choose, in accordance with subsection (9), to apply this section to an amount that is all or part of the contribution.
- (2) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the \*capital proceeds from a \*CGT event for which you can disregard any \*capital gain under section 152-105 (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the contribution is made on or before the later of the following days:
    - (i) the day you are required to lodge your \*income tax return for the income year in which the CGT event happened;
    - (ii) 30 days after the day you receive the capital proceeds.
- (3) For the purposes of paragraph (2)(a), ignore the requirement in paragraph 152-105(b) if you are permanently incapacitated at the time of the \*CGT event but were not permanently incapacitated at the time the relevant \*CGT asset was acquired.

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

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- (4) The requirement in this subsection is met if:
- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under section 152-110, disregard any \*capital gain arising from the CGT event (or would be able to do so, assuming that a capital gain arose from the event); and
  - (b) the entity makes a payment to you before the later of:
    - (i) 2 years after the CGT event; and
    - (ii) if the CGT event happened because the entity \*disposed of the relevant \*CGT asset—6 months after the latest time a possible \*financial benefit becomes or could become due under a \*look-through earnout right relating to that CGT asset and the disposal; and
  - (c) the contribution is equal to all or part of your stakeholder's participation percentage (within the meaning of subsection 152-125(2)) of the \*capital proceeds from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (5) In determining whether the conditions in subsection (2) or (4) are satisfied for a \*CGT event in relation to a \*pre-CGT asset, treat the asset as a \*post-CGT asset.
- (6) For the purposes of paragraph (4)(a), ignore the requirement in paragraph 152-110(1)(b) if a \*significant individual was permanently incapacitated at the time of the \*CGT event but was not permanently incapacitated when the relevant \*CGT asset was acquired.
- (7) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the \*capital gain from a \*CGT event that you disregarded under subsection 152-305(1); and
  - (b) the contribution is made on or before the later of the following days:

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

- (i) the day you are required to lodge your \*income tax return for the income year in which the CGT event happened;
  - (ii) 30 days after the day you receive the \*capital proceeds from the CGT event.
- (8) The requirement in this subsection is met if:
- (a) just before a \*CGT event, you were a \*CGT concession stakeholder of an entity that could, under subsection 152-305(2), disregard all or part of a \*capital gain arising from the CGT event; and
  - (b) the entity makes a payment to you that satisfies the conditions in section 152-325; and
  - (c) the contribution is equal to all or part of the capital gain arising from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
  - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (9) To make a choice for the purposes of paragraph (1)(c), you must:
- (a) make the choice in the \*approved form; and
  - (b) give it to the \*superannuation provider in relation to the \*complying superannuation plan on or before the time when the contribution is made.

### **292-105 CGT cap amount**

- (1) Your **CGT cap amount** at the start of the 2007-2008 \*financial year is \$1,000,000.

Note: For transitional rules about contributions made in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

#### *Reductions and increases*

- (2) If a contribution covered by section 292-100 is made in respect of you at a time, reduce your **CGT cap amount** just after that time:

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

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- (a) if the contribution falls short of your \*CGT cap amount at that time—by the amount of the contribution; or
  - (b) otherwise—to nil.
- (3) At the start of each \*financial year after the 2007-2008 financial year, increase your **CGT cap amount** by the amount (if any) by which the index amount for that financial year exceeds the index amount for the previous financial year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 \*financial year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

**Subdivision 292-E—Excess non-concessional contributions tax assessments**

**Guide to Subdivision 292-E**

**292-225 What this Subdivision is about**

The Commissioner may make an assessment of a person's liability to pay excess non-concessional contributions tax, and the excess non-concessional contributions on which that liability is based.

**Table of sections**

**Operative provisions**

- 292-230 Commissioner must make an *excess non-concessional contributions tax assessment*
- 292-240 Validity of assessment
- 292-245 Objections

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

## Operative provisions

### **292-230 Commissioner must make an *excess non-concessional contributions tax assessment***

- (1) The Commissioner must make an assessment (an *excess non-concessional contributions tax assessment*) of:
  - (a) if a person has \*excess non-concessional contributions for a \*financial year—the amount of the excess non-concessional contributions; and
  - (b) the amount (if any) of \*excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.
- (2) The Commissioner must give the person notice in writing of an \*excess non-concessional contributions tax assessment as soon as practicable after making the assessment.

### **292-240 Validity of assessment**

The validity of an \*excess non-concessional contributions tax assessment is not affected because any of the provisions of this Act have not been complied with.

### **292-245 Objections**

If a person is dissatisfied with an \*excess non-concessional contributions tax assessment made in relation to the person, the person may object against the assessment in the manner set out in Part IVC 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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## Subdivision 292-F—Amending excess non-concessional contributions tax assessments

### Guide to Subdivision 292-F

#### 292-300 What this Subdivision is about

The Commissioner may amend excess non-concessional contributions tax assessments within certain time limits.

#### Table of sections

##### Operative provisions

292-305	Amendments within 4 years of the original assessment
292-310	Amended assessments are treated as excess non-concessional contributions tax assessments
292-315	Later amendments—on request
292-320	Later amendments—fraud or evasion
292-325	Further amendment of an amended particular
292-330	Amendment on review etc.

#### Operative provisions

##### 292-305 Amendments within 4 years of the original assessment

- (1) The Commissioner may amend an \*excess non-concessional contributions tax assessment for a person for a \*financial year at any time during the period of 4 years after the \*original excess non-concessional contributions tax assessment day for the person for that year.
- (2) The *original excess non-concessional contributions tax assessment day* for a person for a \*financial year is the day on which the Commissioner gives the first \*excess non-concessional contributions tax assessment to the person for the financial year.

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



**292-310 Amended assessments are treated as excess  
non-concessional contributions tax assessments**

- (1) Once an amended \*excess non-concessional contributions tax assessment for a person for a \*financial year is made, it is taken to be an *excess non-concessional contributions tax assessment* for the person for the year.
- (2) If the Commissioner amends a person's \*excess non-concessional contributions tax assessment, the Commissioner must give the person notice in writing of the amendment as soon as practicable after making the amendment.

**292-315 Later amendments—on request**

The Commissioner may amend an \*excess non-concessional contributions tax assessment for a person for a \*financial year after the end of the period of 4 years after the \*original excess non-concessional contributions tax assessment day for the person for the year if, within that 4 year period:

- (a) the person applies for the amendment in the \*approved form; and
- (b) the person gives the Commissioner all the information necessary for making the amendment.

**292-320 Later amendments—fraud or evasion**

- (1) If:
  - (a) a person (or a \*superannuation provider covered under subsection (2)) does not make a full and true disclosure to the Commissioner of the information necessary for an \*excess non-concessional contributions tax assessment for the person for a \*financial year; and
  - (b) in making the assessment, the Commissioner makes an under-assessment; and
  - (c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

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

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the Commissioner may amend the assessment at any time.

- (2) A \*superannuation provider is covered under this subsection if any of the following conditions are satisfied:
- (a) contributions have been made to a \*superannuation plan of the provider on behalf of the person in the \*financial year;
  - (b) an amount is included in the person's \*concessional contributions for the financial year under subsection 291-25(3) because the superannuation provider allocated it to the person;
  - (c) \*notional taxed contributions are included in the person's concessional contributions for the financial year under section 291-165 because of the person's \*defined benefit interest in a superannuation plan of the provider.

**292-325 Further amendment of an amended particular**

If:

- (a) an \*excess non-concessional contributions tax assessment has been amended (the *earlier amendment*) in any particular; and
- (b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular;

the Commissioner may do so within a period of 4 years after the earlier amendment.

**292-330 Amendment on review etc.**

Nothing in this Subdivision prevents the amendment of an \*excess non-concessional contributions tax assessment:

- (a) to give effect to a decision on a review or appeal; or
- (b) as a result of an objection or pending an appeal or review.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 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.

## **Subdivision 292-G—Collection and recovery**

### **Guide to Subdivision 292-G**

#### **292-380 What this Subdivision is about**

Excess non-concessional contributions tax is due and payable at the end of 21 days after notice of assessment and the general interest charge applies to unpaid amounts. Money may be released from a superannuation plan to pay the tax.

#### **Table of sections**

##### **Operative provisions**

292-385	Due date for payment of excess non-concessional contributions tax
292-390	General interest charge
292-395	Refunds of amounts overpaid
292-405	Release authority
292-410	Giving a release authority to a superannuation provider
292-415	Superannuation provider given release authority must pay amount

#### **Operative provisions**

##### **292-385 Due date for payment of excess non-concessional contributions tax**

\*Excess non-concessional contributions tax assessed for a person for a \*financial year is due and payable at the end of 21 days after the Commissioner gives the person notice of the \*excess non-concessional contributions tax assessment.

##### **292-390 General interest charge**

If \*excess non-concessional contributions tax or \*shortfall interest charge payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the \*general

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

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interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the excess non-concessional contributions tax or shortfall interest charge 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 excess non-concessional contributions tax or shortfall interest charge;
  - (ii) general interest charge on any of the excess non-concessional contributions tax or shortfall interest charge.

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

**292-395 Refunds of amounts overpaid**

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to \*excess non-concessional contributions tax.

**292-405 Release authority**

- (1) As soon as practicable after making an \*excess non-concessional contributions tax assessment for a person, the Commissioner must give the person a release authority in respect of the amount of \*excess non-concessional contributions tax the person is liable to pay in accordance with the assessment.
- (2) A release authority must:
  - (a) state the amount of \*excess non-concessional contributions tax that the person is liable to pay as a result of the assessment; and
  - (b) be dated; and
  - (c) contain any other information that the Commissioner considers relevant.

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

**292-410 Giving a release authority to a superannuation provider**

- (1) The person may give the release authority to a \*superannuation provider that holds a \*superannuation interest (other than a \*defined benefit interest) for the person in a \*complying superannuation plan within 90 days after the date of the release authority.

Note: Excess non-concessional contributions tax is due and payable at the end of 21 days after notice of assessment: see section 292-385.

- (2) However, if:
- (a) the release authority is for \*excess non-concessional contributions tax; and
  - (b) a \*superannuation provider holds a \*superannuation interest for the person in a \*complying superannuation plan (other than a \*defined benefit interest);

the person must give the release authority to a superannuation provider holding a superannuation interest for the person in a complying superannuation plan (other than a defined benefit interest) within 21 days after the date of the release authority.

Note: Section 288-90 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

- (3) Subsection (4) applies if:
- (a) the release authority is for \*excess non-concessional contributions tax; and
  - (b) a \*superannuation provider holds a \*superannuation interest for the person (other than a \*defined benefit interest); and
  - (c) any of the following conditions are satisfied:
    - (i) the person does not give the release authority to a superannuation provider holding a superannuation interest for the person in a \*complying superannuation plan within 90 days after the date of the release authority in accordance with subsection (1);
    - (ii) if the person has made one or more requests as mentioned in paragraph 292-415(1)(a) in relation to the

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

Section 292-415

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- release authority within 90 days after the date of the release authority—the total of the amounts (if any) paid by superannuation providers in relation to the release authority falls short of the amount of the excess non-concessional contributions tax stated in the release authority;
- (iii) the total of the \*values of every superannuation interest (other than a defined benefit interest) held for the person by a superannuation provider to which the release authority is given falls short of the amount of the excess non-concessional contributions tax stated in the release authority.
- (4) If the conditions in subsection (3) are satisfied, the Commissioner may give the release authority to one or more \*superannuation providers that hold a \*superannuation interest (other than a \*defined benefit interest) for the person.

**292-415 Superannuation provider given release authority must pay amount**

- (1) A \*superannuation provider that has been given a release authority in accordance with section 292-410 must pay to the person or the Commissioner within 30 days after receiving the release authority the least of the following amounts:
- (a) if the person or Commissioner requests the superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;
- (b) the amount of \*excess non-concessional contributions tax stated in the release authority;
- (c) the sum of the \*values of every \*superannuation interest (other than a \*defined benefit interest) held by the superannuation provider for the person in:
- (i) for a release authority given under subsection 292-410(1)—\*complying superannuation plans; or

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

(ii) for a release authority given under subsection 292-410(4)—\*superannuation plans.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Note 2: Section 288-100 in Schedule 1 to the *Taxation Administration Act 1953* provides that the person giving the release authority to the superannuation provider can be liable to an administrative penalty if excess amounts are paid in relation to the release authority.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: For the taxation treatment of the payment, see section 304-15.

- (2) The payment must be made out of one or more \*superannuation interests (other than a \*defined benefit interest) held by the \*superannuation provider for the person in:
- (a) for a release authority given under subsection 292-410(1)—\*complying superannuation plans; or
  - (b) for a release authority given under subsection 292-410(4)—\*superannuation plans.
- (3) If the payment is made to the Commissioner, it is taken to be made in satisfaction (in whole or part) of the person's liability for \*excess non-concessional contributions tax stated in the release authority.
- (4) If:
- (a) the release authority was given by the Commissioner in accordance with subsection 292-410(4); and
  - (b) the payment is made to the Commissioner;
- the Commissioner must, as soon as possible, give the person written notice that the payment has been made.
- (5) Section 307-125 (the proportioning rule) does not apply to a payment made as required under this section.

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

## Subdivision 292-H—Other provisions

### Table of sections

292-465	Commissioner's discretion to disregard contributions etc. in relation to a financial year
292-467	Direction that the value of superannuation interests is nil

### 292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

- (1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division and Subdivision 97-B in Schedule 1 to the *Taxation Administration Act 1953*, all or part of your \*non-concessional contributions for a \*financial year is to be:
  - (a) disregarded; or
  - (b) allocated instead for the purposes of another financial year specified in the determination.
- (2) You may apply to the Commissioner in the \*approved form for a determination under subsection (1). The application can only be made:
  - (a) after all of the contributions sought to be disregarded or reallocated have been made; and
  - (b) if you receive one or more \*excess non-concessional contributions determinations for the \*financial year—before the end of:
    - (i) the period of 60 days starting on the day you receive the most recent of those determinations; or
    - (ii) a longer period allowed by the Commissioner.
- (3) The Commissioner may make a determination under subsection (1) only if he or she considers that:
  - (a) there are special circumstances; and
  - (b) making the determination is consistent with the object of this Division.

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



- (4) In making a determination under subsection (1) the Commissioner may have regard to the matters in subsections (5) and (6) and any other relevant matters.
- (5) The Commissioner may have regard to whether a contribution made in the relevant \*financial year would more appropriately be allocated towards another financial year instead.
- (6) The Commissioner may have regard to whether it was reasonably foreseeable, when a relevant contribution was made, that you would have \*excess concessional contributions or \*excess non-concessional contributions for the relevant \*financial year, and in particular:
  - (a) if the relevant contribution is made in respect of you by another person—the terms of any agreement or arrangement between you and that person as to the amount and timing of the contribution; and
  - (b) the extent to which you had control over the making of the contribution.
- (7) The Commissioner must give you a copy of a determination made under subsection (1).

*Review*

- (9) If you are dissatisfied with:
  - (a) a determination made under this section in relation to you; or
  - (b) a decision the Commissioner makes not to make such a determination;you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (10) To avoid doubt:
  - (a) subject to subsection 14ZVC(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a determination or

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

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decision, relating to all or part of your \*non-concessional contributions for a \*financial year:

- (i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or
  - (ii) under section 97-35 in Schedule 1 to the *Taxation Administration Act 1953* against an \*excess non-concessional contributions determination made in relation to you for the financial year; and
- (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a determination under this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

**292-467 Direction that the value of superannuation interests is nil**

- (1) The Commissioner must, by writing, direct that this section applies to you for a \*financial year if:
- (a) you receive one or more \*excess non-concessional contributions determinations for the financial year; and
  - (b) as a result of those determinations, you make one or more elections under paragraph 96-7(1)(a) or (b) in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (c) in the case of elections under paragraph 96-7(1)(a) in that Schedule—the sum of any amounts paid to you in response to any release authorities issued in relation to those elections is less than the excess amount stated in the most recent of those determinations; and
  - (d) the Commissioner is satisfied that the \*value of all of your remaining \*superannuation interests is nil.

Note 1: The direction means you have no excess non-concessional contributions for the financial year (see paragraph 292-85(1)(c)), even though not all of the excess amount has been released to you.

Note 2: The direction does not prevent an amount from being included in your assessable income (see Subdivision 292-B).

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

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Note 3: Any excess non-concessional contributions determination you receive after the first one for a financial year is an amended determination.

- (2) The Commissioner must give you a copy of the direction.
- (4) To avoid doubt:
  - (a) you may object under section 292-245 against an \*excess non-concessional contributions tax assessment made in relation to you on the ground that a direction was not made under this section; and
  - (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, not making a direction under this section is a decision forming part of the process of making an assessment of tax under this Act.

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

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## Division 293—Sustaining the superannuation contribution concession

### Table of Subdivisions

	Guide to Division 293
293-A	Object of this Division
293-B	Sustaining the superannuation contribution concession
293-C	When tax is payable
293-D	Modifications for defined benefit interests
293-E	Modifications for constitutionally protected State higher level office holders
293-F	Modifications for Commonwealth justices
293-G	Modifications for temporary residents who depart Australia

### Guide to Division 293

#### 293-1 What this Division is about

This Division reduces the concessional tax treatment of certain superannuation contributions made for high income individuals.

The high income threshold is \$250,000.

There are special rules for defined benefit interests, constitutionally protected State higher level office holders, certain Commonwealth justices and temporary residents who depart Australia.

Note: Part 3-20 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about the administration of the Division 293 tax.

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

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## **Subdivision 293-A—Object of this Division**

### **Table of sections**

#### **Operative provisions**

293-5 Object of this Division

### **Operative provisions**

#### **293-5 Object of this Division**

The object of this Division is to reduce the concessional tax treatment of superannuation contributions for high income individuals.

## **Subdivision 293-B—Sustaining the superannuation contribution concession**

### **Guide to Subdivision 293-B**

#### **293-10 What this Subdivision is about**

This Subdivision reduces the superannuation tax concession for high income earners.

An individual's income is added to certain superannuation contributions and compared to the high income threshold of \$250,000. A tax is payable on the excess, or on the superannuation contributions (whichever is less).

The tax is not payable in respect of excess concessional contributions.

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

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Section 293-15

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**Table of sections**

**Liability for tax**

293-15 Liability for tax

293-20 Your *taxable contributions*

**Low tax contributions**

293-25 Your *low tax contributions*

293-30 Low tax contributed amounts

**Liability for tax**

**293-15 Liability for tax**

You are liable to pay \*Division 293 tax if you have \*taxable contributions for an income year.

Note: The amount of the tax is set out in the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

**293-20 Your taxable contributions**

- (1) If the sum of:
  - (a) your \*income for surcharge purposes for an income year (disregarding your \*reportable superannuation contributions); and
  - (b) your \*low tax contributions for the corresponding \*financial year;exceeds \$250,000, you have *taxable contributions* for the income year equal to the lesser of the low tax contributions and the amount of the excess.
- (2) However, you do not have *taxable contributions* for an income year if the amount of your \*low tax contributions is nil.

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

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## Low tax contributions

### 293-25 Your *low tax contributions*

The amount of your *low tax contributions* for a \*financial year is:

- (a) the low tax contributed amounts covered by section 293-30 for the financial year; less
- (b) your \*excess concessional contributions for the financial year (if any).

Note 1: Low tax contributions are modified for defined benefit interests (see Subdivision 293-D).

Note 2: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

### 293-30 Low tax contributed amounts

- (1) The low tax contributed amounts covered by this section for a \*financial year are the sum of the contributions covered by subsection (2) and the amounts covered by subsection (5) for the financial year.

Note: Low tax contributed amounts covered by this section are modified for State higher level office holders (see Subdivision 293-E).

#### *Contributions to complying superannuation plans*

- (2) A contribution is covered under this section for a \*financial year if:
  - (a) it is made in the financial year to a \*complying superannuation plan in respect of you; and
  - (b) it is included:
    - (i) in the assessable income of the \*superannuation provider in relation to the plan; or
    - (ii) by way of a \*roll-over superannuation benefit, in the assessable income of a \*complying superannuation fund or \*RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds) or subsection 290-170(6) (about MySuper products).

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

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- (3) For the purposes of paragraph (2)(b), disregard:
- (a) table item 5.3 in section 50-25 (about income tax exemption for constitutionally protected funds); and
  - (b) Subdivision 295-D (about excluded contributions).

*Exceptions*

- (4) Despite subsection (2), a contribution is not covered under this section if it is any of the following:
- (a) an amount mentioned in subsection 295-200(2) (about amounts transferred from foreign superannuation funds);
  - (b) an amount mentioned in item 2 of the table in subsection 295-190(1) (about certain roll-over superannuation benefits).

*Amounts allocated in relation to a complying superannuation plan*

- (5) An amount in a \*complying superannuation plan is covered under this section if it is allocated by the \*superannuation provider in relation to the plan for you for the \*financial year in accordance with conditions specified by a regulation made for the purposes of subsection 291-25(3).

**Subdivision 293-C—When tax is payable**

**Guide to Subdivision 293-C**

**293-60 What this Subdivision is about**

This Subdivision has rules about payment of Division 293 tax.

**Table of sections**

**Operative provisions**

- 293-65 When tax is payable—original assessments
- 293-70 When tax is payable—amended assessments

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



293-75 General interest charge

## Operative provisions

### 293-65 When tax is payable—original assessments

- (1) Your \*assessed Division 293 tax for an income year is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the \*Division 293 tax.

*Exception for tax deferred to a debt account*

- (2) However, subsection (1) does not apply to an amount of \*assessed Division 293 tax that is \*deferred to a debt account for a \*superannuation interest.

Note 1: For assessments of Division 293 tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For *deferred to a debt account*, see Division 133 in that Schedule.

Note 3: For release of money from a superannuation plan to pay these amounts, see Division 135 in that Schedule.

### 293-70 When tax is payable—amended assessments

- (1) If the Commissioner amends your assessment, any extra \*assessed Division 293 tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

*Exception for tax deferred to a debt account*

- (2) However, subsection (1) does not apply to an amount of extra \*assessed Division 293 tax that is \*deferred to a debt account for a \*superannuation interest.

Note 1: For *deferred to a debt account*, see Division 133 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For release of money from a superannuation plan to pay these amounts, see Division 135 in that Schedule.

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

Section 293-75

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**293-75 General interest charge**

If an amount of \*assessed Division 293 tax or \*shortfall interest charge on assessed Division 293 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) begins on the day on which the amount was due to be paid; and
- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the assessed Division 293 tax or the shortfall interest charge;
  - (ii) general interest charge on any of the assessed Division 293 tax or the shortfall interest charge.

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

Note 2: Shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 3: See section 5-10 of this Act for when the amount of shortfall interest charge becomes due and payable.

**Subdivision 293-D—Modifications for defined benefit interests**

**Guide to Subdivision 293-D**

**293-100 What this Subdivision is about**

This Subdivision modifies the meaning of *low tax contributions* for individuals who have a defined benefit interest or interests in a financial year.

**Table of sections**

**Operative provisions**

293-105 *Low tax contributions*—modification for defined benefit interests

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

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293-115 *Defined benefit contributions*

## Operative provisions

### 293-105 *Low tax contributions—modification for defined benefit interests*

Despite section 293-25, if you have a \*defined benefit interest or interests in a \*financial year, the amount of your **low tax contributions** for the financial year is worked out as follows:

*Method statement*

Step 1. Start with the low tax contributed amounts covered by section 293-30 for the \*financial year, to the extent to which they do *not* relate to the \*defined benefit interest or interests.

Step 2. Subtract your \*excess concessional contributions for the \*financial year (if any).

Note: The result of step 2 could be nil, or a negative amount.

Step 3. Add your \*defined benefit contributions for the \*financial year in respect of the \*defined benefit interest or interests.

The result (but not less than nil) is the amount of your **low tax contributions** for the financial year.

Note: Modifications in Subdivision 293-E (about constitutionally protected State higher level office holders) and Subdivision 293-F (about Commonwealth justices) affect the amount of low tax contributions.

### 293-115 *Defined benefit contributions*

- (1) Your **defined benefit contributions**, for a \*financial year in respect of a \*defined benefit interest, has the meaning given by regulation.

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

Section 293-115

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Note: There are modifications in sections 293-150 (about constitutionally protected State higher level office holders) and 293-195 (about Commonwealth justices).

- (2) A regulation made for the purposes of subsection (1) may provide for a method of determining the amount of the ***defined benefit contributions***.
- (3) A regulation made for the purposes of subsection (1) may define the \*defined benefit contributions, and the amount of defined benefit contributions, in different ways depending on any of the following matters:
  - (a) the person who has the \*superannuation interest that is or includes the \*defined benefit interest;
  - (b) the \*superannuation plan in which the superannuation interest exists;
  - (c) the \*superannuation provider in relation to the superannuation plan;
  - (d) any other matter.
- (4) A regulation made for the purposes of subsection (1) may specify circumstances in which the amount of \*defined benefit contributions for a \*financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit a regulation that may be made for the purposes of this section.
- (6) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a regulation made for the purposes of subsection (1).
- (7) Despite subsection 12(3) (retrospective commencement of legislative instruments) of the *Legislation Act 2003*, a regulation made for the purposes of subsection (1) must not commence before 1 July 2012.

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

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## **Subdivision 293-E—Modifications for constitutionally protected State higher level office holders**

### **Guide to Subdivision 293-E**

#### **293-140 What this Subdivision is about**

Constitutionally protected State higher level office holders do not pay Division 293 tax in respect of contributions to constitutionally protected funds, unless the contributions are made as part of a salary package.

#### **Table of sections**

##### **Operative provisions**

293-145	Who this Subdivision applies to
293-150	<i>Low tax contributions</i> —modification for CPFs
293-155	High income threshold—effect of modification
293-160	Salary packaged contributions

#### **Operative provisions**

##### **293-145 Who this Subdivision applies to**

- (1) This Subdivision applies to an individual for an income year if:
  - (a) the individual has a \*superannuation interest in a \*constitutionally protected fund in the corresponding \*financial year; and
  - (b) at any time in the income year, the individual is declared by regulation to be an individual to whom this Subdivision applies.
- (2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a regulation made for the purposes of paragraph (1)(b).

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

Section 293-150

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(2A) Despite subsection 12(3) (retrospective commencement of legislative instruments) of the *Legislation Act 2003*, a regulation made for the purposes of paragraph (1)(b) must not commence before 1 July 2012.

(3) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

Note: Section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013* provides that Division 293 tax is not imposed in relation to a person if the imposition would exceed the legislative power of the Commonwealth.

**293-150 Low tax contributions—modification for CPFs**

(1) This section applies for the purpose of working out under section 293-25 or 293-105 the amount of the individual's \*low tax contributions for the \*financial year corresponding to the income year.

*Modified low tax contributed amounts in CPFs*

(2) Despite section 293-30, the low tax contributed amounts covered by that section for the \*financial year do not include any contributions to a \*constitutionally protected fund, other than contributions covered by section 293-160 (about salary packaged contributions).

*Modified defined benefit contributions in CPFs*

(3) Despite section 293-115, the individual's **defined benefit contributions** for the \*financial year in respect of a \*defined benefit interest in a \*constitutionally protected fund are equal to:

- (a) unless paragraph (b) applies—nil; or
- (b) if, having regard to subsection (2) of this section, the low tax contributed amounts covered by section 293-30 for the year include contributions in respect of the defined benefit interest—the amount of those contributions.

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

### 293-155 High income threshold—effect of modification

- (1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the \$250,000 threshold mentioned in that subsection, disregard section 293-150.
- (2) To avoid doubt, the effect of subsection (1) is that the amount of the individual's \*taxable contributions for an income year is the lesser of:
  - (a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-150) for the income year; and
  - (b) the individual's \*low tax contributions for the corresponding \*financial year (worked out having regard to section 293-150).

### 293-160 Salary packaged contributions

- (1) A contribution made to a \*complying superannuation plan in respect of an individual is covered by this section if it is made because the individual agreed with an entity, or an \*associate of an entity:
  - (a) for the contribution to be made; and
  - (b) in return, for the \*withholding payments covered by subsection (2) that are to be made to the individual by the entity to be reduced (including to nil).
- (2) 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.

Withholding payments covered		
Item	Provision	Subject matter
1	Section 12-35	Payment to employee
2	Section 12-40	Payment to company director

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

Section 293-185

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**Withholding payments covered**

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Item	Provision	Subject matter
3	Section 12-45	Payment to office holder
4	Section 12-55	Voluntary agreement to withhold
5	Section 12-60	Payment under labour hire arrangement, or specified by regulations

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**Subdivision 293-F—Modifications for Commonwealth justices**

**Guide to Subdivision 293-F**

**293-185 What this Subdivision is about**

Division 293 tax is not payable by Commonwealth justices and judges in respect of contributions to a defined benefit interest established under the *Judges' Pensions Act 1968*.

**Table of sections**

**Operative provisions**

293-190 Who this Subdivision applies to

293-195 ***Defined benefit contributions***—modified treatment of contributions under the *Judges' Pensions Act 1968*

293-200 High income threshold—effect of modification

**Operative provisions**

**293-190 Who this Subdivision applies to**

- (1) This Subdivision applies to an individual if the individual is a Justice of the High Court, or a justice or judge of a court created by the Parliament, at any time on or after the start of the individual's 2012-13 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) Nothing in this Subdivision limits section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013*.

Note: Section 6 of the *Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Act 2013* provides that Division 293 tax is not imposed in relation to a person if the imposition would exceed the legislative power of the Commonwealth.

**293-195 *Defined benefit contributions—modified treatment of contributions under the Judges’ Pensions Act 1968***

- (1) This section applies for the purpose of working out under section 293-105 the amount of the individual’s \*low tax contributions for any \*financial year.
- (2) Despite section 293-115 and subsection 293-150(3), the individual’s *defined benefit contributions* for a \*financial year for a \*defined benefit interest in a \*superannuation fund established under the *Judges’ Pensions Act 1968* are nil.

**293-200 High income threshold—effect of modification**

- (1) For the purpose of working out the extent (if any) to which the sum mentioned in subsection 293-20(1) for the individual exceeds the \$250,000 threshold mentioned in that subsection, disregard section 293-195.
- (2) To avoid doubt, the effect of subsection (1) is that the amount of the individual’s \*taxable contributions for an income year is the lesser of:
- (a) the excess (if any) mentioned in subsection 293-20(1) (worked out disregarding section 293-195) for the income year; and
  - (b) the individual’s \*low tax contributions for the corresponding \*financial year (worked out having regard to section 293-195).

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

## Subdivision 293-G—Modifications for temporary residents who depart Australia

### Guide to Subdivision 293-G

#### 293-225 What this Subdivision is about

If you receive a departing Australia superannuation payment, you are entitled to a refund of any Division 293 tax you have paid.

#### Table of sections

##### Operative provisions

293-230	Who is entitled to a refund
293-235	Amount of the refund
293-240	Entitlement to refund stops all Division 293 tax liabilities

#### Operative provisions

##### 293-230 Who is entitled to a refund

You are entitled to a refund if:

- (a) you have made payments of any of the following:
  - (i) \*assessed Division 293 tax;
  - (ii) a voluntary payment made under section 133-70 in Schedule 1 to the *Taxation Administration Act 1953* for the purpose of reducing the amount by which a debt account for a \*superannuation interest is in debit;
  - (iii) \*debt account discharge liability; and
- (b) you receive a \*departing Australia superannuation payment; and
- (c) you apply to the Commissioner in the \*approved form for the refund.

Note: How the refund is applied is set out in Part IIB 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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**293-235 Amount of the refund**

- (1) The amount of the refund to which you are entitled is the sum of the payments mentioned in paragraph 293-230(a) that you have made.
- (2) However, the amount of the refund is reduced by the amount of any refunds to which you are entitled under a previous application of this Subdivision.

*Exception—Division 293 tax attributable to period when you are an Australian resident*

- (3) Despite subsection (1), if:
  - (a) at any time in your 2012-13 income year, or a later income year, you are an Australian resident (but not a \*temporary resident); and
  - (b) a payment mentioned in paragraph 293-230(a) that you have made relates, or is reasonably attributable, to that income year;the payment is to be disregarded in working out under subsection (1) of this section the amount of the refund to which you are entitled.

**293-240 Entitlement to refund stops all Division 293 tax liabilities**

- (1) The Commissioner may decide to release you from any existing or future liability to pay \*Division 293 tax or \*debt account discharge liability if:
  - (a) you become entitled to a refund under section 293-230; or
  - (b) you would become entitled to such a refund, if you were to pay the liability and paragraph 293-230(c) were disregarded.
- (2) The Commissioner may take such action as is necessary to give effect to a decision under subsection (1).

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

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## Division 294—Transfer balance cap

### Table of Subdivisions

	Guide to Division 294
294-A	Object of this Division
294-B	Transfer balance account
294-C	Transfer balance debits
294-D	Modifications for certain defined benefit income streams
294-E	Modifications for death benefits dependants who are children
294-F	Excess transfer balance tax

### Guide to Division 294

#### 294-1 What this Division is about

There is a cap on the total amount you can transfer into the retirement phase of superannuation (where earnings are exempt from taxation).

Credits are added to a transfer balance account when you transfer amounts.

If the balance in your account exceeds the cap, you will be required to remove the excess from the retirement phase, and you will be liable to pay excess transfer balance tax.

Note: Division 136 in Schedule 1 to the *Taxation Administration Act 1953* contains rules about excess transfer balance determinations and commutation authorities.

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

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## **Subdivision 294-A—Object of this Division**

### **Table of sections**

#### **Operative provisions**

294-5 Object of this Division

### **Operative provisions**

#### **294-5 Object of this Division**

The object of this Division is to limit the total amount of an individual's \*superannuation income streams that receive an earnings tax exemption.

## **Subdivision 294-B—Transfer balance account**

### **Guide to Subdivision 294-B**

#### **294-10 What this Subdivision is about**

This Subdivision creates a transfer balance account for you, and credits it, if you have a superannuation income stream in the retirement phase.

It also provides for a transfer balance cap and identifies when you have excess transfer balance.

### **Table of sections**

#### **Operative provisions**

294-15 When you have a transfer balance account  
294-20 Meaning of retirement phase recipient  
294-25 Transfer balance credits  
294-30 Excess transfer balance  
294-35 Your transfer balance cap

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

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Section 294-15

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- 294-40 Proportionally indexed transfer balance cap
- 294-45 Transfer balance account ends
- 294-50 Assumptions about income streams
- 294-55 Repayment of limited recourse borrowing arrangement

## Operative provisions

### 294-15 When you have a transfer balance account

- (1) You have a **transfer balance account** if you are, or have at any time been, the \*retirement phase recipient of a \*superannuation income stream.
- (2) You start to have the \*transfer balance account on the later of:
  - (a) 1 July 2017; and
  - (b) the day you first start to be a \*retirement phase recipient of a \*superannuation income stream.

### 294-20 Meaning of retirement phase recipient

- (1) You are the **retirement phase recipient** of a \*superannuation income stream at a time if:
  - (a) the superannuation income stream is in the \*retirement phase at that time; and
  - (b) a \*superannuation income stream benefit from the superannuation income stream is payable to you at that time.
- (2) You are also the **retirement phase recipient** of a \*superannuation income stream at a time if:
  - (a) the superannuation income stream is in the \*retirement phase at that time; and
  - (b) the superannuation income stream is a \*deferred superannuation income stream; and
  - (c) a \*superannuation income stream benefit from the superannuation income stream will be payable to you after that time.

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

**294-25 Transfer balance credits**

(1) The following table sets out when a credit arises in your \*transfer balance account and the amount of the credit. The credit is called a *transfer balance credit*.

<b>Credits in the transfer balance account</b>			
<b>Item</b>	<b>If:</b>	<b>A credit of:</b>	<b>Arises:</b>
1	just before 1 July 2017, you are the *retirement phase recipient of a *superannuation income stream	the *value, just before 1 July 2017, of the *superannuation interest that supports the superannuation income stream	on the later of: (a) 1 July 2017; and (b) if you are a reversionary beneficiary—the last day of the period of 12 months beginning on the day a *superannuation income stream benefit first becomes payable from the income stream
2	on a day (the <i>starting day</i> ) on or after 1 July 2017, you start to be the *retirement phase recipient of a *superannuation income stream	the *value on the starting day of the *superannuation interest that supports the superannuation income stream	(a) on the starting day, unless paragraph (b) applies; or (b) if you are a reversionary beneficiary—at the end of the period of 12 months beginning on the starting day
3	you have *excess transfer balance at the end of a day	your *excess transfer balance earnings for that day	at the start of the next day

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

Section 294-25

**Credits in the transfer balance account**

Item	If:	A credit of:	Arises:
4	a *transfer balance credit arises under section 294-55 because of a repayment of a limited recourse borrowing arrangement	the amount of the credit specified in section 294-55	at the time provided by section 294-55
5	a *transfer balance credit arises under regulations made for the purposes of this item	the amount of the credit worked out in accordance with the regulations	at the time specified in the regulations

Note 1: The amount of the transfer balance credit is modified for certain capped defined benefit income streams: see Subdivision 294-D.

Note 2: For the meaning of *excess transfer balance earnings*, see section 294-235.

Note 3: If a payment split applies to payments from the superannuation income stream, a debit arises under section 294-90.

*No crediting of earnings if determination issued*

- (2) Despite item 3 of the table in subsection (1), no credit arises in your \*transfer balance account under that item because of \*excess transfer balance at the end of a day if the day is in the period:
- (a) starting on the day the Commissioner makes an \*excess transfer balance determination in respect of you; and
  - (b) ending on:
    - (i) unless subparagraph (ii) applies—the first day on which the sum of all \*transfer balance debits arising in your \*transfer balance account since the determination was issued equals or exceeds the \*crystallised reduction amount; or
    - (ii) if a \*transfer balance credit arises in your transfer balance account before the day mentioned in subparagraph (i)—the day on which that credit arises.

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



Note: For provisions about excess transfer balance determinations, see Division 136 in Schedule 1 to the *Taxation Administration Act 1953*.

*Regulations may provide for exceptions*

- (3) The regulations may provide that an item of the table in subsection (1) does not apply to a class of \*superannuation income streams specified in the regulations.

### **294-30 Excess transfer balance**

- (1) You have **excess transfer balance** at a particular time if, at that time, the \*transfer balance in your \*transfer balance account exceeds your \*transfer balance cap at that time. The amount of the **excess transfer balance** is the amount of the excess.

Note: There is a modification for certain capped defined benefit income streams: see Subdivision 294-D.

- (2) The **transfer balance** in your \*transfer balance account at a time equals:
- (a) the sum of the \*transfer balance credits in the account at that time; less
  - (b) the sum of the \*transfer balance debits (if any) in the account at that time.

Note 1: For **transfer balance debits**, see Subdivision 294-C.

Note 2: There is no consequence for having a negative transfer balance.

### **294-35 Your transfer balance cap**

- (1) Your **transfer balance cap** for the \*financial year in which you first start to have a \*transfer balance account is equal to the \*general transfer balance cap for that financial year.

Note: The amount of the transfer balance cap is modified for child recipients: see Subdivision 294-E.

- (2) Your **transfer balance cap** for a later \*financial year is equal to your transfer balance cap for the previous year, subject to section 294-40 (which is about proportional indexation).

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

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Section 294-40

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- (3) The **general transfer balance cap** is:
- (a) for the 2017-2018 \*financial year—\$1,600,000; or
  - (b) for the 2018-2019 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (a).

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

**294-40 Proportionally indexed transfer balance cap**

- (1) This section applies to increase your **transfer balance cap** for a \*financial year (other than the financial year in which you first start to have a \*transfer balance account) if:
- (a) the \*general transfer balance cap is increased as a result of indexation for the financial year; and
  - (b) at no time before the start of that financial year has the \*transfer balance in your transfer balance account at the end of a day exceeded your transfer balance cap.
- (2) Your **transfer balance cap** is increased for the \*financial year by the amount worked out using the following formula:

Unused cap percentage × Indexation increase

where:

**indexation increase** means the amount by which the \*general transfer balance cap for the \*financial year increased as a result of indexation.

**unused cap percentage** is worked out by:

- (a) identifying the highest \*transfer balance in your \*transfer balance account at the end of any day up to the end of the previous \*financial year; and
- (b) identifying the day on which the transfer balance account had that transfer balance at the end of the day, or, if your transfer balance account had that transfer balance at the end of more than one day, the earliest of those days; and

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

- (c) expressing the transfer balance identified in paragraph (a) as a percentage (rounded down to the nearest whole number) of your \*transfer balance cap on the day identified in paragraph (b); and
  - (d) subtracting the result of paragraph (c) from 100%.
- (3) However, if the highest \*transfer balance mentioned in paragraph (a) of the definition of **unused cap percentage** in subsection (2) is less than nil, that unused cap percentage is taken to be 100%.

#### **294-45 Transfer balance account ends**

The \*transfer balance account ceases when the \*retirement phase recipient dies.

#### **294-50 Assumptions about income streams**

- (1) Subsections (2) and (3) apply for the purposes of working out the following matters at a time:
  - (a) whether you have a \*transfer balance account;
  - (b) the \*transfer balance in your transfer balance account.
- (2) In working out whether there is a **superannuation income stream** at a time:
  - (a) have regard only to facts and circumstances that exist at that time; and
  - (b) assume a requirement will be met, to the extent (if any) that:
    - (i) the requirement arises under a provision of the \*taxation law or under any rules or standards under which a benefit is, or is purported to be, provided; and
    - (ii) meeting the requirement is a condition for there to be a superannuation income stream at that time; and
    - (iii) it is not possible to determine, having regard only to facts and circumstances that exist at that time, whether or not the requirement has been met.

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

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Section 294-55

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- (3) In working out whether a \*superannuation income stream is in the *retirement phase* at a time, disregard the operation of subsection 307-80(4), if the time is before the end of the 60-day period mentioned in paragraph (c) of that subsection.

**294-55 Repayment of limited recourse borrowing arrangement**

- (1) A \*transfer balance credit arises in your \*transfer balance account if:
- (a) a \*superannuation provider makes a payment in respect of a \*borrowing under an \*arrangement that is covered by the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (which is about limited recourse borrowing arrangements); and
  - (b) as a result, there is an increase in the \*value of a \*superannuation interest that supports a \*superannuation income stream of which you are the \*retirement phase recipient; and
  - (c) the superannuation interest is in a \*superannuation fund that is covered by subsection (4) at the time of the payment.
- (2) The amount of the credit is the amount of the increase in \*value.
- (3) The credit arises at the time of the payment.
- (4) A \*complying superannuation fund is covered by this subsection at a time if any of the following requirements are satisfied:
- (a) the fund is a \*self managed superannuation fund at the time;
  - (b) there are less than 5 \*members of the fund at the time.

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

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## Subdivision 294-C—Transfer balance debits

### Guide to Subdivision 294-C

#### 294-75 What this Subdivision is about

A debit arises in your transfer balance account when superannuation income streams that were previously credited (because they receive the earnings tax exemption) are reduced (other than by draw-downs or investment losses) or lose the earnings tax exemption.

A debit also arises in your transfer balance account when you make a contribution relating to a structured settlement or personal injury, or where certain events occur that result in you having reduced superannuation.

#### Table of sections

##### Operative provisions

294-80	Transfer balance debits
294-85	Certain events that result in reduced superannuation
294-90	Payment splits
294-95	Payment splits—no double debiting

#### Operative provisions

##### 294-80 Transfer balance debits

- (1) The following table sets out when a debit arises in your \*transfer balance account and the amount of the debit. The debit is called a *transfer balance debit*.

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

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 294** Transfer balance cap

Section 294-80

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<b>Debits in the transfer balance account</b>			
<b>Item</b>	<b>If:</b>	<b>A debit of:</b>	<b>Arises:</b>
1	you receive a *superannuation lump sum because a *superannuation income stream of which you are a *retirement phase recipient is commuted, in full or in part	the amount of the superannuation lump sum	at the time you receive the superannuation lump sum
2	a *structured settlement contribution is made in respect of you	the amount of the contribution	at the later of: (a) the time the contribution is made; and (b) the start of the day you first start to have a *transfer balance account
3	a *transfer balance debit arises under section 294-85 because of an event that results in reduced superannuation	the amount of the debit specified in section 294-85	at the time provided by section 294-85
4	a *transfer balance debit arises under section 294-90 because of a payment split	the amount of the debit specified in section 294-90	at the time provided by section 294-90
5	a *superannuation income stream of which you are a *retirement phase recipient stops being in the *retirement phase under subsection 307-80(4)	the *value of the *superannuation interest that supports the superannuation income stream at the end of the period within which the commutation authority mentioned in that subsection was required to be complied with	at the end of the period within which the commutation authority mentioned in that subsection was required to be complied with

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

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**Debits in the transfer balance account**

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Item	If:	A debit of:	Arises:
6	a *superannuation income stream of which you were a *retirement phase recipient stops being a superannuation income stream that is in the *retirement phase at a time (the <i>stop time</i> ), but items 1 and 5 do not apply	the *value of the *superannuation interest that supported the superannuation income stream just before the stop time	at the stop time
7	the Commissioner gives you a notice under section 136-70 in Schedule 1 to the <i>Taxation Administration Act 1953</i> (about non-commutable excess transfer balance)	the amount of the *excess transfer balance stated in the notice	at the time the Commissioner issues the notice
8	a *transfer balance debit arises under regulations made for the purposes of this item	the amount of the debit worked out in accordance with the regulations	at the time specified in the regulations

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*Structured settlement contributions*

- (2) Each of the following is a **structured settlement contribution** in respect of you:
- (a) a contribution to a \*complying superannuation plan in respect of you that is covered under section 292-95 (about structured settlements or orders for personal injuries);
  - (b) a contribution to a complying superannuation plan in respect of you that would be covered under section 292-95 if:
    - (i) the section applied to contributions made before 10 May 2006; and
    - (ii) paragraphs 292-95(1)(b) and (d) were disregarded.

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

Section 294-85

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*Regulations may provide for exceptions*

- (3) The regulations may provide that an item of the table in subsection (1) does not apply to a class of \*superannuation income streams specified in the regulations.

**294-85 Certain events that result in reduced superannuation**

- (1) A \*transfer balance debit arises in your \*transfer balance account if:
- (a) subsection (2) or (5) provides that the debit arises; and
  - (b) you notify the Commissioner in the \*approved form that the debit has arisen.

*Fraud or dishonesty*

- (2) A debit arises if:
- (a) a loss is suffered by a \*superannuation income stream provider; and
  - (b) as a result, the \*value of the \*superannuation interest that supports a \*superannuation income stream of which you are the \*retirement phase recipient is reduced; and
  - (c) the loss is a result of fraud or dishonesty; and
  - (d) an individual has been convicted of an offence involving that fraud or dishonesty.
- (3) The amount of the debit equals the amount by which the \*value of the \*superannuation interest is reduced as a result of the loss.
- (4) The debit arises at the time of the loss.

*Payments under section 139ZQ of the Bankruptcy Act 1966*

- (5) A debit arises if:
- (a) an amount is paid in compliance with a notice given under section 139ZQ of the *Bankruptcy Act 1966*; and
  - (b) as a result, the \*value of a \*superannuation interest that supports a \*superannuation income stream of which you are the \*retirement phase recipient is reduced.

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



- (6) The amount of the debit is the amount paid to the trustee in bankruptcy.
- (7) The debit arises at the time of the payment.

### **294-90 Payment splits**

- (1) A \*transfer balance debit arises in your \*transfer balance account if:
  - (a) subsection (2) provides that the debit arises; and
  - (b) the Commissioner is notified in the \*approved form that the debit has arisen.

#### *Payment splits*

- (2) A debit arises if:
  - (a) a \*superannuation interest is subject to a \*payment split but remains an interest of the \*member spouse; and
  - (b) the superannuation interest supports a \*superannuation income stream that is in the \*retirement phase; and
  - (c) as a result of the payment split, a proportion of all \*superannuation income stream benefits from the income stream is to be paid to a \*non-member spouse; and
  - (d) as a result, the member spouse and the non-member spouse are both \*retirement phase recipients of the superannuation income stream.
- (3) The amount of the debit is:
  - (a) if you are the \*member spouse—the proportion mentioned in paragraph (2)(c); and
  - (b) if you are the \*non-member spouse—the remaining proportion;  
of the \*value, on the day the debit arises, of the \*superannuation interest that supports the \*superannuation income stream affected by the \*payment split.
- (4) The debit arises at the later of:

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

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Section 294-95

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- (a) the operative time (within the meaning of Part VIIIB of the *Family Law Act 1975*) for the \*payment split; and
- (b) at the start of the day you first start to have a \*transfer balance account.

**294-95 Payment splits—no double debiting**

If a \*transfer balance debit, worked out by reference to a particular proportion, arises in your \*transfer balance account because a \*superannuation interest is subject to a \*payment split, each of the following debits arising in your account at a later time in respect of the same interest is to be reduced by the same proportion:

- (a) a debit that arises under item 1 of the table in subsection 294-80(1) (about commutations), but only if the commuted income stream is a \*capped defined benefit income stream;
- (b) a debit that arises under item 3 of that table (about events that result in reduced superannuation);
- (c) a debit that arises under item 5 or 6 of that table (about income streams that stop being in the retirement phase).

**Subdivision 294-D—Modifications for certain defined benefit income streams**

**Guide to Subdivision 294-D**

**294-120 What this Subdivision is about**

Certain defined benefit lifetime pensions that are subject to commutation restrictions cannot result in excess transfer balance (instead, Subdivision 303-A applies to the superannuation income stream benefits).

Certain commutation-restricted income streams started before 1 July 2017 are covered by the same modification.

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

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294-125	When this Subdivision applies
294-130	Meaning of capped defined benefit income stream
294-135	Transfer balance credit—special rule for capped defined benefit income streams
294-140	Excess transfer balance—special rule for capped defined benefit income streams
294-145	Transfer balance debits—special rules for capped defined benefit income streams

## Operative provisions

### 294-125 When this Subdivision applies

This Subdivision applies to you if you are the \*retirement phase recipient of a \*capped defined benefit income stream.

### 294-130 Meaning of capped defined benefit income stream

- (1) A \*superannuation income stream is a ***capped defined benefit income stream*** if it is:
- covered by an item of the following table; and
  - if it is covered by any of items 2 to 7 of that table—it is in the \*retirement phase just before 1 July 2017.

#### Capped defined benefit income streams

Item	Topic	A superannuation income stream is covered if:
1	Lifetime pension	it is a pension for the purposes of the <i>Superannuation Industry (Supervision) Act 1993</i> (the <b><i>SIS Act</i></b> ) that is provided under rules that meet the standards of subregulation 1.06(2) of the <i>Superannuation Industry (Supervision) Regulations 1994</i> (the <b><i>SIS Regulations</i></b> )
2	Lifetime annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(2) of the SIS Regulations

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

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<b>Capped defined benefit income streams</b>		
<b>Item</b>	<b>Topic</b>	<b>A superannuation income stream is covered if:</b>
3	Life expectancy pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(7) of the SIS Regulations
4	Life expectancy annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(9) of the SIS Regulations
5	Market linked pension	it is a pension for the purposes of the SIS Act that is provided under rules that meet the standards of subregulation 1.06(8) of the SIS Regulations
6	Market linked annuity	it is an annuity for the purposes of the SIS Act that is provided under a contract that meets the standards of subregulation 1.05(10) of the SIS Regulations
7	Market linked pension (RSA)	it is a pension for the purposes of the <i>Retirement Savings Accounts Act 1997</i> that is provided under terms and conditions that meet the standards of subregulation 1.07(3A) of the <i>Retirement Savings Accounts Regulations 1997</i>

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- (2) A \*superannuation income stream is also a ***capped defined benefit income stream*** if the income stream is prescribed by the regulations for the purposes of this subsection.

**294-135 Transfer balance credit—special rule for capped defined benefit income streams**

- (1) Section 294-25 applies in relation to a \*capped defined benefit income stream as if a reference in that section to the \*value of a \*superannuation interest were a reference to the \*special value of the superannuation interest.

*Meaning of special value—lifetime products*

- (2) The ***special value***, at a particular time, of a \*superannuation interest that supports an income stream that is, or was at any time, a \*capped defined benefit income stream covered by item 1 or 2 of

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

the table in subsection 294-130(1), is the amount worked out using the formula:

Annual entitlement  $\times$  16

where:

**annual entitlement** is worked out by:

- (a) dividing the amount of the first \*superannuation income stream benefit you are entitled to receive from the income stream just after that time by the number of whole days to which that benefit relates; and
- (b) multiplying the result by 365.

*Meaning of special value—life expectancy and market linked products*

- (3) The **special value**, at a particular time, of a \*superannuation interest that supports an income stream that is, or was at any time, a \*capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1), is the amount worked out using the formula:

Annual entitlement  $\times$  Remaining term

where:

**annual entitlement** has the same meaning as in subsection (2) of this section.

**remaining term** means the number of years remaining at that time in the period throughout which \*superannuation income stream benefits are payable under the income stream, rounded up to the next whole number.

*Regulations*

- (4) The regulations may specify a method for determining the **special value** of a \*superannuation interest that supports a \*superannuation income stream prescribed by regulations made for the purposes of subsection 294-130(2).

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

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**294-140 Excess transfer balance—special rule for capped defined benefit income streams**

- (1) Despite section 294-30, you have *excess transfer balance* at a particular time if, at that time, the \*transfer balance in your \*transfer balance account:
- (a) exceeds your \*transfer balance cap at that time; and
  - (b) exceeds your capped defined benefit balance from subsection (3) of this section at that time.

- (2) The amount of the *excess transfer balance* is the lesser of the 2 excesses.

Note: For modifications of the tax treatment of benefits paid from capped defined benefit income streams, see Subdivision 303-A.

*Your capped defined benefit balance*

- (3) You have an amount under this subsection (a *capped defined benefit balance*) at a time equal to:
- (a) the sum of the \*transfer balance credits in your \*transfer balance account at that time in respect of \*capped defined benefit income streams; less
  - (b) the sum of the \*transfer balance debits (if any) in your transfer balance account at that time in respect of capped defined benefit income streams.

**294-145 Transfer balance debits—special rules for capped defined benefit income streams**

*Debit for commutation*

- (1) Item 1 of the table in subsection 294-80(1) applies in relation to a \*capped defined benefit income stream as if the reference in column 2 of that item to the amount of the \*superannuation lump sum were a reference to:
- (a) for a commutation in full—the \*debit value, just before the superannuation lump sum is paid, of the \*superannuation

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

interest that supports the capped defined benefit income stream; or

- (b) for a commutation in part—the debit value mentioned in paragraph (a), multiplied by the fraction:

$$1 - \frac{\text{SV just after commutation}}{\text{SV just before commutation}}$$

where:

***SV just after commutation*** means the \*special value, just after the \*superannuation lump sum is paid, of the \*superannuation interest that supports the \*capped defined benefit income stream.

***SV just before commutation*** means the \*special value, just before the \*superannuation lump sum is paid, of the \*superannuation interest that supports the \*capped defined benefit income stream.

*Debit for events that result in reduced superannuation*

- (2) Item 3 of the table in subsection 294-80(1) (about events that result in reduced superannuation) applies in relation to a \*capped defined benefit income stream as if the amount of the debit provided for in section 294-85 was the \*debit value, just before the loss or payment reduces the \*value of the \*superannuation interest that supports the capped defined benefit income stream, multiplied by the amount worked out using the following formula:

$$1 - \frac{\text{SV just after event}}{\text{SV just before event}}$$

where:

***SV just after event*** means the \*special value, worked out just after the loss or payment reduces the \*value of the \*superannuation interest that supports the \*capped defined benefit income stream.

***SV just before event*** means the \*special value, worked out just before the loss or payment reduces the \*value of the

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

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\*superannuation interest that supports the \*capped defined benefit income stream.

*Debit for payment split*

- (3) Item 4 of the table in subsection 294-80(1) (about a debit for a payment split) applies in relation to a \*capped defined benefit income stream as if the reference in section 294-90 to the \*value of the \*superannuation interest were a reference to the \*debit value of the superannuation interest.

*Debits for loss of earnings exemption*

- (4) Items 5 and 6 of the table in subsection 294-80(1) apply in relation to an income stream that is, or was, a \*capped defined benefit income stream as if the reference in the item to the \*value of a \*superannuation interest were a reference to the \*debit value of the superannuation interest.

*Meaning of debit value*

- (5) The **debit value**, at a particular time, of a \*superannuation interest that supports an income stream that is, or was at any time, a \*capped defined benefit income stream covered by item 1 or 2 of the table in subsection 294-130(1), is:
- (a) the amount of the \*transfer balance credit that arose in your \*transfer balance account in respect of the income stream; less
  - (b) the amount of any \*transfer balance debits (apart from debits arising under item 4 of the table in subsection 294-80(1)) that have arisen in your transfer balance account in respect of the income stream before that time.
- (6) The **debit value**, at a particular time, of a \*superannuation interest that supports an income stream that is, or was at any time, a \*capped defined benefit income stream covered by any of items 3 to 7 of the table in subsection 294-130(1) is the \*special value of the interest at that time.

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



*Regulations*

- (7) The regulations may specify a method for determining the *debit value* of a \*superannuation interest that supports a \*superannuation income stream prescribed by regulations made for the purposes of subsection 294-130(2).

**Subdivision 294-E—Modifications for death benefits dependants who are children**

**Guide to Subdivision 294-E**

**294-170 What this Subdivision is about**

If you are a death benefits dependant, and a child, you are not required to use your retirement transfer balance cap to receive a death benefits income stream.

However, there is a cap on the total amount of your death benefits income streams that receives the earnings tax exemption.

This cap is based on the deceased's superannuation interests in the retirement phase, or, if the deceased did not have any superannuation interests in the retirement phase, on the transfer balance cap.

**Table of sections**

**Operative provisions**

294-175	When this Subdivision applies
294-180	Transfer balance account ends
294-185	Transfer balance cap—special rule for child recipient
294-190	Cap increment—child recipient just before 1 July 2017
294-195	Cap increment—child recipient on or after 1 July 2017, deceased had no transfer balance account
294-200	Cap increment—child recipient on or after 1 July 2017, deceased had transfer balance account

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

## Operative provisions

### 294-175 When this Subdivision applies

- (1) This Subdivision applies to you if you are a \*child recipient of a \*superannuation income stream.
- (2) You are a **child recipient** of a \*superannuation income stream if:
  - (a) because of the death of a person, you are a \*retirement phase recipient of the superannuation income stream; and
  - (b) you are a \*child, and a \*death benefits dependant, of the deceased; and
  - (c) you are covered by paragraph 6.21(2A)(b) of the *Superannuation Industry (Supervision) Regulations 1994* or paragraph 4.24(3A)(b) of the *Retirement Savings Accounts Regulations 1997* (which are about children who are under age 18, or under age 25 and financially dependent or who have a disability).

### 294-180 Transfer balance account ends

- (1) Despite sections 294-15 and 294-45, your \*transfer balance account ceases at a time if:
  - (a) just before that time, you were a \*child recipient of one or more \*superannuation income streams; and
  - (b) just after that time, you are no longer a child recipient of any superannuation income stream; and
  - (c) no \*transfer balance credits arose in the transfer balance account in respect of a superannuation income stream of which you were a \*retirement phase recipient, but not a child recipient.
- (2) If you again start to have a \*transfer balance account at a later time, this Division applies in relation to that later transfer balance account as if it were the only transfer balance account you have had.

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

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### **294-185 Transfer balance cap—special rule for child recipient**

- (1) Despite section 294-35, your *transfer balance cap* on a day is the sum of the cap increments that have arisen under this Subdivision on and before that day.

Note: Your transfer balance cap is not worked out on a financial year basis and it is not indexed.

- (2) However, if there are one or more \*superannuation income streams of which you are, on that day, a \*retirement phase recipient but not a \*child recipient, your *transfer balance cap* on that day is the sum of:

- (a) the sum of the cap increments that have arisen under this Subdivision on and before that day; and
- (b) your transfer balance cap for the \*financial year in which the day falls, worked out disregarding:
  - (i) any cap increments that arise under this Subdivision; and
  - (ii) any \*transfer balance credits or \*transfer balance debits that have arisen in your \*transfer balance account in respect of superannuation income streams of which you are a child recipient.

Note: Paragraph (b) is the transfer balance cap you would have if you were not a child recipient of any income stream. Disregarding credits, debits and cap increments allows this cap to be indexed appropriately under section 294-40 (which is about proportional indexation).

### **294-190 Cap increment—child recipient just before 1 July 2017**

- (1) A cap increment arises if, just before 1 July 2017, you are the \*child recipient of a \*superannuation income stream.
- (2) The amount of the cap increment is the \*general transfer balance cap.
- (3) The cap increment arises on 1 July 2017.

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

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**294-195 Cap increment—child recipient on or after 1 July 2017,  
deceased had no transfer balance account**

- (1) A cap increment arises if:
  - (a) on a day (the *starting day*) on or after 1 July 2017, you start to be the \*child recipient of a \*superannuation income stream; and
  - (b) the deceased did not have a \*transfer balance account just before death.
- (2) The amount of the cap increment is:
  - (a) the \*general transfer balance cap, unless paragraph (b) applies; or
  - (b) if you are *not* the only person to receive a \*superannuation death benefit because of the death of the person—the proportion of the general transfer balance cap that corresponds to your share of the deceased's \*superannuation interests.
- (3) The cap increment arises on the starting day.

**294-200 Cap increment—child recipient on or after 1 July 2017,  
deceased had transfer balance account**

- (1) A cap increment arises if:
  - (a) on a day (the *starting day*) on or after 1 July 2017, you start to be the \*child recipient of a \*superannuation income stream; and
  - (b) the deceased had a \*transfer balance account just before death.

*Income stream fully funded by deceased's retirement phase interests*

- (2) If the \*superannuation interest that supports the \*superannuation income stream is wholly attributable to one or more superannuation interests of the deceased that were in the \*retirement phase, the amount of the cap increment equals the

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

amount of the \*transfer balance credit that arises in your \*transfer balance account in respect of the \*superannuation income stream.

*Income stream fully funded by deceased's accumulation phase interests*

- (3) If the \*superannuation interest that supports the \*superannuation income stream is wholly attributable to one or more superannuation interests of the deceased that were *not* in the \*retirement phase, the amount of the cap increment is nil.

Note: A superannuation income stream covered by this subsection will generally result in excess transfer balance. The exceptions are: where you have additional cap increments under section 294-190 or 294-195, or where you have a higher cap under subsection 294-185(2) because you also receive a non-death benefit income stream.

*Income stream partly funded by deceased's accumulation interests*

- (4) If the \*superannuation interest that supports the \*superannuation income stream is:

(a) in part (the ***retirement phase part***) attributable to a superannuation interest of the deceased that was in the \*retirement phase; and

(b) in part attributable to a superannuation interest of the deceased that was *not* in the retirement phase;

the amount of the cap increment is so much of the \*transfer balance credit that arises in your \*transfer balance account in respect of the superannuation income stream as represents the retirement phase part.

Note: A superannuation income stream covered by this subsection will generally result in excess transfer balance. The exceptions are: where you have additional cap increments under section 294-190 or 294-195, or where you have a higher cap under subsection 294-185(2) because you also receive a non-death benefit income stream.

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

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*Reduced increment for excess transfer balance*

- (5) Despite subsections (2) and (4), the cap increment is reduced if there was \*excess transfer balance in the deceased's \*transfer balance account just before death. The amount of the reduction is:
- (a) the proportion of the excess transfer balance that corresponds to your share of the deceased's \*superannuation interests that were in the \*retirement phase; less
  - (b) the amount of any \*superannuation lump sum paid to you, because of the death of the person from a superannuation interest of the deceased that was in the retirement phase.

*When cap increment arises*

- (6) The cap increment arises:
- (a) on the starting day, unless paragraph (b) applies; or
  - (b) if you are a reversionary beneficiary—at the end of the period of 12 months beginning on the starting day.

*Treatment of investment earnings after death*

- (7) For the purposes of working out under this section the extent to which a \*superannuation interest is attributable to another superannuation interest, if:
- (a) a superannuation interest of the deceased was in the \*retirement phase; and
  - (b) on or after the death of the deceased, an amount of investment earnings is added to the superannuation interest;
- the superannuation interest is taken to include that amount of investment earnings, except to the extent that the amount of investment earnings includes an amount paid under a policy of insurance on the life of the deceased or an amount arising from self-insurance.

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

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## Subdivision 294-F—Excess transfer balance tax

### Guide to Subdivision 294-F

#### 294-225 What this Subdivision is about

This Subdivision neutralises the earnings tax exemption on retirement phase income streams that result in excess transfer balance.

#### Table of sections

##### Operative provisions

294-230	Excess transfer balance tax
294-235	Your excess transfer balance earnings
294-240	When tax is payable—original assessments
294-245	When tax is payable—amended assessments
294-250	General interest charge

#### Operative provisions

##### 294-230 Excess transfer balance tax

- (1) If there is an \*excess transfer balance period for your \*transfer balance account, you are liable to pay \*excess transfer balance tax imposed by the *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016* for the period.

Note: The amount of the tax is set out in the *Superannuation (Excess Transfer Balance Tax) Imposition Act 2016*.

- (2) An **excess transfer balance period** for a \*transfer balance account is a continuous period of one or more days during which, at the end of each day, there is \*excess transfer balance in the account.
- (3) Your \*excess transfer balance tax is worked out by reference to the sum of:

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

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- (a) your \*excess transfer balance earnings for each day in the \*excess transfer balance period; and
- (b) for each day in the excess transfer balance period that is also a day in the period mentioned in subsection 294-25(2) (the **determination period**)—the amount worked out by multiplying the rate mentioned in subsection 294-235(2) for the day by the sum of your excess transfer balance earnings for each previous day in the determination period.

**294-235 Your excess transfer balance earnings**

- (1) Your **excess transfer balance earnings** for a day is worked out by multiplying the rate mentioned in subsection (2) for that day by the amount of your \*excess transfer balance at the end of that day.
- (2) The rate is the lower of:
  - (a) the rate worked out under subsection 8AAD(1) of the *Taxation Administration Act 1953* for the day; and
  - (b) a rate determined under subsection (3) for the day.
- (3) The Minister may, by legislative instrument, determine a rate for a day.

**294-240 When tax is payable—original assessments**

Your \*assessed excess transfer balance tax is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the \*excess transfer balance tax.

Note: For assessments of excess transfer balance tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

**294-245 When tax is payable—amended assessments**

If the Commissioner amends your assessment, any extra \*assessed excess transfer balance tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

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



### **294-250 General interest charge**

If an amount of \*assessed excess transfer balance 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) begins on the day on which the amount was due to be paid;  
and
- (b) ends on the last day on which, at the end of the day, any of the following remains unpaid:
  - (i) the assessed excess transfer balance tax;
  - (ii) general interest charge on any of the assessed excess transfer balance 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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## **Division 295—Taxation of superannuation entities**

### **Table of Subdivisions**

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295-A	Provisions of general operation
295-B	Modifications of provisions of this Act
295-C	Contributions included
295-D	Contributions excluded
295-E	Other income amounts
295-F	Exempt income
295-G	Deductions
295-H	Components of taxable income
295-I	No-TFN contributions
295-J	Tax offset for no-TFN contributions income (TFN quoted within 4 years)

### **Guide to Division 295**

#### **295-1 What this Division is about**

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

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

## Subdivision 295-A—Provisions of general operation

### Table of sections

295-5	Entities to which Division applies
295-10	How to work out the tax payable by superannuation entities
295-15	Division does not impose a tax on property of a State
295-20	Exempting laws ineffective
295-25	Assessments on basis of anticipated SIS Act notice
295-30	Effect of revocation etc. of SIS Act notices
295-35	Acronyms used in tables

### 295-5 Entities to which Division applies

- (1) This Division applies to these entities:
  - (a) a \*complying superannuation fund;
  - (b) a \*non-complying superannuation fund;
  - (c) a \*complying approved deposit fund;
  - (d) a \*non-complying approved deposit fund;
  - (e) a \*pooled superannuation trust;whether they are established by an \*Australian law, by a public authority constituted by or under such a law or in some other way.
- (2) The \*superannuation provider in relation to an entity referred to in paragraph (1)(a) to (d) is liable to pay tax on the taxable income of the entity.

Note: A superannuation provider in relation to an entity referred to in paragraphs (1)(a) and (b) or in relation to an RSA is liable to pay tax on the no-TFN contributions income of the entity: see section 295-605.
- (3) The trustee of a \*pooled superannuation trust is liable to pay tax on the taxable income of the trust.
- (4) This Division also applies to an \*RSA provider that is not a \*life insurance company.

Note 1: Division 320 deals with RSA providers that are life insurance companies.

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

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Note 2: However, Subdivisions 295-I and 295-J apply to RSA providers that are life insurance companies: see section 320-155.

**295-10 How to work out the tax payable by superannuation entities**

- (1) Use this method for \*superannuation funds, \*approved deposit funds and \*pooled superannuation trusts:

*Method statement*

- Step 1. For a \*superannuation fund, work out the \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.
- Step 3. Work out the entity's taxable income as if its trustee:
- (a) were an Australian resident (except where paragraph (b) applies); or
  - (b) for a \*non-complying superannuation fund that is a \*foreign superannuation fund for the income year—were not an Australian resident.
- Step 4. Work out the \*low tax component and \*non-arm's length component of the taxable income of a \*complying superannuation fund, \*complying approved deposit fund or \*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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- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components, or to the taxable income of a \*non-complying superannuation fund or \*non-complying approved deposit fund.
- Step 6. Subtract the entity's \*tax offsets from the step 5 amount or, for a \*superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

(2) Use this method for \*RSA providers:

*Method statement*

- Step 1. Work out the entity's \*no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division.
- Step 3. Work out the \*RSA component and \*standard component of the entity's taxable income.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The \*RSA component is taxed at a concessional rate.
- Step 6. Subtract the entity's \*tax offsets from the sum of the entity's step 1 and step 5 amounts.

**295-15 Division does not impose a tax on property of a State**

This Division does not impose a tax on property of any kind belonging to a State (within the meaning of section 114 of the Constitution).

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

Section 295-20

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**295-20 Exempting laws ineffective**

A \*Commonwealth law (other than this Act) does not have the effect of exempting the trustee of an entity to which this Division applies from the liability to pay tax unless it does so expressly.

**295-25 Assessments on basis of anticipated SIS Act notice**

- (1) The Commissioner may make an assessment for a fund or trust that is not a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust for the income year as if it were such an entity if the Commissioner considers it likely that a notice will be given under section 40 of the *Superannuation Industry (Supervision) Act 1993* having the effect that it will become such an entity.
- (2) However, the grounds for making an assessment under subsection (1) are taken never to have existed if:
  - (a) the Commissioner becomes satisfied that the notice will not be given; or
  - (b) \*APRA does not receive the documents referred to in subsection 36(1) of the *Superannuation Industry (Supervision) Act 1993* about the fund or trust before the end of 12 months after the assessment is made.

**295-30 Effect of revocation etc. of SIS Act notices**

This Division has effect as if a notice given under section 342 of the *Superannuation Industry (Supervision) Act 1993* (about pre-1 July 88 funding credits) or under regulations made for the purposes of that section had never been given if:

- (a) the notice is revoked; or
- (b) the decision to give the notice is set aside.

**295-35 Acronyms used in tables**

In tables in this Division, these acronyms are used for these entities:

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

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**Acronyms used in tables**

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Item	Entity	Acronym
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

**Subdivision 295-B—Modifications of provisions of this Act****Table of sections**

295-85	CGT to be primary code for calculating gains or losses
295-90	CGT rules for pre-30 June 1988 assets
295-95	Deductions related to contributions
295-100	Deductions for investing in PSTs and life policies
295-105	Distributions to PST unitholders

**295-85 CGT to be primary code for calculating gains or losses**

- (1) The modifications in subsection (2) apply if a \*CGT event happens involving a \*CGT asset that was owned by one of these entities just before the time of the event:
- (a) a \*complying superannuation fund;
  - (b) a \*complying approved deposit fund;
  - (c) a \*pooled superannuation trust.
- (2) These provisions do not apply to the \*CGT event:
- (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
  - (aa) section 230-15 (about financial arrangements);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings 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 295-85

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*Exceptions*

- (3) The provisions referred to in subsection (2) can apply to the \*CGT event if:
- (a) any \*capital gain or \*capital loss from the event is attributable to currency exchange rate fluctuations; or
  - (b) the \*CGT asset is one of these:
    - (i) debenture stock, a bond, \*debenture, certificate of entitlement, bill of exchange, promissory note or other security;
    - (ii) a deposit with a bank, building society or other financial institution;
    - (iii) a loan (secured or not);
    - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the \*CGT event if a \*capital gain or \*capital loss from the event is disregarded because of one of the provisions in this table:

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<b>Where gain or loss disregarded because of CGT provision</b>		
<b>Item</b>	<b>Provision</b>	<b>Brief description</b>
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	R&D
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts

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

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**Where gain or loss disregarded because of CGT provision**

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Item	Provision	Brief description
10	Subsection 118-300(1), for general insurance policies covered by table item 2 in that subsection	General insurance policies for property
11	Section 118-305	Superannuation
12	Section 118-310	CGT event happens to right to, or part of, RSA

Note: For item 5, certain assets (particularly shares, units in a unit trust, and land) are not trading stock when owned by the entity (see paragraph 70-10(2)(b)).

**295-90 CGT rules for pre-30 June 1988 assets**

- (1) This section applies to the trustee of:
  - (a) a \*complying superannuation fund; or
  - (b) a \*complying approved deposit fund; or
  - (c) a \*pooled superannuation trust.
- (2) Parts 3-1 and 3-3 (about capital gains and losses) apply to a \*CGT asset that:
  - (a) the trustee or a former trustee owned at the end of 30 June 1988; and
  - (b) the trustee owned at the commencement of this section; as if the trustee had \*acquired the asset on 30 June 1988.
- (3) Subsection (2) does not affect how to work out the asset's \*cost base or \*reduced cost base.
 

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base.
- (4) Subsection 104-30(5) applies to an option granted by the trustee as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

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

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Section 295-95

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**295-95 Deductions related to contributions**

(1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:

- (a) \*complying superannuation funds;
- (b) \*non-complying superannuation funds that are \*Australian superannuation funds;
- (c) \*complying approved deposit funds;
- (d) \*non-complying approved deposit funds;
- (e) \*RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

Note 2: Examples of contributions that are not assessable are:

- contributions which the contributor cannot deduct;
- contributions excluded from assessable income under Subdivision 295-D.

(2) A \*superannuation fund is an ***Australian superannuation fund*** at a time, and for the income year in which that time occurs, if:

- (a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and
- (b) at that time, the central management and control of the fund is ordinarily in Australia; and
- (c) at that time either the fund had no member covered by subsection (3) (an ***active member***) or at least 50% of:
  - (i) the total \*market value of the fund's assets attributable to \*superannuation interests held by active members; or
  - (ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;

is attributable to superannuation interests held by active members who are Australian residents.

(3) A member is covered by this subsection at a time if the member is:

- (a) a contributor to the fund at that time; or

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

- (b) an individual on whose behalf contributions have been made, other than an individual:
  - (i) who is a foreign resident; and
  - (ii) who is not a contributor at that time; and
  - (iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.
  
- (4) To avoid doubt, the central management and control of a \*superannuation fund is ordinarily in Australia at a time even if that central management and control is temporarily outside Australia for a period of not more than 2 years.

### **295-100 Deductions for investing in PSTs and life policies**

- (1) Provisions of this Act about deducting amounts apply to \*complying superannuation funds and \*complying approved deposit funds as if \*ordinary income and \*statutory income received from these investments were included in their assessable income:
    - (a) units in a \*pooled superannuation trust;
    - (b) \*life insurance policies issued by a \*life insurance company;
    - (c) an interest in a trust whose assets consist only of life insurance policies issued by a life insurance company.
- Note: Income from these investments is not assessable: see for example sections 295-105 and 118-350.
- (2) A \*complying superannuation fund cannot deduct an amount (otherwise than under section 295-465) for fees or charges incurred for:
    - (a) \*complying superannuation life insurance policies; or
    - (b) \*exempt life insurance policies; or
    - (c) units in a \*pooled superannuation trust that are \*segregated current pension assets of the fund.

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

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Section 295-105

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**295-105 Distributions to PST unitholders**

The assessable income of a \*complying superannuation fund, \*complying approved deposit fund or \*pooled superannuation trust does not include amounts \*derived by the entity because it holds units in a \*pooled superannuation trust.

Note: These entities will not be subject to any tax liability when they dispose of the units: see subsection 295-85(2) and section 118-350.

**Subdivision 295-C—Contributions included**

**Guide to Subdivision 295-C**

**295-155 What this Subdivision is about**

There are basically 3 types of assessable contributions:

- (a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and
- (b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and
- (c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

**Table of sections**

**Contributions and payments**

295-160	Contributions and payments
295-165	Exception—spouse contributions
295-170	Exception—Government co-contributions and contributions for a child
295-173	Exception—trustee contributions

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

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- 295-175 Exception—payments by a member spouse
- 295-180 Exception—choice to exclude certain contributions
- 295-185 Exception—temporary residents

**Personal contributions and roll-over amounts**

- 295-190 Personal contributions and roll-over amounts
- 295-195 Exclusion of personal contributions—contributions
- 295-197 Exclusion of personal contributions—successor funds

**Transfers from foreign funds**

- 295-200 Transfers from foreign superannuation funds

**Application of tables to RSA providers**

- 295-205 Application of tables to RSA providers

**Former constitutionally protected funds**

- 295-210 Former constitutionally protected funds

**Contributions and payments**

**295-160 Contributions and payments**

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

Note: For an explanation of the acronyms used, see section 295-35.

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**Contributions and payments included in assessable income**

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Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)

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

Section 295-165

<b>Contributions and payments included in assessable income</b>		
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>
2	N-CSF that is a *foreign superannuation fund for the income year	Contribution to provide *superannuation benefits for someone else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)
3	CSF CADF *RSA provider	Payment under section 65 of the <i>Superannuation Guarantee (Administration) Act 1992</i>
4	CSF *RSA provider	Payment under section 61 or 61A of the <i>Small Superannuation Accounts Act 1995</i>

**295-165 Exception—spouse contributions**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a \*complying superannuation fund or an \*RSA:
  - (a) to provide \*superannuation benefits for the individual's \*spouse (regardless whether the benefits are payable to the individual's spouse's \*SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and
  - (b) that the individual cannot deduct under Subdivision 290-B.
- (2) Paragraph (1)(a) does not apply to \*superannuation benefits for a \*spouse living permanently separately and apart from the individual.

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

**295-170 Exception—Government co-contributions and contributions for a child**

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution:
  - (a) that is a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or
  - (b) for the benefit of a person under 18 that is not made by or on behalf of the person's employer.
  
- (2) Item 4 of the table in section 295-160 does not include in assessable income a payment to the extent to which it represents a Government co-contribution or co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

**295-173 Exception—trustee contributions**

- Item 1 of the table in section 295-160 does not include in assessable income:
- (a) a contribution made by an entity that was, when the contribution was made, the trustee of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust; or
  - (b) a contribution made out of the \*complying superannuation assets, or out of the \*segregated exempt assets, of a \*life insurance company.

**295-175 Exception—payments by a member spouse**

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a \*regulated superannuation fund, or to an \*RSA provider, to be held for the benefit of the \*non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the \*superannuation interest concerned.

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

Section 295-180

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**295-180 Exception—choice to exclude certain contributions**

- (1) Item 1 of the table in section 295-160 does not include an amount in the assessable income of a \*public sector superannuation scheme for an income year to the extent that the trustee chooses that it not be included.
- (2) The entity that made the contributions must consent to the choice.  
Note: Making this choice effectively shifts the liability for tax on the contributions to the recipient of the benefit. The benefit is treated as an element untaxed in the fund: see Subdivision 301-C.
- (3) However, the choice cannot be made for an income year for an amount that exceeds the sum of amounts covered by notices given by the trustee under section 307-285 for \*superannuation benefits paid in the income year.
- (4) A choice under this section cannot be revoked or withdrawn.
- (5) A choice under this section cannot be made in relation to a \*public sector superannuation scheme that comes into operation after 5 September 2006.

**295-185 Exception—temporary residents**

Item 2 of the table in section 295-160 does not include a contribution in the assessable income of an entity if the individual (for whom it was made) is a \*temporary resident at the end of the income year to which the contribution relates.

**Personal contributions and roll-over amounts\***

**295-190 Personal contributions and roll-over amounts**

- (1) The assessable income of an entity includes amounts as set out in this table.  
Note: For an explanation of the acronyms used, see section 295-35.

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

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**Personal contributions and roll-over amounts included in assessable income**

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Item	Assessable income of this entity:	Includes:
1	CSF *RSA provider	A contribution: (a) made to the CSF or *RSA; and (b) covered by a valid and acknowledged notice given to the *superannuation provider of the CSF or RSA under section 290-170
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund; and (b) is not an *excess untaxed roll-over amount for that individual

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

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Section 295-190

**Personal contributions and roll-over amounts included in assessable income**

Item	Assessable income of this entity:	Includes:
2A	CSF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: <ul style="list-style-type: none"> <li>(a) the CSF or *RSA is: <ul style="list-style-type: none"> <li>(i) a *successor fund; or</li> <li>(ii) a superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and</li> </ul> </li> <li>(b) the benefit relates to a contribution that, before it was transferred to the successor fund or continuing fund, was not covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and</li> <li>(c) while the benefit is held in the successor fund or continuing fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of that fund under that section</li> </ul>
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the <i>Income Tax (Transitional Provisions) Act 1997</i> )

(1A) Items 2 and 2A of the table in subsection (1) do not apply to a \*roll-over superannuation benefit that is a \*departing Australia superannuation payment made under subsection 20H(2), (2AA) or (2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

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

*Income years in which amounts are included in assessable income*

- (2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the \*superannuation provider by the day the provider lodges its \*income tax return for that income year.
- (3) Otherwise it is included in the income year in which the notice is received.
- (4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the \*superannuation provider.
- (5) A benefit referred to in item 2A is included in the income year in which it is received if the notice is received by the \*superannuation provider by the day the provider lodges its \*income tax return for that income year.
- (6) Otherwise it is included in the income year in which the notice is received.

**295-195 Exclusion of personal contributions—contributions**

*Variation notice received before return lodged*

- (1) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider under item 1 of the table in subsection 295-190(1) to the extent that it has been reduced by a notice under section 290-180 if the notice is received by the \*superannuation provider before it has lodged its \*income tax return for the income year in which the contribution was made.

*Variation notice received after return lodged*

- (2) A contribution is not included in the assessable income of a \*complying superannuation fund or \*RSA provider under item 1 of the table in subsection 295-190(1) for the income year in which the contribution was made to the extent that it has been reduced by a notice under section 290-180 if:

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

Section 295-197

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- (a) the notice is received by the \*superannuation provider after it has lodged its \*income tax return for the income year; and
  - (b) the provider exercises the option mentioned in subsection (3).
- (3) An amount referred to in subsection (2) may, at the option of the provider, be excluded from the assessable income of the fund or \*RSA provider for the income year referred to in subsection (2) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2 of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2 of the table in subsection 295-490(1).

### 295-197 Exclusion of personal contributions—successor funds

#### *Scope*

- (1) This section applies to the \*superannuation provider (the **successor provider**) of a \*complying superannuation fund or \*RSA if, apart from this section, a \*roll-over superannuation benefit would be included in the assessable income of the fund or \*RSA provider under item 2A of the table in subsection 295-190(1).

#### *Variation notice received before return lodged*

- (2) The benefit is not so included, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if the notice is received by the successor provider before the successor provider has lodged its \*income tax return for the income year in which the benefit was transferred.

#### *Variation notice received after return lodged*

- (3) The benefit is not so included in the assessable income for the income year in which the benefit was transferred, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if:

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

- (a) the notice is received by the successor provider after the successor provider has lodged its \*income tax return for the income year; and
  - (b) the successor provider exercises the option mentioned in subsection (4).
- (4) An amount referred to in subsection (3) may, at the option of the successor provider, be excluded from the assessable income of the fund or \*RSA provider for the income year referred to in subsection (3) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2B of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2B of the table in subsection 295-490(1).

## Transfers from foreign funds

### 295-200 Transfers from foreign superannuation funds

- (1) The assessable income of a fund that is an \*Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.
- (2) The assessable income of a fund that is a \*complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a \*foreign superannuation fund for the income year as is specified in a choice made by a former member of the foreign fund under section 305-80.
- (3) The amount is included in the income year in which the transfer happens.

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

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Section 295-205

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- (4) This section also applies to an amount transferred from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
- (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.

**Application of tables to RSA providers**

**295-205 Application of tables to RSA providers**

The tables in this Subdivision apply to \*RSA providers only to the extent that amounts are paid to \*RSAs they provide.

**Former constitutionally protected funds**

**295-210 Former constitutionally protected funds**

- (1) This section applies to a \*complying superannuation fund for an income year if the fund ceased to be a \*constitutionally protected fund during the year or at the end of the previous year.
- (2) The assessable income of the fund for the income year includes the sum of the \*roll-over superannuation benefits to the extent that they consist of the \*element untaxed in the fund of the \*taxable component that would be included in that assessable income if all contributions and earnings accumulated in the fund when the fund ceased to be a \*constitutionally protected fund:
- (a) had been paid out of the fund immediately before it ceased to be a constitutionally protected fund; and
  - (b) were paid to the fund as roll-over superannuation benefits immediately after that time.

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

## Subdivision 295-D—Contributions excluded

### Table of sections

295-260	Transfer of liability to investment vehicle
295-265	Application of pre-1 July 88 funding credits
295-270	Anticipated funding credits

### 295-260 Transfer of liability to investment vehicle

- (1) The \*superannuation provider in relation to a \*complying superannuation fund or a \*complying approved deposit fund (the *transferor*) may reduce the amount that would otherwise be included in the fund's assessable income for an income year under Subdivision 295-C by agreement with another entity (the *transferee*) in which it holds investments.

*What the transferee must be*

- (2) The transferee must be a \*life insurance company or a \*pooled superannuation trust.

Note: Amounts transferred are included in the transferee's assessable income: see section 295-320 (for PSTs) and paragraph 320-15(1)(i) (for life insurance companies).

*Agreement requirements*

- (3) The transferor may make one agreement only for an income year with a particular transferee.
- (4) An agreement:
- (a) must be in writing, and must be signed by or for the transferor and transferee; and
  - (b) must be made by the day the transferor lodges its \*income tax return for its income year to which the agreement relates; and
  - (c) cannot be revoked.

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

Section 295-265

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*Limits on transfer*

- (5) The total amount covered by the agreements cannot exceed the amount that would otherwise be included in the transferor's assessable income under Subdivision 295-C for that income year.
- (6) The amount covered by an agreement with a particular transferee cannot exceed this amount:

$$\frac{\text{Greatest equity value}}{\text{Transferor's low tax component tax rate}}$$

where:

**greatest equity value** is the greatest of these amounts during the transferor's income year:

- (a) if the transferee is a \*pooled superannuation trust—the \*market value of the transferor's investment in units in the trust;
- (b) if not—the market value of the transferor's investment in:
- (i) \*life insurance policies issued by the transferee; or
  - (ii) a trust whose assets consist only of life insurance policies issued by the transferee.

**transferor's low tax component tax rate** is the rate of tax imposed on the \*low tax component of the fund's taxable income for the income year.

**295-265 Application of pre-1 July 88 funding credits**

*Choice to reduce contributions included in assessable income*

- (1) The \*superannuation provider in relation to a \*complying superannuation fund can choose to reduce the amount of contributions that would otherwise be included in the fund's assessable income for an income year under item 1 of the table in section 295-160 if it has pre-1 July 88 funding credits available for the income year.

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



*When funding credits are available*

- (2) Use this method to work out whether a fund has pre-1 July 88 funding credits available for an income year:

*Method statement*

Step 1. Identify the amount of pre-1 July 88 funding credits unused at the end of the previous income year.

Step 2. Index that amount.

Note: Subdivision 960-M shows you how to index amounts.

Step 3. Add any pre-1 July 88 funding credits transferred to the fund in the income year under regulations made for the purposes of subsection 342(7) of the *Superannuation Industry (Supervision) Act 1993*.

Step 4. Deduct from the step 3 amount:

- (a) pre-1 July 88 funding credits transferred from the fund in the income year under regulations made for the purposes of subsection 342(7) of that Act; and
- (b) amounts specified in a notice given to the \*superannuation provider in relation to the fund under subsection 342(6) of that Act for the income year.

Step 5. The result is the pre-1 July 88 funding credits available to the fund for the income year.

That amount, reduced by any amount specified in a choice made under subsection (1) for the income year, is the amount of pre-1 July 88 funding credits unused at the end of the income year.

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

**Section 295-265**

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Note 1: Regulations under subsection 342(7) of the SIS Act allow APRA to approve transfers of pre-1 July 88 funding credits between funds.

Note 2: Subsection 342(6) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the trustee notifies APRA of the change.

(3) If a notice is given to the \*superannuation provider in relation to the fund under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* granting the trustee a pre-1 July 88 funding credit, this section applies as if the pre-1 July 88 funding credit had arisen at the beginning of the income year in which 1 July 1988 occurred.

(4) However, if a notice is given to the \*superannuation provider in relation to the fund under subsection 342(4) of the *Superannuation Industry (Supervision) Act 1993* for the income year, the fund has no pre-1 July 88 funding credits.

Note: Subsection 342(4) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the provider fails to notify APRA of the change.

*Limit on choice*

(5) The total amount covered by the choice cannot exceed the pre-1 July 88 funding credits available to the fund for the income year.

(6) The total amount covered by the choice also cannot exceed the amount of contributions that would otherwise be included in the fund's assessable income for the income year under item 1 of the table in section 295-160 that are used to fund liabilities that accrued before 1 July 1988.

(7) The regulations may prescribe either or both of the following:  
(a) the manner in which the \*superannuation provider in relation to a \*superannuation fund is to work out the amount applicable to the fund under subsection (6) for an income year;

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

- (b) methods (other than the method specified in subsection (6)) of working out how the provider of a superannuation fund can apply pre-1 July 88 funding credits.
- (8) Methods prescribed under paragraph (7)(b) may be applicable to particular \*superannuation funds or to a class or classes of superannuation funds.

### **295-270 Anticipated funding credits**

- (1) Subsection (2) has effect if the \*superannuation provider in relation to a \*complying superannuation fund expects a notice to be given under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of subsection 342(7) of that Act to the effect that pre-1 July 88 funding credits of a particular amount will be available to the fund for the income year.
- (2) Section 295-265 applies to the fund as if pre-1 July 88 funding credits of the anticipated amount were available to the fund for the income year (in addition to any other pre-1 July 88 funding credits available to the fund for the year).
- (3) However, section 295-265 applies to the fund for the income year as if pre-1 July 88 funding credits of the anticipated amount were not available to the fund for the income year if:
  - (a) it becomes clear that the expected notice will not be given or that the specified amount of pre-1 July 88 funding credits will not be available; or
  - (b) \*APRA does not receive the things referred to in subsection 342(3) of the *Superannuation Industry (Supervision) Act 1993* (for a notice expected under subsection 342(2) of that Act) or the things required to be given under regulations made for the purposes of subsection 342(7) of that Act (for a notice under those regulations) before the earlier of:
    - (i) the end of 12 months after the fund's assessment is made for the income year; and

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

Section 295-320

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- (ii) the time the things are required to be given by the regulations.

**Subdivision 295-E—Other income amounts**

**Table of sections**

**Amounts included**

- 295-320 Other amounts included in assessable income  
295-325 Previously complying funds  
295-330 Previously foreign funds

**Amounts excluded**

- 295-335 Amounts excluded from assessable income

**Amounts included**

**295-320 Other amounts included in assessable income**

The assessable income of an entity includes the amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

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<b>Amounts included in assessable income</b>			
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
1	PST	Amount transferred to it by a CSF or CADF under section 295-260	Of the PST that includes the last day of the transferor's income year to which the agreement relates

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

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Section 295-325

<b>Amounts included in assessable income</b>			
<b>Item</b>	<b>Assessable income of this entity:</b>	<b>Includes:</b>	<b>For the income year:</b>
2	N-CSF that was a CSF for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-325	Following the income year in which it was a CSF
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year and that was a *foreign superannuation fund for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund
4	CSF	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under an item of the table in subsection 295-465(1)	In which the rebate or refund is received
5	*RSA provider	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under section 295-475	In which the rebate or refund is received

**295-325 Previously complying funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 2 of the table in section 295-320 is:

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

Section 295-330

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Sum of the \*market values of the fund's assets just before the start of the income year – Sum of the part of the \*crystallised undeducted contributions that relates to the period after 30 June 1983 and the \*contributions segment for current members at that time so far as they have not been, and cannot be, deducted

**295-330 Previously foreign funds**

The amount of \*ordinary income and \*statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the \*market values of the fund's assets just before the start of the income year – Amount in the fund at that time representing contributions made by current members

**Amounts excluded**

**295-335 Amounts excluded from assessable income**

The assessable income of an entity does not include the amounts set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts excluded from assessable income</b>		
<b>Item</b>	<b>This entity:</b>	<b>Does not include this in assessable income:</b>
1	CSF CADF PST	A bonus on a *life insurance policy (except a reversionary bonus)
2	PST	Amount attributable to amounts received from a *constitutionally protected fund
3	*RSA provider	A bonus on a *life insurance policy that is an *RSA (except a reversionary bonus)

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

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## Subdivision 295-F—Exempt income

### Table of sections

295-385	Income from assets set aside to meet current pension liabilities
295-387	Disregarded small fund assets
295-390	Income from other assets used to meet current pension liabilities
295-395	Meaning of <i>segregated non-current assets</i>
295-400	Income of a PST attributable to current pension liabilities
295-405	Other exempt income
295-407	Covered superannuation income streams—RSAs
295-410	Amount credited to RSA

### 295-385 Income from assets set aside to meet current pension liabilities

- (1) The \*ordinary income and \*statutory income of a \*complying superannuation fund for an income year is exempt from income tax to the extent that:
  - (a) it would otherwise be assessable income; and
  - (b) it is from \*segregated current pension assets.

#### *Exception*

- (2) Subsection (1) does not apply to:
  - (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C.

#### *Meaning of segregated current pension assets*

- (3) Assets of a \*complying superannuation fund are *segregated current pension assets* at a time if:
  - (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of \*RP superannuation income stream benefits of the fund 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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Section 295-387

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- (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (4) Assets of a \*complying superannuation fund are also **segregated current pension assets** of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of \*superannuation income stream benefits:
- (a) that are \*RP superannuation income stream benefits of the fund at that time; and
- (b) prescribed by the regulations for the purposes of this section.
- (5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay \*RP superannuation income stream benefits of the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.
- (6) However, assets of a \*complying superannuation fund that are supporting a \*superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not **segregated current pension assets** to the extent that the \*market value of the assets exceeds the account balance supporting the benefit.
- (7) Also, \*disregarded small fund assets are not segregated current pension assets.

**295-387 Disregarded small fund assets**

- (1) The assets of a \*complying superannuation fund are **disregarded small fund assets** at all times in an income year if the fund is covered by subsection (2) for the income year.

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



- (2) A \*complying superannuation fund is covered by this subsection for an income year if:
- (a) any of these requirements are satisfied:
    - (i) the fund is a \*self managed superannuation fund at a time during the income year;
    - (ii) there are less than 5 \*members of the fund at a time during the income year; and
  - (b) at a time during the income year, there is at least one \*superannuation interest in the fund that is in the \*retirement phase; and
  - (c) just before the start of the income year:
    - (i) a person has a \*total superannuation balance that exceeds \$1.6 million; and
    - (ii) the person is the \*retirement phase recipient of a \*superannuation income stream (whether or not the fund is the \*superannuation income stream provider for the superannuation income stream); and
  - (d) at a time during the income year, the person has a superannuation interest in the fund (whether or not the superannuation interest is the superannuation interest mentioned in paragraph (b)).

**295-390 Income from other assets used to meet current pension liabilities**

- (1) A proportion of the \*ordinary income and \*statutory income of a \*complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

*Exception*

- (2) Subsection (1) does not apply to:
- (a) \*non-arm's length income; or
  - (b) amounts included in assessable income under Subdivision 295-C; or

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

Section 295-390

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- (c) income \*derived from \*segregated non-current assets; or
- (d) income that is exempt from income tax under section 295-385.

*Formula*

- (3) The proportion is:

$$\frac{\text{Average value of current pension liabilities}}{\text{Average value of superannuation liabilities}}$$

where:

***average value of current pension liabilities*** is the average value for the income year of the fund's current liabilities (contingent or not) in respect of \*RP superannuation income stream benefits of the fund at any time in that year. This does not include liabilities for which \*segregated current pension assets are held.

***average value of superannuation liabilities*** is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of \*superannuation benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which \*segregated current pension assets or \*segregated non-current assets are held.

*Actuary's certificate*

- (4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.
- (5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except

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

\*segregated current pension assets or \*segregated non-current assets).

*Superannuation liabilities where no current certificate*

- (6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no \*segregated current pension assets or \*segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

**current value of assets** is the value of all of the fund's assets at a time in the income year, as specified in an \*actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's \*income tax return for the income year.

**last value of assets** is the most recent value of all of the fund's assets specified in an \*actuary's certificate.

**last value of superannuation liabilities** is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an \*actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

- (7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of \*RP superannuation income stream benefits of the fund at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

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

Section 295-395

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**295-395 Meaning of *segregated non-current assets***

- (1) Assets of a \*complying superannuation fund are *segregated non-current assets* at a time in an income year if:
  - (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its current and future liabilities (contingent or not) to pay benefits in respect of which contributions have, or were liable to have, been made; and
  - (b) the trustee of the fund obtains an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (2) The liabilities referred to in paragraph (1)(a) do not include liabilities (contingent or not) in respect of \*RP superannuation income stream benefits of the fund at that time.
- (3) However, \*disregarded small fund assets are not segregated non-current assets.

**295-400 Income of a PST attributable to current pension liabilities**

- (1) This proportion of the \*ordinary income and \*statutory income that would otherwise be assessable income of a \*pooled superannuation trust is \*exempt income:

$$\frac{\text{Average number of units in the trust during the income year that are *segregated current pension assets of unitholders that are *complying superannuation funds}}{\text{Average number of units in the trust during the income year}}$$

*Exceptions*

- (2) Subsection (1) does not apply to:

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

- (a) \*non-arm's length income; or
- (b) amounts included in assessable income under item 1 of the table in section 295-320.

*Alternative exemption*

- (3) However, the trustee of the \*pooled superannuation trust can choose that a different amount be \*exempt income of the trust under this section if a percentage of the assessable income of the trust would have been exempt income under section 295-385 or 295-390 if it had been \*derived instead by the unitholders in the trust in proportion to their holdings.
- (4) That percentage of the trust's \*ordinary income and \*statutory income is then \*exempt income.

**295-405 Other exempt income**

The \*ordinary income or \*statutory income of an entity is exempt from income tax as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Exempt income</b>		
<b>Item</b>	<b>For this entity:</b>	<b>This is exempt:</b>
1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
2	*RSA provider	Amount credited to the *RSA where a *superannuation income stream covered by section 295-407 was paid from the RSA for all of the period in the income year that the RSA existed
3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a *superannuation income stream covered by section 295-407 was paid from the RSA for part of the period in the income year that the RSA existed

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

Section 295-407

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**295-407 Covered superannuation income streams—RSAs**

A \*superannuation income stream is covered by this section if:

- (a) it is a pension (within the meaning of the *Retirement Savings Accounts Act 1997*); and
- (b) it is in the \*retirement phase.

**295-410 Amount credited to RSA**

For item 3 of the table in section 295-405, the part of the amount credited to the \*RSA that is \*exempt income is worked out by:

- (a) multiplying the amount by the number of days in the income year for which the pension covered by section 295-407 was paid; and
- (b) dividing the result by the number of days in the income year that the RSA existed.

**Subdivision 295-G—Deductions**

**Table of sections**

**Death or disability benefits**

- 295-460 Benefits for which deductions are available
- 295-465 Complying funds—deductions for insurance premiums
- 295-470 Complying funds—deductions for future liability to pay benefits
- 295-475 RSA providers—deductions for insurance premiums
- 295-480 Meaning of *whole of life policy* and *endowment policy*

**Other deductions**

- 295-490 Other deductions

**Certain amounts cannot be deducted**

- 295-495 Amounts that cannot be deducted

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

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## Death or disability benefits

### 295-460 Benefits for which deductions are available

Sections 295-465 (about deductions for complying funds for insurance premiums), 295-470 (about deductions for complying funds for future liability to pay benefits) and 295-475 (about deductions for \*RSA providers for insurance premiums) apply to these benefits:

- (a) a \*superannuation death benefit;
- (aa) a benefit consisting of an amount payable to an individual because a \*terminal medical condition exists in relation to the individual;
- (b) a \*disability superannuation benefit;
- (c) a benefit consisting of an amount payable to an individual under an income stream because of the individual's temporary inability to engage in \*gainful employment, that is payable for no longer than:
  - (i) 2 years; or
  - (ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period—that longer period; or
  - (iii) if there is no such approval in force—a longer period allowed by the Commissioner.

Note 1: The fund can deduct amounts in relation to these benefits under either section 295-465 or 295-470, but not both.

Note 2: The taxable component of the superannuation lump sums will contain an element untaxed in the fund: see section 307-290.

### 295-465 Complying funds—deductions for insurance premiums

#### *Deductions for insurance premiums*

- (1) A \*complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies

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

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Section 295-465

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that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

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**Deductions of \*complying superannuation funds**

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**Item    The fund can deduct this amount:**

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1	30% of the premium for a *whole of life policy if all individuals whose lives are insured are members of the fund
2	10% of the premium for an *endowment policy if all individuals whose lives are insured are members of the fund
3	30% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been a whole of life policy had it been a separate policy
4	10% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been an endowment policy had it been a separate policy
5	The part of a premium that is specified in the policy as being wholly for the liability to provide certain benefits, if those benefits are benefits referred to in section 295-460
6	So much of other insurance policy premiums as are attributable to the liability to provide benefits referred to in section 295-460

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Note:        If the fund receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 4 in section 295-320.

- (1A) If item 5 of the table applies to part, but not all, of an insurance policy premium, item 6 of the table applies to the rest of the premium as if item 5 did not apply to the premium.
- (1B) For the purposes of item 6 of the table, the regulations may provide that a specified proportion of a specified insurance policy premium may be treated as being attributable to the \*complying

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

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superannuation fund's liability to provide benefits referred to in section 295-460.

Note: The fund may deduct a proportion other than that specified in the regulations for the premium, but must obtain an actuary's certificate in accordance with subsection (3) in order to do so. The same applies if the insurance policy premium is not specified in the regulations.

*Deductions for self-insurance*

- (2) A \*complying superannuation fund can also deduct the amount it could reasonably be expected to pay in an \*arm's length transaction to obtain an insurance policy to cover it for that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which it does not have insurance coverage. It can deduct the amount for the income year when it has the liability.
- (2A) For the purposes of subsection (2), the regulations may provide that a specified proportion of an amount mentioned in subsection (2B) may be treated as being the amount the fund could reasonably be expected to pay in an \*arm's length transaction to obtain an insurance policy to cover it for its current or contingent liabilities to provide benefits referred to in section 295-460.
- Example: If:
- (a) an actuary certifies the amount a fund could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy; and
  - (b) the insurance policy covers liabilities of the fund to provide a class of total and permanent disability benefits broader than that covered by section 295-460; and
  - (c) the insurance policy is specified in the regulations; and
  - (d) the fund does not have insurance coverage for the liabilities;
- the fund may deduct, under subsection (2), so much of that certified amount as is specified in the regulations.
- (2B) The amount is the amount a \*complying superannuation fund could reasonably be expected to pay in an \*arm's length transaction to obtain an insurance policy specified in the regulations.

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

**Section 295-470**

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*Actuary's certificate*

- (3) The trustee must obtain an \*actuary's certificate before the date for lodgment of the fund's \*income tax return for the income year in order to deduct an amount referred to in item 6 of the table or in subsection (2).
- (3A) Subsection (3) does not apply to an amount referred to in item 6 of the table in relation to an insurance policy premium, if the trustee deducts, under that item, only the proportion (if any) of the premium specified in the regulations made for the purposes of subsection (1B).

*Choice not to deduct amounts under this section*

- (4) The trustee may choose not to deduct amounts under this section for an income year and to deduct instead (under section 295-470) amounts based on the fund's future liability to pay the benefits.
- (5) The choice applies also to future income years unless the Commissioner decides that it should not.

**295-470 Complying funds—deductions for future liability to pay benefits**

- (1) A \*complying superannuation fund can deduct an amount under this section for an income year if:
  - (a) the trustee of the fund makes a choice under subsection 295-465(4) and the choice applies to the income year; and
  - (b) the trustee pays:
    - (i) a benefit referred to in paragraph 295-460(a), (aa) or (b) for the income year in consequence of the termination of a member's employment; or
    - (ii) a benefit referred to in paragraph 295-460(c).

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

(2) The amount the fund can deduct is:

$$\text{Benefit amount} \times \frac{\text{Future service days}}{\text{Total service days}}$$

where:

**benefit amount** is:

- (a) for a benefit that is a \*superannuation lump sum—the amount of the lump sum; or
- (b) for a benefit that is a \*superannuation income stream—the \*value of the \*superannuation interest supporting the income stream; or
- (c) for a benefit referred to in paragraph 295-460(c)—the total of the amounts paid during the income year.

**future service days** is the number of days in the period starting when:

- (a) the termination happened; or
- (b) for a benefit referred to in paragraph 295-460(c)—the member became unable to engage in \*gainful employment; and ending on the member's \*last retirement day.

**total service days** is the sum of future service days and the number of days in:

- (a) for a benefit that is a \*superannuation lump sum—the \*service period for the superannuation lump sum; or
- (b) for another benefit—the period ending on the first day of the period to which the first payment of the benefit relates and starting on the earliest of:
  - (i) the day on which the member joined the relevant \*superannuation fund; and
  - (ii) the first day of the period of employment to which the benefit relates (including a qualifying period before the member could join the fund and any period when the member was not a member of the fund); and
  - (iii) the day applicable under subsection (3).

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

Section 295-475

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- (3) The applicable day is the first day of the \*service period for a \*superannuation lump sum that is a \*roll-over superannuation benefit if all or part of the \*value of the other benefit is attributable to the roll-over superannuation benefit.

**295-475 RSA providers—deductions for insurance premiums**

An \*RSA provider can deduct premiums it pays for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460 for its \*RSA holders. It can deduct the amounts for the income year in which the premiums are paid.

Note: If the RSA provider receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 5 in section 295-320.

**295-480 Meaning of *whole of life policy* and *endowment policy***

- (1) A ***whole of life policy*** is an insurance policy:
- (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) the death of the individual insured; or
    - (ii) the earlier of the death of the individual insured and the individual attaining the age specified in the policy (being at least the age of 85).
- (2) An ***endowment policy*** is an insurance policy:
- (a) that includes an investment component; and
  - (b) the premiums for which are not dissected; and
  - (c) where the sum insured (and any bonuses) are payable on:
    - (i) a day specified in, or worked out under, the policy; or
    - (ii) the death of the individual insured if that happens before that day;
- but does not include a \*whole of life policy.

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

## Other deductions

### 295-490 Other deductions

(1) An entity can deduct amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
1	CSF N-CSF CADF N-CADF PST	An amount included in the entity's assessable income under Subdivision 295-C that is a *fringe benefit	The contribution is included in assessable income
2	CSF *RSA provider	Contributions made to the CSF or *RSA to the extent they have been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or RSA after it lodged its *income tax return for the income year in which the contributions were made, but only if the provider has <i>not</i> exercised the option mentioned in subsection 295-195(3)	The notice is received

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

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<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the CSF or *RSA is: (i) a *successor fund; or (ii) a superannuation fund that is a continuing fund for the purposes of subsection 311-10(3); and (b) the benefit relates to a contribution that, before it was transferred to the successor fund or continuing fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund or continuing fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section)	The notice mentioned in paragraph (c) is received

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

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<b>Other deductions</b>			
<b>Item</b>	<b>This entity:</b>	<b>Can deduct:</b>	<b>For the income year in which:</b>
2B	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the benefit is included in the assessable income of the CSF or RSA provider under item 2A of the table in subsection 295-190(1); and (b) the relevant contribution has been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or *RSA after it lodged its *income tax return for the income year in which the transfer occurred; and (c) the provider has <i>not</i> exercised the option mentioned in subsection 295-197(4)	The notice mentioned in paragraph (b) is received
3	CSF N-CSF CADF N-CADF	A levy imposed by regulations under section 6 of the <i>Superannuation (Financial Assistance Funding) Levy Act 1993</i>	The levy is incurred
4	Entity that is a N-CSF and has been since 1 July 1988, or since it came into existence if that was later	An amount paid to an entity who includes it in assessable income under section 290-100	It is included in the entity's assessable income

(2) A fund cannot deduct an amount under item 3 of the table for a levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993* to the extent that:  
 (a) the levy is remitted; or

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

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- (b) there is a refund or other application of an overpayment of the levy.
- (3) No other provision of this Act affects a fund's income tax liability in relation to the levy.

**Certain amounts cannot be deducted**

**295-495 Amounts that cannot be deducted**

These entities cannot deduct anything for these amounts:

Note: For an explanation of the acronyms used, see section 295-35.

<b>Amounts that cannot be deducted</b>		
<b>Item</b>	<b>This entity</b>	<b>Cannot deduct anything for:</b>
1	CSF	*Superannuation benefits
2	N-CSF	*Superannuation benefits (except amounts paid as mentioned in item 4 of the table in section 295-490)
3	*RSA provider	*Superannuation benefits paid from, or amounts withdrawn from, *RSAs
4	*RSA provider	Amounts credited to *RSAs
5	CSF N-CSF CADF N-CADF	A repayment of a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>

**Subdivision 295-H—Components of taxable income**

**Table of sections**

- 295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs
- 295-550 Meaning of *non-arm's length income*
- 295-555 Components of taxable income—RSA providers

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



**295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs**

- (1) The taxable income of these entities is split into a \*non-arm's length component and a \*low tax component:
  - (a) \*complying superannuation funds;
  - (b) \*complying approved deposit funds;
  - (c) \*pooled superannuation trusts.

Note: A concessional rate applies to the low tax component, while the non-arm's length component is taxed at the highest marginal rate. The rates are set out in the *Income Tax Rates Act 1986*.

- (2) The **non-arm's length component** for an income year is the entity's \*non-arm's length income for that year less any deductions to the extent that they are attributable to that income.
- (3) The **low tax component** is any remaining part of the entity's taxable income for the income year.

**295-550 Meaning of non-arm's length income**

- (1) An amount of \*ordinary income or \*statutory income is **non-arm's length income** of a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust (other than an amount to which subsection (2) applies or an amount \*derived by the entity in the capacity of beneficiary of a trust) if:
  - (a) it is derived from a \*scheme the parties to which were not dealing with each other at \*arm's length in relation to the scheme; and
  - (b) that amount is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme.
- (2) An amount of \*ordinary income or \*statutory income is also **non-arm's length income** of the entity if it is:
  - (a) a \*dividend paid to the entity by a \*private company; or

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

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- (b) ordinary income or statutory income that is reasonably attributable to such a dividend;  
unless the amount is consistent with an \*arm's length dealing.
- (3) In deciding whether an amount is consistent with an \*arm's length dealing under subsection (2), have regard to:
- (a) the value of \*shares in the company that are assets of the entity; and
  - (b) the cost to the entity of the shares on which the \*dividend was paid; and
  - (c) the rate of that dividend; and
  - (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend; and
  - (e) whether the company has issued any shares to the entity in satisfaction of a dividend paid by the company (or part of it) and, if so, the circumstances of the issue; and
  - (f) any other relevant matters.
- (4) Income \*derived by the entity as a beneficiary of a trust, other than because of holding a fixed entitlement to the income, is **non-arm's length income** of the entity.
- (5) Other income \*derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is **non-arm's length income** of the entity if:
- (a) the entity acquired the entitlement under a \*scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at \*arm's length; and
  - (b) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length.
- (6) This section:
- (a) applies to a \*non-share equity interest in the same way as it applies to a \*share; and
  - (b) applies to an \*equity holder in a company in the same way as it applies to a shareholder in 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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- (c) applies to a \*non-share dividend in the same way as it applies to a \*dividend.

### **295-555 Components of taxable income—RSA providers**

- (1) The taxable income of an \*RSA provider is split into:
- (a) an \*RSA component; and
  - (c) a \*standard component.

Note: The RSA component is taxed at the same concessional rate that applies to the low tax component of complying superannuation funds, complying approved deposit funds and pooled superannuation trusts (see section 23 of the *Income Tax Rates Act 1986*). The standard component is taxed at the standard company rate.

- (2) The ***RSA component*** for an income year is worked out in this way:

*Method statement*

- Step 1. Add these amounts included in the provider's assessable income for the income year:
- (a) amounts included under Subdivision 295-C; and
  - (b) other amounts credited during the year to \*RSAs that it provides.
- Step 2. Subtract from the step 1 amount amounts paid from those \*RSAs (except benefits for the RSA holders or tax).
- Step 3. The result is the ***RSA component***.

- (3) However, if the \*RSA component is more than the \*RSA provider's taxable income:
- (a) the provider's taxable income is equal to that sum; and
  - (b) this Act applies to the provider as if it had a \*tax loss for the income year of an amount that would have been that loss if

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

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the RSA component were not \*ordinary income or \*statutory income.

- (4) The *standard component* is the remaining part (if any) of the \*RSA provider's taxable income for the income year after subtracting the \*RSA component.

**Subdivision 295-I—No-TFN contributions**

**Table of sections**

295-605	Liability for tax on no-TFN contributions income
295-610	No-TFN contributions income
295-615	Meaning of <i>quoted (for superannuation purposes)</i>
295-620	No reduction under Subdivision 295-D
295-625	Assessments

**295-605 Liability for tax on no-TFN contributions income**

- (1) A \*superannuation provider in relation to a \*complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (2) A \*superannuation provider in relation to a \*non-complying superannuation fund is liable to pay tax on the \*no-TFN contributions income of the fund for an income year.
- (3) An \*RSA provider is liable to pay tax on its \*no-TFN contributions income for an income year.

Note 1: The tax is imposed by the *Income Tax Act 1986*.

Note 2: The no-TFN contributions income is subject to a special rate of tax under the *Income Tax Rates Act 1986*.

Note 3: The Commissioner may make an assessment of the amount of income tax on the no-TFN contributions income: see section 169 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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**295-610 No-TFN contributions income**

- (1) An amount included by Subdivision 295-C in the assessable income of a \*complying superannuation fund, a \*non-complying superannuation fund or an \*RSA provider for an income year is ***no-TFN contributions income*** for the year if:
- (a) it is included by that Subdivision in the assessable income of the income year of the fund or RSA provider in which 1 July 2007 occurs, or a later income year; and
  - (b) it is a contribution made to the fund or \*RSA on or after 1 July 2007 to provide \*superannuation benefits for an individual; and
  - (c) by the end of the income year, the individual has not \*quoted (for superannuation purposes) his or her \*tax file number to the \*superannuation provider.

*Exception*

- (2) However, an amount is not ***no-TFN contributions income*** if:
- (a) the contribution was made in relation to a \*superannuation interest or an \*RSA of the individual that existed prior to 1 July 2007; and
  - (b) the total contributions made in relation to the superannuation interest or RSA for the income year that are included in assessable income under Subdivision 295-C did not exceed \$1,000.

**295-615 Meaning of quoted (for superannuation purposes)**

- (1) An individual has ***quoted (for superannuation purposes)*** a \*tax file number to an entity at a time if the individual:
- (a) quotes his or her tax file number to the entity at that time; or
  - (b) is taken by the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997* or this Act to quote his or her tax file number to the entity at that time;
- in connection with the operation or the possible future operation of one or more of the following Acts:

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

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- (c) the Superannuation Acts (within the meaning of Part 25A of the *Superannuation Industry (Supervision) Act 1993*);
  - (d) the *Retirement Savings Accounts Act 1997*.
- (2) An individual is taken to have **quoted (for superannuation purposes)** a \*tax file number to an entity at a time if the Commissioner gives notice of the individual's tax file number to the entity at that time.

**295-620 No reduction under Subdivision 295-D**

There is no reduction of the amount of \*no-TFN contributions income by Subdivision 295-D.

Note: Subdivision 295-D can reduce an amount that would otherwise be included in assessable income. It does not reduce the amount of *no-TFN contributions income*. An amount is still no-TFN contributions income even if, because of Subdivision 295-D, the amount (or part of it) is not included in assessable income.

**295-625 Assessments**

- (2) If the conditions in subsection (3) are met, the Commissioner is taken to have made an assessment of a kind set out in subsection (4).
- (3) The conditions are:
- (a) one of the following gives the Commissioner an \*income tax return for an income year on a particular day (the **return day**):
    - (i) a \*superannuation provider in relation to a \*complying superannuation fund;
    - (ii) a superannuation provider in relation to a \*non-complying superannuation fund;
    - (iii) an \*RSA provider; and
  - (b) the return is the first income tax return given by the provider for the year; and
  - (c) the Commissioner has not already made an assessment of a kind set out in subsection (4) for the provider for the year.

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

- (4) The assessment is taken to have been made for the provider for the income year on the return day, and to be an assessment, in accordance with the information stated in the return, of the amount of income tax payable on the \*no-TFN contributions income (if any) of the provider (or to be an assessment that no tax is payable).
- (5) The return is taken to be notice of the assessment signed by the Commissioner and given to the provider on the return day.

Note: The return may also be taken to be a notice of another assessment: see section 166A of the *Income Tax Assessment Act 1936*.

### **Subdivision 295-J—Tax offset for no-TFN contributions income (TFN quoted within 4 years)**

#### **Table of sections**

295-675	Entitlement to a tax offset
295-680	Amount of the tax offset

#### **295-675 Entitlement to a tax offset**

- (1) A \*superannuation provider in relation to a \*superannuation fund or an \*RSA provider is entitled to a \*tax offset for an income year (the **current year**) commencing on or after 1 July 2007 for amounts of tax that count towards the offset for the provider for the current year.
- (2) An amount of tax counts towards the offset for the provider for the current year if:
  - (a) the tax was payable by the provider in one of the most recent 3 income years ending before the current year; and
  - (b) the tax was payable on an amount of \*no-TFN contributions income of the fund or \*RSA provider; and
  - (c) the amount of no-TFN contributions income was a contribution made to the fund or provider to provide \*superannuation benefits for an individual who, in the current year, has \*quoted (for superannuation purposes) his or her \*tax file number to the provider for the first time.

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

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**Division 295** Taxation of superannuation entities

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Note: In certain circumstances the superannuation provider or RSA provider can get a refund of the tax offset under Division 67.

**295-680 Amount of the tax offset**

The amount of the \*tax offset is the sum of each amount of tax that counts towards the offset for the provider for the current year.

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

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## **Division 301—Superannuation member benefits paid from complying plans etc.**

### **Table of Subdivisions**

	Guide to Division 301
301-A	Application
301-B	Member benefits: general rules
301-C	Member benefits: elements untaxed in fund
301-D	Departing Australia superannuation payments
301-E	Superannuation lump sum member benefits less than \$200

### **Guide to Division 301**

#### **301-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of complying plans etc. This treatment varies depending on the age of the member when they receive the benefit. This Division also sets out the tax treatment of departing Australia superannuation payments and certain payments less than \$200.

### **Subdivision 301-A—Application**

#### **Table of sections**

301-5	Division applies to superannuation member benefits paid from complying plans etc.
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#### **301-5 Division applies to superannuation member benefits paid from complying plans etc.**

This Division applies to:

- (a) \*superannuation member benefits that are paid from a \*complying superannuation plan; and

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

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- (b) \*superannuation guarantee payments; and
- (c) \*small superannuation account payments; and
- (d) \*unclaimed money payments; and
- (e) \*superannuation co-contribution benefit payments; and
- (f) \*superannuation annuity payments.

Note: For the tax treatment of superannuation death benefits paid from complying plans, see Division 302. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

**Subdivision 301-B—Member benefits: general rules**

**Table of sections**

**Member benefits—recipient aged 60 or above**

301-10 All superannuation benefits are tax free

**Member benefits—recipient aged over preservation age and under 60**

301-15 Tax free status of tax free component

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

301-25 Superannuation income stream—taxable component attracts 15% offset

**Member benefits—recipient aged under preservation age**

301-30 Tax free status of tax free component

301-35 Superannuation lump sum—taxable component taxed at 20%

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

**Member benefits—recipient aged 60 or above**

**301-10 All superannuation benefits are tax free**

If you are 60 years or over when you receive a \*superannuation benefit, the benefit is not assessable income and is not \*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 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.
- Note 2: If your superannuation benefit includes an element untaxed in the fund, see Subdivision 301-C.
- Note 3: If your superannuation benefit is a superannuation income stream benefit that is defined benefit income, see Subdivision 303-A.

## **Member benefits—recipient aged over preservation age and under 60**

### **301-15 Tax free status of tax free component**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

- Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70).
- Note 2: For *tax free component*, see Subdivision 307-C.

### **301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.
- Note 1: For *taxable component*, see Subdivision 307-C.
- Note 2: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 0%.
- (3) The amount is so much of the total of the \*taxable components included in your assessable income for the income year under

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

Section 301-25

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subsection (1) as does not exceed your \*low rate cap amount (see section 307-345) for the income year.

- (4) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 15%.
- (5) The amount is so much of the total of the \*taxable components included in your assessable income for an income year under subsection (1) as exceeds your \*low rate cap amount for the income year.

Note: This amount will be nil if the total of the taxable components falls short of your low rate cap amount for the income year.

**301-25 Superannuation income stream—taxable component attracts 15% offset**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your superannuation income stream benefit includes an element untaxed in the fund, see Subdivision 301-C.

**Member benefits—recipient aged under preservation age**

**301-30 Tax free status of tax free component**

If you are under your \*preservation age when you receive a \*superannuation benefit, the \*tax free component of the benefit is not assessable income and is not \*exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: For *tax free component*, see Subdivision 307-C.

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

**301-35 Superannuation lump sum—taxable component taxed at 20%**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*taxable component of the lump sum does not exceed 20%.

Note: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

**301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit**

- (1) If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*taxable component of the benefit is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

*Offset for disability benefit*

- (2) If the benefit is a \*superannuation income stream benefit and a \*disability superannuation benefit, you are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

**Subdivision 301-C—Member benefits: elements untaxed in fund**

**Table of sections**

301-90	Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

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**Member benefits (element untaxed in fund)—recipient aged 60 or above**

- 301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder
- 301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

**Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

- 301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder
- 301-110 Superannuation income stream—element untaxed in fund is assessable income

**Member benefits (element untaxed in fund)—recipient aged under preservation age**

- 301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder
- 301-120 Superannuation income stream—element untaxed in fund is assessable income

**Miscellaneous**

- 301-125 Unclaimed money payments by the Commissioner

**301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision**

If you receive a \*superannuation benefit that includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation benefit under Subdivision 301-B; and
- (b) the \*element taxed in the fund (if any) included in the benefit is treated in the same way as the taxable component of a superannuation benefit under Subdivision 301-B; and
- (c) the element untaxed in the fund is treated in accordance with this Subdivision.

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

Note: If your superannuation benefit is a superannuation income stream benefit that is defined benefit income, see Subdivision 303-A.

### **Member benefits (element untaxed in fund)—recipient aged 60 or above**

#### **301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are 60 years or over when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 15%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

#### **301-100 Superannuation income stream—element untaxed in fund attracts 10% offset**

- (1) If you are 60 years or over when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.
- (2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

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

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**Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60**

**301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount worked out under subsection (3) does not exceed 30%.
- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

Note: To the extent that the element untaxed in the fund exceeds the amount worked out under this subsection, it is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) If you are entitled to one or more \*tax offsets under subsection (2) for \*superannuation benefits that you receive in an income year, you are entitled to a tax offset that ensures that the rate of income tax on the amount worked out under subsection (5) does not exceed 15%.
- (5) The amount is so much of the total of the one or more amounts worked out under subsection (3) as does not exceed your \*low rate cap amount for the income year.
- (6) If you are also entitled to a \*tax offset under subsection 301-20(2) for the income year, reduce your \*low rate cap amount for the purposes of subsection (5) of this section for the income year by the amount mentioned in subsection 301-20(3).

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

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**301-110 Superannuation income stream—element untaxed in fund is assessable income**

If you are under 60 years but have reached your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

**Member benefits (element untaxed in fund)—recipient aged under preservation age****301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder**

- (1) If you are under your \*preservation age when you receive a \*superannuation lump sum from a \*superannuation plan, the \*element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 30%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*element untaxed in the fund as does not exceed your \*untaxed plan cap amount for the \*superannuation plan at the time you receive the benefit.

**301-120 Superannuation income stream—element untaxed in fund is assessable income**

If you are under your \*preservation age when you receive a \*superannuation income stream benefit, the \*element untaxed in the fund of the benefit is assessable income.

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

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Section 301-125

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**Miscellaneous**

**301-125 Unclaimed money payments by the Commissioner**

For the purposes of this Subdivision, treat a \*superannuation lump sum paid by the Commissioner under subsection 17(2), 20H(2), (2AA), (2A) or (3) or 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* as if it were paid from a \*superannuation plan.

**Subdivision 301-D—Departing Australia superannuation payments**

**Table of sections**

301-170	<i>Departing Australia superannuation payments</i>
301-175	Treatment of departing Australia superannuation benefits

**301-170 *Departing Australia superannuation payments***

- (1) A \*superannuation lump sum is a *departing Australia superannuation payment* if it:
- (a) is paid to a person who has departed Australia; and
  - (b) is paid:
    - (i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are specified in regulations made for the purposes of this definition; or
    - (ii) in accordance with section 67A of the *Small Superannuation Accounts Act 1995*; or
    - (iii) by an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*) and is made in accordance with rules of the fund that are substantially similar to the regulations specified as mentioned in subparagraph (i).

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

- (2) Also, a \*superannuation lump sum is a **departing Australia superannuation payment** if it is paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (3) Despite subsection (2), a \*superannuation lump sum paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* because a person has been identified in a notice under section 20C of that Act is not a **departing Australia superannuation payment** if, when it is paid, the Commissioner is satisfied that:
- (a) the person has not been, under the *Migration Act 1958*, the holder of a temporary visa that ceased to be in effect at least 6 months ago; or
  - (b) the person has been the holder of such a visa but has not left Australia (within the meaning of that Act) at least 6 months ago but after starting to be the holder of the visa.
- (4) Despite subsection (2), a \*superannuation lump sum that is paid under subsection 20H(2), (2AA), (2A) or (3) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and is prescribed by the regulations for the purposes of this subsection is not a **departing Australia superannuation payment**.

### **301-175 Treatment of departing Australia superannuation benefits**

- (1) Despite anything else in this Division, if you receive a \*superannuation benefit that is a \*departing Australia superannuation payment, the benefit is not assessable income and is not \*exempt income.
- (2) However, you are liable to pay income tax on that payment at the rate declared by the Parliament in respect of \*departing Australia superannuation payments.

Note 1: The tax is imposed in the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* and the amount of the tax is set out in that Act.

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

Section 301-225

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Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

**Subdivision 301-E—Superannuation lump sum member benefits less than \$200**

**Table of sections**

301-225 Superannuation lump sum member benefits less than \$200 are tax free

**301-225 Superannuation lump sum member benefits less than \$200 are tax free**

- (1) Despite anything else in this Division (apart from Subdivision 301-D), a \*superannuation member benefit that you receive is not assessable income and is not \*exempt income if:
  - (a) the benefit is a \*superannuation lump sum; and
  - (b) the amount of the benefit is less than \$200; and
  - (c) the \*value of the \*superannuation interest from which the benefit is paid is nil just after the benefit is paid; and
  - (d) the requirements (if any) specified in the regulations in relation to the benefit are satisfied.
- (2) Despite anything else in this Division (apart from Subdivision 301-D), a \*superannuation member benefit that you receive is not assessable income and is not \*exempt income if:
  - (a) the benefit is a \*superannuation lump sum; and
  - (b) the benefit is paid to you under subsection 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in a case covered by paragraph (d) of that subsection; and
  - (c) the amount of the benefit is less than \$200.

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

## **Division 302—Superannuation death benefits paid from complying plans etc.**

### **Table of Subdivisions**

	Guide to Division 302
302-A	Application
302-B	Death benefits to dependant
302-C	Death benefits to non-dependant
302-D	Definitions relating to dependants

### **Guide to Division 302**

#### **302-1 What this Division is about**

This Division sets out the tax treatment of superannuation death benefits received by members of complying plans etc. This treatment varies depending on the age of the deceased when they died (and in some cases on the age of the recipient of the benefit).

### **Subdivision 302-A—Application**

#### **Table of sections**

302-5	Division applies to superannuation death benefits paid from complying plans etc.
302-10	Superannuation death benefits paid to trustee of deceased estate

#### **302-5 Division applies to superannuation death benefits paid from complying plans etc.**

This Division applies to \*superannuation death benefits that:

- (a) are paid from a \*complying superannuation plan; or

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

Section 302-10

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- (b) are \*superannuation guarantee payments, \*small superannuation account payments, \*unclaimed money payments, \*superannuation co-contribution benefit payments or \*superannuation annuity payments.

Note: For the tax treatment of superannuation member benefits paid from complying plans, see Division 301. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

**302-10 Superannuation death benefits paid to trustee of deceased estate**

- (1) This section applies to you if:
- (a) you are the trustee of a deceased estate; and
  - (b) you receive a \*superannuation death benefit in your capacity as trustee.
- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.
- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the \*superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the benefit is taken to be income to which no beneficiary is presently entitled.

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

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## **Subdivision 302-B—Death benefits to dependant**

### **Table of sections**

#### **Lump sum death benefits to dependants are tax free**

302-60 All of superannuation lump sum is tax free

#### **Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

302-65 Superannuation income stream benefits are tax free

#### **Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

302-70 Superannuation income stream—tax free status of tax free component

302-75 Superannuation income stream—taxable component attracts 15% offset

#### **Death benefits to dependant—elements untaxed in fund**

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream—element untaxed in fund attracts 10% offset

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream—element untaxed in fund is assessable income

## **Lump sum death benefits to dependants are tax free**

### **302-60 All of superannuation lump sum is tax free**

A \*superannuation lump sum that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

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

Section 302-65

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**Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above**

**302-65 Superannuation income stream benefits are tax free**

A \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income in either or both of the following cases:

- (a) you are 60 years or over when you receive the benefit;
- (b) the deceased died aged 60 or over.

Note 1: If your superannuation income stream benefit includes an element untaxed in the fund, see section 302-85.

Note 2: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

**Superannuation income stream—deceased died aged under 60 and dependant aged under 60**

**302-70 Superannuation income stream—tax free status of tax free component**

The \*tax free component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income if:

- (a) you are under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Note: For *tax free component*, see Subdivision 307-C.

**302-75 Superannuation income stream—taxable component attracts 15% offset**

- (1) The \*taxable component of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:

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



- (a) you are under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset equal to 15% of the \*taxable component of the benefit.

### **Death benefits to dependant—elements untaxed in fund**

#### **302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant**

If a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant includes an \*element untaxed in the fund:

- (a) the \*tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation income stream benefit under section 302-65 or 302-70; and
- (b) the \*element taxed in the fund (if any) of the benefit is treated in the same way as the \*taxable component of a superannuation income stream benefit under section 302-65 or 302-75; and
- (c) the element untaxed in the fund is treated in accordance with section 302-85 or 302-90.

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

#### **302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset**

- (1) The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income in either or both of the following cases:
  - (a) you are 60 years or over when you receive the benefit;

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

Section 302-90

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(b) the deceased died aged 60 or above.

(2) You are entitled to a \*tax offset equal to 10% of the \*element untaxed in the fund of the benefit.

Note: If your superannuation income stream benefit is defined benefit income, see Subdivision 303-A.

**302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income**

The \*element untaxed in the fund of a \*superannuation income stream benefit that you receive because of the death of a person of whom you are a \*death benefits dependant is assessable income if:

- (a) you are aged under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

**Subdivision 302-C—Death benefits to non-dependant**

**Table of sections**

**Superannuation lump sum**

- 302-140 Superannuation lump sum—tax free status of tax free component
- 302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

**Superannuation lump sum**

**302-140 Superannuation lump sum—tax free status of tax free component**

The \*tax free component of a \*superannuation lump sum that you receive because of the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

Note: For *tax free component*, see Subdivision 307-C.

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

**302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%**

- (1) If you receive a \*superannuation lump sum because of the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element taxed in the fund of the lump sum does not exceed 15%.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the \*element untaxed in the fund of the lump sum does not exceed 30%.

**Subdivision 302-D—Definitions relating to dependants**

**Table of sections**

302-195	Meaning of <i>death benefits dependant</i>
302-200	What is an <i>interdependency relationship</i> ?

**302-195 Meaning of *death benefits dependant***

- (1) A *death benefits dependant*, of a person who has died, is:
- (a) the deceased person's \*spouse or former spouse; or
  - (b) the deceased person's \*child, aged less than 18; or
  - (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
  - (d) any other person who was a dependant of the deceased person just before he or she died.
- (2) For the purposes of this Division, treat an individual who receives a \*superannuation lump sum because of the death of another person as a *death benefits dependant* of the deceased person in relation to

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

Section 302-200

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the lump sum if the deceased person \*died in the line of duty (see subsection (3)) as:

- (a) a member of the Defence Force; or
  - (b) a member of the Australian Federal Police or the police force of a State or Territory; or
  - (c) a protective service officer (within the meaning of the *Australian Federal Police Act 1979*).
- (3) For the purposes of subsection (2), a person ***died in the line of duty*** if the person died in the circumstances specified in the regulations.

**302-200 What is an *interdependency relationship*?**

- (1) Two persons (whether or not related by family) have an ***interdependency relationship*** under this section if:
  - (a) they have a close personal relationship; and
  - (b) they live together; and
  - (c) one or each of them provides the other with financial support; and
  - (d) one or each of them provides the other with domestic support and personal care.
- (2) In addition, 2 persons (whether or not related by family) also have an ***interdependency relationship*** under this section if:
  - (a) they have a close personal relationship; and
  - (b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and
  - (c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.
- (3) The regulations may specify:
  - (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an ***interdependency relationship*** under this section; and

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

- (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship* under this section.

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

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## Division 303—Superannuation benefits paid in special circumstances

### Table of Subdivisions

	Guide to Division 303
303-A	Modifications for defined benefit income
303-B	Other special circumstances

### Guide to Division 303

#### 303-1 What this Division is about

Under Subdivision 303-A, the tax treatment of superannuation income stream benefits that are defined benefit income can be less favourable to you if that income exceeds your defined benefit income cap.

Subdivision 303-B sets out special circumstances in which superannuation benefits are neither assessable income nor exempt income.

### Subdivision 303-A—Modifications for defined benefit income

#### Table of sections

##### Operative provisions

303-2	Effect of exceeding defined benefit income cap on assessable income
303-3	Effect of exceeding defined benefit income cap on tax offsets
303-4	Meaning of <i>defined benefit income cap</i>

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

## Operative provisions

### 303-2 Effect of exceeding defined benefit income cap on assessable income

- (1) Despite sections 301-10 and 302-65, if:
  - (a) during a \*financial year, you receive one or more \*superannuation income stream benefits:
    - (i) that are \*defined benefit income; and
    - (ii) to which either section 301-10 or 302-65 applies; and
  - (b) the sum of all of those benefits (other than any \*elements untaxed in the fund of those benefits) exceeds your \*defined benefit income cap for the financial year;  
50% of that excess is assessable income.
- (2) **Defined benefit income** is a \*superannuation income stream benefit that is paid from a \*capped defined benefit income stream.

### 303-3 Effect of exceeding defined benefit income cap on tax offsets

- Despite sections 301-100 and 302-85, if:
- (a) during a \*financial year, you receive one or more \*superannuation income stream benefits:
    - (i) that are \*defined benefit income; and
    - (ii) in relation to which you are entitled, or apart from this section you would be entitled, to one or more \*tax offsets under section 301-100 or 302-85; and
  - (b) the sum of all of the superannuation income stream benefits you receive during the financial year:
    - (i) that are defined benefit income; and
    - (ii) to which section 301-10, 301-100, 302-65 or 302-85 applies;exceeds your \*defined benefit income cap for the financial year;  
the sum of those tax offsets is reduced (but not below zero) by an amount equal to 10% of that excess.

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

Section 303-4

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**303-4 Meaning of *defined benefit income cap***

- (1) Your *defined benefit income cap* for a \*financial year is the following amount (rounded up to the nearest dollar):

$$\frac{\text{The *general transfer balance cap for the *financial year}}{16}$$

- (2) Despite subsection (1) of this section, if a particular day in a \*financial year is the first day in relation to which section 301-10, 301-100, 302-65 or 302-85:

- (a) applies to you in respect of an amount of \*defined benefit income; or  
(b) would apart from this Subdivision apply to you in respect of an amount of defined benefit income;

your *defined benefit income cap* for the financial year is the following amount (rounded up to the nearest dollar):

$$\frac{\text{The *general transfer balance cap for the *financial year}}{16} \times \frac{1 + \frac{\text{Number of days remaining in the *financial year after that day}}{\text{Number of days in the *financial year}}}{\text{Number of days in the *financial year}}$$

- (3) Despite subsections (1) and (2) of this section, if:
- (a) in a case where subsection (1) applies—during the \*financial year, you receive any amounts of \*defined benefit income to which none of sections 301-10, 301-100, 302-65 and 302-85 apply; or
- (b) in a case where subsection (2) applies—during the financial year, you receive after the day mentioned in that subsection any amounts of defined benefit income to which none of sections 301-10, 301-100, 302-65 and 302-85 apply;
- your *defined benefit income cap* for the financial year under subsection (1) or (2) (as the case requires) is reduced by the sum of those amounts.

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



## **Subdivision 303-B—Other special circumstances**

### **Table of sections**

303-5	Commutation of income stream if you are under 25 etc.
303-10	Superannuation lump sum member benefit paid to member having a terminal medical condition
303-15	Payments from release authorities—excess concessional contributions
303-17	Payments from release authorities etc.—released non-concessional contributions and associated earnings
303-20	Payments from release authorities—Division 293 tax

### **303-5 Commutation of income stream if you are under 25 etc.**

- (1) A \*superannuation lump sum that you receive from a \*complying superannuation plan is not assessable income and is not \*exempt income if:
  - (a) the superannuation lump sum arises from the commutation of a \*superannuation income stream; and
  - (b) any of these conditions are satisfied:
    - (i) you are under 25 when you receive the superannuation lump sum;
    - (ii) the commutation takes place because you turn 25;
    - (iii) you are permanently disabled when you receive the superannuation lump sum; and
  - (c) you had received one or more \*superannuation income stream benefits from the superannuation income stream before the commutation because of the death of a person of whom you are a \*death benefits dependant.
- (2) Subsection (1) applies despite Divisions 301 and 302.

### **303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition**

- (1) This section applies to a \*superannuation member benefit that:
  - (a) is a \*superannuation lump sum; and

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

Section 303-15

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(b) is:

- (i) paid from a \*complying superannuation plan; or
  - (ii) a \*superannuation guarantee payment, a \*small superannuation account payment, an \*unclaimed money payment, a \*superannuation co-contribution benefit payment or a \*superannuation annuity payment.
- (2) The lump sum is not assessable income and is not \*exempt income if a \*terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*.

**303-15 Payments from release authorities—excess concessional contributions**

A \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued in relation to an election you make under section 96-5 in Schedule 1 to the *Taxation Administration Act 1953*, is not assessable income and is not \*exempt income.

**303-17 Payments from release authorities etc.—released non-concessional contributions and associated earnings**

A \*superannuation benefit is not assessable income and is not \*exempt income if it is paid to you in response to a release authority issued under section 96-12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: A related amount may still be included in your assessable income (see Subdivision 292-B).

**303-20 Payments from release authorities—Division 293 tax**

A \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in

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

respect of a \*release entitlement you have, is not assessable income and is not \*exempt income.

Note: However, payments that exceed the release entitlement are assessable: see section 304-20.

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

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## **Division 304—Superannuation benefits in breach of legislative requirements etc.**

### **Guide to Division 304**

#### **304-1 What this Division is about**

This Division overrides the tax treatment in Divisions 301 and 302 if payments from complying superannuation plans etc. are in breach of payment and other rules.

#### **Table of sections**

##### **Operative provisions**

304-5	Application
304-10	Superannuation benefits in breach of legislative requirements etc.
304-15	Excess payments from release authorities
304-20	Excess payments from release authorities—Division 293 tax

#### **Operative provisions**

##### **304-5 Application**

This Division applies despite Divisions 301, 302 and 303.

##### **304-10 Superannuation benefits in breach of legislative requirements etc.**

- (1) Include in your assessable income the amount of a \*superannuation benefit if:
  - (a) any of the following applies:
    - (i) you received the benefit from a \*complying superannuation fund or from a \*superannuation fund that was previously a complying superannuation fund;

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

- (ii) the benefit is attributable to the assets of a complying superannuation fund or from a superannuation fund that was previously a complying superannuation fund; and
  - (b) any of the following applies:
    - (i) the fund was not (when you received the benefit) maintained as required by section 62 of the *Superannuation Industry (Supervision) Act 1993*;
    - (ii) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (2) Include in your assessable income the amount of a \*superannuation benefit if:
- (a) any of the following applies:
    - (i) you received the benefit from a \*complying approved deposit fund or from an \*approved deposit fund that was previously a complying approved deposit fund;
    - (ii) the benefit is attributable to the assets of a complying approved deposit fund or from an approved deposit fund that was previously a complying approved deposit fund; and
  - (b) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 32(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) Include in your assessable income the amount of a \*superannuation benefit you receive from an \*RSA in breach of the *Retirement Savings Accounts Act 1997*, regulations under that Act or payment standards prescribed under subsection 38(2) of that Act.
- (4) However, you do not have to include the amount in your assessable income to the extent that the Commissioner is satisfied that it is unreasonable that it be included having regard to:
- (a) for subsection (1) or (2)—the nature of the fund; and
  - (b) any other matters that the Commissioner considers relevant.

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

Section 304-15

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- (5) For the purposes of this section, treat your receipt of a benefit (other than a \*superannuation benefit) out of, or attributable to, the assets of a \*superannuation plan as your receipt of a superannuation benefit.

**304-15 Excess payments from release authorities**

- (1) This section applies to a \*superannuation benefit that you receive, paid in relation to a release authority given in relation to you in accordance with section 292-410.
- (2) The \*superannuation benefit is not assessable income and is not \*exempt income to the extent that it does not exceed the amount mentioned in subsection (3).
- (3) The amount is the amount of \*excess non-concessional contributions tax stated in the release authority, reduced (but not below zero) by the amount of any \*superannuation benefit that was not assessable income and not \*exempt income under a previous operation of subsection (2) in relation to the release authority.
- (4) The \*superannuation benefit is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (3).

**304-20 Excess payments from release authorities—Division 293 tax**

- (1) Despite section 303-20, a \*superannuation benefit that you receive (or are taken to receive), paid in relation to a release authority issued to you in respect of a \*release entitlement you have, is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (2).

Note: Section 303-20 makes superannuation benefits received under a release authority non-assessable non-exempt income.

- (2) The amount is the amount of the \*release entitlement, reduced (but not below zero) by the amount of any \*superannuation benefit that was not assessable income and not \*exempt income under a previous operation of section 303-20 of this Act in relation to that release entitlement.

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

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## **Division 305—Superannuation benefits paid from non-complying superannuation plans**

### **Table of Subdivisions**

	Guide to Division 305
305-A	Superannuation benefits from Australian non-complying superannuation funds
305-B	Superannuation benefits from foreign superannuation funds

### **Guide to Division 305**

#### **305-1 What this Division is about**

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).

### **Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds**

#### **Table of sections**

305-5	Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds
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#### **305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds**

A \*superannuation benefit that you receive from a \*non-complying superannuation fund that is an \*Australian superannuation fund (for the income year in which the benefit is paid) is \*exempt income if:

- (a) the fund:
- (i) has never been a \*complying superannuation fund; or

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

Section 305-55

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- (ii) last stopped being a complying superannuation fund for the income year in which 1 July 1995 occurred or a later income year; and
- (b) the fund:
  - (i) has never been a \*foreign superannuation fund; or
  - (ii) last stopped being a foreign superannuation fund for the income year in which 1 July 1995 occurred or a later income year.

**Subdivision 305-B—Superannuation benefits from foreign superannuation funds**

**Table of sections**

**Application of Subdivision**

305-55 Restriction to lump sums received from certain foreign superannuation funds

**Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

305-60 Lump sums tax free—foreign resident period

305-65 Lump sums tax free—Australian resident period

**Lump sums to which sections 305-60 and 305-65 do not apply**

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75 Lump sums—*applicable fund earnings*

305-80 Lump sums paid into complying superannuation plans—choice

**Application of Subdivision**

**305-55 Restriction to lump sums received from certain foreign superannuation funds**

- (1) This Subdivision applies if:
  - (a) you receive a \*superannuation lump sum from a \*foreign superannuation fund; and

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



- (b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).
- (2) This Subdivision also applies if you receive a payment, other than a pension payment, from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
- (a) is not, and never has been, an \*Australian superannuation fund or a \*foreign superannuation fund; and
  - (b) was not established in Australia; and
  - (c) is not centrally managed or controlled in Australia.
- (3) This Subdivision applies to a payment mentioned in subsection (2) from a scheme mentioned in that subsection in the same way as it applies to a \*superannuation lump sum from a \*foreign superannuation fund.

### **Lump sums received within 6 months after Australian residency or termination of foreign employment etc.**

#### **305-60 Lump sums tax free—foreign resident period**

A \*superannuation lump sum you receive from a \*foreign superannuation fund is not assessable income and is not \*exempt income if:

- (a) you receive it within 6 months after you become an Australian resident; and
- (b) it relates only to a period:
  - (i) when you were not an Australian resident; or
  - (ii) starting after you became an Australian resident and ending before you receive the payment; and
- (c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

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

**305-65 Lump sums tax free—Australian resident period**

- (1) A \*superannuation lump sum you receive is not assessable income and is not \*exempt income if:
- (a) you receive it in consequence of:
    - (i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or
    - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
  - (b) it relates only to the period of that employment, holding of office, or engagement; and
  - (c) you were an Australian resident during the period of the employment, holding of office or engagement; and
  - (d) you receive the lump sum within 6 months after the termination; and
  - (e) the lump sum is not exempt from taxation under the law of the foreign country; and
  - (f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
  - (g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, the lump sum will fall within section 305-70.

- (2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:
- (a) retirement from the employment, office or engagement; and
  - (b) cessation of the employment, office or engagement because of death.

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

## **Lump sums to which sections 305-60 and 305-65 do not apply**

### **305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.**

#### *Superannuation lump sums to which section applies*

- (1) This section applies to a \*superannuation lump sum you receive from a \*foreign superannuation fund if:
  - (a) you are an Australian resident when you receive the lump sum; and
  - (b) sections 305-60 and 305-65 do not apply to the lump sum.

#### *Assessable part*

- (2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:
  - (a) your \*applicable fund earnings (worked out under section 305-75); or
  - (b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

#### *Non-assessable, non-exempt part*

- (3) The remainder of the lump sum is not assessable income and is not \*exempt income.

#### *Amount paid into another foreign superannuation fund*

- (4) Any part of the lump sum that is paid into another \*foreign superannuation fund is not assessable income and is not \*exempt income.

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

Section 305-75

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Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign superannuation fund may include an amount (*previously exempt fund earnings*) attributable to the lump sum.

**305-75 Lump sums—*applicable fund earnings***

- (1) This section applies if you need to work out an amount (your *applicable fund earnings*) in relation to a \*superannuation lump sum to which section 305-70 applies that you receive from a \*foreign superannuation fund.

*If you were an Australian resident at all times*

- (2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
    - (i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the *start day*);
    - (ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the period;
  - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

*If you were not an Australian resident at all times*

- (3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:

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

- (i) the amount in the fund that was vested in you just before the day (the **start day**) you first became an Australian resident during the period;
  - (ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;
  - (iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other \*foreign superannuation fund during the remainder of the period;
- (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax);
  - (c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;
  - (d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

*Previous lump sums from the fund*

- (4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the **start day** is the day after you received the most recent such lump sum.

*Previously exempt fund earnings*

- (5) You have an amount of **previously exempt fund earnings** in respect of the lump sum if:
  - (a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for \*foreign income tax) is attributable to the amount; and
  - (b) the amount is attributable to a payment received from a \*foreign superannuation fund; and
  - (c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this

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

Section 305-80

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section, but for the payment having been received by another foreign superannuation fund.

- (6) The amount of your *previously exempt fund earnings* is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

**305-80 Lump sums paid into complying superannuation plans—choice**

- (1) This section applies if:
- (a) section 305-70 applies to a \*superannuation lump sum that is paid from a \*foreign superannuation fund; and
  - (b) you are taken to receive the lump sum under section 307-15; and
  - (c) all of the lump sum is paid into a \*complying superannuation fund; and
  - (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a \*superannuation interest in the foreign superannuation fund.
- (2) You may choose for all or part of your \*applicable fund earnings worked out under section 305-75 (but not exceeding the amount of the lump sum) to be included in the assessable income of the \*complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.

- (3) Your choice:
- (a) must be in writing; and
  - (b) must comply with the requirements (if any) specified in the regulations.

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

## Division 306—Roll-overs etc.

### Guide to Division 306

#### 306-1 What this Division is about

This Division sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments.

#### Table of sections

##### Operative provisions

306-5	Effect of a roll-over superannuation benefit
306-10	<b><i>Roll-over superannuation benefit</i></b>
306-12	<b><i>Involuntary roll-over superannuation benefit</i></b>
306-15	Tax on <b><i>excess untaxed roll-over amounts</i></b>
306-20	Effect of payment to government of unclaimed superannuation money
306-25	Payments connected with financial claims scheme to RSAs

#### Operative provisions

##### 306-5 Effect of a roll-over superannuation benefit

A \*roll-over superannuation benefit that you are taken to receive under section 307-15 is not assessable income and is not \*exempt income.

Note: Roll-over superannuation benefits are paid into a complying superannuation plan or are used to purchase a superannuation annuity on your behalf. However, you are taken to receive the benefit under subsection 307-15(1).

##### 306-10 ***Roll-over superannuation benefit***

A \*superannuation benefit is a ***roll-over superannuation benefit*** 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 benefit is a \*superannuation lump sum and a \*superannuation benefit; and
- (b) the benefit is *not* a superannuation benefit of a kind specified in the regulations; and
- (c) the benefit satisfies any of the following conditions:
  - (i) it is paid from a \*complying superannuation plan;
  - (ii) it is an \*unclaimed money payment;
  - (iii) it arises from the commutation of a \*superannuation annuity; and
- (d) the benefit satisfies any of the following conditions:
  - (i) it is paid to a complying superannuation plan;
  - (ii) it is paid to an entity to purchase a superannuation annuity from the entity.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider.

Note 2: For the treatment of amounts transferred within a superannuation plan, see subsection 307-5(8).

**306-12 *Involuntary roll-over superannuation benefit***

A \*roll-over superannuation benefit is an ***involuntary roll-over superannuation benefit*** if it is:

- (a) a payment transferring a \*superannuation interest of:
  - (i) a member of a \*superannuation fund; or
  - (ii) a depositor with an \*approved deposit fund; or
  - (iii) a holder of an \*RSA;to a \*successor fund (other than a \*self managed superannuation fund) without the consent of the member, depositor or holder; or
- (b) a payment transferring an \*accrued default amount of a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a \*complying superannuation fund to another complying superannuation fund:

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

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- (i) as a result of an election under paragraph 29SAA(1)(b) of that Act; or
  - (ii) under section 388 of that Act;
- if:
- (iii) that member becomes a member (within the meaning of that Act) of the other fund immediately after the transfer; and
  - (iv) the transfer happens during the period beginning on 1 July 2015 and ending on 1 July 2017; or
- (c) a payment of consideration for the issue to a person of a beneficial interest in an eligible rollover fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) in accordance with an application on behalf of that person under section 243 of that Act.

### **306-15 Tax on *excess untaxed roll-over amounts***

- (1) This section applies to a \*superannuation benefit if:
- (a) it is a \*roll-over superannuation benefit that is paid into a \*superannuation plan; and
  - (b) you are taken to receive the benefit under section 307-15; and
  - (c) the benefit consists of, or includes, an amount that is an \*element untaxed in the fund; and
  - (d) the amount mentioned in paragraph (c) exceeds your \*untaxed plan cap amount (see section 307-350), for the superannuation plan from which the benefit is paid, just before you are taken to receive the benefit.

Note: To work out your untaxed plan cap amount in relation to an unclaimed money payment from the Commissioner, see subsection 307-350(2B).

- (1A) However, this section does not apply to a \*roll-over superannuation benefit that is transferred from one \*superannuation interest in a \*superannuation plan to another superannuation interest in the same plan.

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

Section 306-20

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Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider. Such a benefit may be a roll-over superannuation benefit: see section 306-10.

Note 2: For the treatment of amounts transferred within the same superannuation plan, see subsection 307-5(8).

(2) The **excess untaxed roll-over amount** is the amount of the excess mentioned in paragraph (1)(d).

(3) You are liable to pay income tax on the \*excess untaxed roll-over amount at the rate declared by the Parliament in respect of such amounts.

Note 1: The tax is imposed in the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, and the amount of tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

**306-20 Effect of payment to government of unclaimed superannuation money**

An \*unclaimed money payment that you are taken to receive under section 307-15 because it is paid in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or because it is paid as mentioned in subsection 18(4) of that Act, to the Commissioner or a State or Territory authority (within the meaning of that Act) is not assessable income and is not \*exempt income.

**306-25 Payments connected with financial claims scheme to RSAs**

(1) This section applies if:

(a) a person is the holder of an \*RSA (the **old RSA**) of which an \*ADI is the \*RSA provider; and

(b) an entitlement of the person arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with the old RSA; and

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

- (c) either:
- (i) the entitlement, so far as it relates to the old RSA, is met wholly or partly by the making of a payment to another RSA (the **new RSA**) that the person is the holder of (whether or not the new RSA was established under section 16AH of the *Banking Act 1959*); or
  - (ii) a liquidator of the ADI pays a distribution from the liquidation of the ADI, so far as the distribution is attributable to the old RSA, to another RSA (also the **new RSA**) that the person is the holder of (whether or not the new RSA was established under section 16AR of the *Banking Act 1959*).
- (2) This Part (except this section), and the other provisions of this Act (except this section) so far as they relate to this Part, apply in relation to the payment to the new RSA as if:
- (a) the payment were made from the old RSA to the new RSA; and
  - (b) the entity that made the payment (rather than the \*ADI) were the \*RSA provider of the old RSA.
- Note: The effects of this include:
- (a) the payment is a superannuation member benefit of the person (because of sections 307-5 and 307-15); and
  - (b) the payment is a superannuation lump sum under Subdivision 307-B (unless regulations prevent this); and
  - (c) the payment is a roll-over superannuation benefit under section 306-10 (unless regulations prevent this); and
  - (d) reporting obligations (such as those in section 390-10 in Schedule 1 to the *Taxation Administration Act 1953*) apply to the entity that made the payment as if it were the RSA provider of the old RSA.
- (3) However, for the purposes of section 307-125, determine the \*value of the \*superannuation interest, and the amount of each of the \*tax free component and the \*taxable component of the interest:
- (a) when the entitlement arose; or

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

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- (b) if a \*superannuation income stream benefit had been paid from the old RSA before that time—at the time the relevant \*superannuation income stream commenced.
- (4) Subsection (3) has effect despite:
  - (a) subsection 307-125(3) (as it applies because of subsection (2) of this section); and
  - (b) paragraph 307-125(3)(a) of the *Income Tax (Transitional Provisions) Act 1997*.
- (5) This section has effect despite:
  - (a) Division 253; and
  - (b) Division 21 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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## **Division 307—Key concepts relating to superannuation benefits**

### **Table of Subdivisions**

	Guide to Division 307
307-A	Superannuation benefits generally
307-B	Superannuation lump sums and superannuation income stream benefits
307-C	Components of a superannuation benefit
307-D	Superannuation interests
307-E	Elements taxed and untaxed in the fund of the taxable component of superannuation benefit
307-F	Low rate cap and untaxed plan cap amounts
307-G	Other concepts

### **Guide to Division 307**

#### **307-1 What this Division is about**

This Division defines concepts used in Divisions 301 to 306, such as *superannuation benefit*, and the *tax free component* and *taxable component* of such benefits. To work out those components, it is often necessary to work out the corresponding components of the *superannuation interest* from which the benefit is paid (see Subdivision 307-D).

This Division also defines the *element taxed in the fund* and the *element untaxed in the fund* of superannuation benefits, which are relevant to superannuation benefits paid from untaxed funds etc. (see Subdivision 307-D).

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

Section 307-5

Subdivision 307-F defines the concessional limits used in Division 301 known as the low rate cap amount and untaxed plan cap amount.

**Subdivision 307-A—Superannuation benefits generally**

**Table of sections**

- 307-5 What is a *superannuation benefit*?
- 307-10 Payments that are not *superannuation benefits*
- 307-15 Payments for your benefit or at your direction or request

**307-5 What is a *superannuation benefit*?**

(1) A *superannuation benefit* is a payment described in the table.

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
1	<i>superannuation fund payment</i>	A payment to you from a *superannuation fund because you are a fund member.	A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.
2	<i>RSA payment</i>	A payment to you from an *RSA because you are the holder of the RSA.	A payment to you from an RSA, after another person's death, because the other person was the holder of the RSA.
3	<i>approved deposit fund payment</i>	A payment to you from an *approved deposit fund because you are a depositor with the fund.	A payment to you from an approved deposit fund after another person's death, because the other person was a depositor with the fund.

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

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
4	<i>small superannuation account payment</i>	A payment to you under section 63, 64, 65, 66, 67 or 67A, or subsection 76(6), of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act.)	A payment to you under section 68 or subsection 76(7) of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act to the legal personal representative of the deceased.)
5	<i>unclaimed money payment</i>	A payment to you: (a) under subsection 17(1), (2) or (2AB), 20F(1) or 20H(2), (2AA) or (2A), section 24E or subsection 24G(2) or (3A) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) as mentioned in subsection 18(4) or (5) of that Act;  otherwise than because of another person's death.	A payment to you: (a) under subsection 17(1), (2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3) or 24G(2), (3A) or (3B) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) as mentioned in subsection 18(4) or (5) of that Act;  because of another person's death.

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

Section 307-5

<b>Types of superannuation benefits</b>			
<b>Item</b>	<b>Column 1 Superannuation benefit type</b>	<b>Column 2 Superannuation member benefit</b>	<b>Column 3 Superannuation death benefit</b>
6	<i>superannuation co-contribution benefit payment</i>	A payment to you under paragraph 15(1)(c) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .	A payment to you under paragraph 15(1)(d) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .
7	<i>superannuation guarantee payment</i>	A payment to you under section 65A or 66 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected under the Act to be paid to a person who retires because of incapacity or invalidity.)	A payment to you under section 67 of the <i>Superannuation Guarantee (Administration) Act 1992</i> .  (This provides for money collected under the Act to be paid to the legal personal representative of the deceased.)
8	<i>superannuation annuity payment</i>	A payment to you: (a) from a *superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because you are the annuitant.	A payment to you: (a) from a superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because of the death of the annuitant.

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



- (2) A **superannuation member benefit** is a payment described in column 2 of the table.
- (4) A **superannuation death benefit** is a payment described in column 3 of the table.
- (5) Subsection (6) applies if a \*contributions-splitting superannuation benefit or a \*family law superannuation payment is paid to you because another person is a member of a \*superannuation fund, holder of an \*RSA or depositor with an \*approved deposit fund, or the annuitant under a \*superannuation annuity.
- (6) For the purposes of this section (and despite section 307-15):
- (a) treat yourself as a member of the fund, holder of the \*RSA, depositor with the fund or annuitant under the \*superannuation annuity; and
  - (b) do not treat the other person as a member of the fund, holder of the RSA, depositor with the fund or annuitant under the superannuation annuity.

Note: This means that the benefit is a superannuation benefit for you but not for the other person.

- (7) A **family law superannuation payment** is a payment that:
- (a) is a payment of any of the following kinds:
    - (i) a payment in accordance with Part VIII B of the *Family Law Act 1975*;
    - (ii) a payment in accordance with the *Family Law (Superannuation) Regulations 2001*;
    - (iii) a payment in accordance with Part 7 A of the *Superannuation Industry (Supervision) Regulations 1994*;
    - (iv) a payment in accordance with Part 4 A of the *Retirement Savings Accounts Regulations 1997*;
    - (v) a payment specified in the regulations; and
  - (b) satisfies the requirements (if any) specified in the regulations.

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

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*Treatment of amounts transferred within a superannuation plan*

- (8) If an amount is transferred from one \*superannuation interest in a \*superannuation plan to another superannuation interest in the same plan, treat the transfer as a payment in determining whether the transfer of the amount is a superannuation benefit or a roll-over superannuation benefit.

**307-10 Payments that are not *superannuation benefits***

A payment of any of the following kinds is *not* a **superannuation benefit**:

- (a) an amount payable to a person under an income stream because of the person's temporary inability to engage in \*gainful employment;
- (aa) a benefit to which subsection 26AF(1) or 26AFA(1) of the *Income Tax Assessment Act 1936* applies;
- (ab) an amount required by the *Bankruptcy Act 1966* to be paid to a trustee;
- (b) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (c) an amount:
  - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);

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

- (d) a payment of a pension or an \*annuity from a \*foreign superannuation fund.

### **307-15 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
- (a) determining whether a payment is a *superannuation benefit*, and
  - (b) determining whether a \*superannuation benefit is made to you, or received by you.
- (2) A payment is treated as being made to you, or received by you, if it is made:
- (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

Note: Paragraph (b) would cover, for example, a direction by you that a payment be rolled over from your original superannuation fund into another superannuation fund.

### **Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits**

#### **Table of sections**

307-65	Meaning of <i>superannuation lump sum</i>
307-70	Meaning of <i>superannuation income stream</i> and <i>superannuation income stream benefit</i>
307-75	Meaning of <i>retirement phase superannuation income stream benefit</i>
307-80	When a superannuation income stream is in the <i>retirement phase</i>

#### **307-65 Meaning of *superannuation lump sum***

- (1) A *superannuation lump sum* is a \*superannuation benefit that is not a \*superannuation income stream benefit (see section 307-70).
- (2) Treat a lump sum payment arising from a partial commutation of a \*superannuation income stream as a *superannuation lump sum* for the purposes of this Act (other than Subdivision 295-F).

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

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**307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit***

- (1) A *superannuation income stream benefit* is a \*superannuation benefit specified in the regulations that is paid from a \*superannuation income stream.
- (2) A *superannuation income stream* has the meaning given by the regulations.

Note: For the purposes of the transfer balance cap, the meaning of *superannuation income stream* is affected by subsection 294-50(2).

**307-75 Meaning of *retirement phase superannuation income stream benefit***

- (1) A \*superannuation income stream benefit is a *retirement phase superannuation income stream benefit* (or *RP superannuation income stream benefit*) of a \*superannuation fund at a time if it is payable by the fund at that time from a \*superannuation income stream that is in the \*retirement phase at that time.
- (2) A \*superannuation income stream benefit is also a *retirement phase superannuation income stream benefit* (or *RP superannuation income stream benefit*) of a \*superannuation fund at a time if it is payable by the fund after that time from a \*superannuation income stream that:
  - (a) is a \*deferred superannuation income stream; and
  - (b) is in the \*retirement phase at that time.

**307-80 When a *superannuation income stream* is in the *retirement phase***

- (1) A \*superannuation income stream is in the *retirement phase* at a time if a \*superannuation income stream benefit is payable from it at that time.
- (2) A \*superannuation income stream is also in the *retirement phase* at a time if:

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

- (a) it is a \*deferred superannuation income stream; and
  - (b) a \*superannuation income stream benefit will be payable from it to a person after that time; and
  - (c) the person has satisfied (whether at or before that time) a condition of release specified in any of the following items of the table in Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994*:
    - (i) 101 (retirement);
    - (ii) 102A (terminal medical condition);
    - (iii) 103 (permanent incapacity);
    - (iv) 106 (attaining age 65).
- (3) However, a \*superannuation income stream from which a \*superannuation income stream benefit is payable is not in the **retirement phase** at a time if:
- (a) the superannuation income stream is any of the following:
    - (i) a transition to retirement income stream (within the meaning of Part 6 of the *Superannuation Industry (Supervision) Regulations 1994*);
    - (ii) a non-commutable allocated annuity (within the meaning of those regulations);
    - (iii) a non-commutable allocated pension (within the meaning of those regulations);
    - (iv) a transition to retirement pension (within the meaning of Part 4 of the *Retirement Savings Accounts Regulations 1997*);
    - (v) a non-commutable allocated pension (within the meaning of those regulations); and
  - (b) at or before that time, the person to whom the benefit is payable:
    - (i) has not satisfied a condition of release specified in paragraph (2)(c); or
    - (ii) has satisfied a condition of release specified in subparagraph (2)(c)(i), (ii) or (iii), but has not notified the \*superannuation income stream provider for the superannuation income stream of that fact.

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

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- (4) A \*superannuation income stream is also not in the *retirement phase* in an income year if:
- (a) the superannuation income stream is specified in a commutation authority issued by the Commissioner under Subdivision 136-B in Schedule 1 to the *Taxation Administration Act 1953* to a \*superannuation income stream provider; and
  - (b) the superannuation income stream provider is required by section 136-80 in that Schedule to pay a \*superannuation lump sum but fails to do so within the 60-day period mentioned in that section; and
  - (c) the income year is the income year in which the 60-day period ended, or a later income year.

Note: The operation of this subsection in relation to the part of the income year before the end of the 60-day period is modified for the purposes of the transfer balance cap: see section 294-50.

**Subdivision 307-C—Components of a superannuation benefit**

**Table of sections**

307-120	Components of superannuation benefit
307-125	Proportioning rule
307-130	Superannuation guarantee payment consists entirely of taxable component
307-135	Superannuation co-contribution benefit payment consists entirely of tax free component
307-140	Contributions-splitting superannuation benefit consists entirely of taxable component
307-142	Components of certain unclaimed money payments
307-145	Modification for disability benefits
307-150	Modification in respect of superannuation lump sum with element untaxed in fund

**307-120 Components of superannuation benefit**

- (1) Work out the following components of a \*superannuation benefit under this Subdivision:
- (a) the *tax free component*;

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

- (b) the *taxable component*.
- (2) Work out those components under:
- (a) if the benefit is not mentioned in paragraph (b), (c), (d) or (e)—section 307-125; or
  - (b) if the benefit is a \*superannuation guarantee payment—section 307-130; or
  - (c) if the benefit is a \*superannuation co-contribution benefit payment—section 307-135; or
  - (d) if the benefit is a \*contributions-splitting superannuation benefit—section 307-140; or
  - (e) if the benefit is a payment under subsection 17(2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3) or 24G(2), (3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—section 307-142.
- (3) Those components may be modified under sections 307-145 (which deals with certain disability benefits) and 307-150 (which deals with certain \*elements untaxed in fund).

### **307-125 Proportioning rule**

- (1) The object of this section is to ensure that the \*tax free component and \*taxable component of a \*superannuation benefit are calculated by:
- (a) first, determining the proportions of the \*value of the \*superannuation interest that those components represent; and
  - (b) next, applying those proportions to the benefit.
- (2) The \*superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the \*superannuation interest bears to the \*value of the superannuation interest.

Example: The amount of a superannuation lump sum is \$100. Just before the benefit is paid, the value of the superannuation interest was \$1000 (of

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

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which \$200 was the tax free component and \$800 was the taxable component). For the lump sum, the tax free component is \$20 and the taxable component is \$80.

- (3) For the purposes of subsection (2), determine the \*value of the \*superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:
- (a) if the \*superannuation benefit is a \*superannuation income stream benefit—when the relevant \*superannuation income stream commenced;
  - (b) if the superannuation benefit is a \*superannuation lump sum—just before the benefit is paid;
  - (c) despite paragraphs (a) and (b), if the superannuation benefit arises from the commutation of a superannuation income stream:
    - (i) if subparagraph (ii) does not apply—when the relevant superannuation income stream commenced; or
    - (ii) if the superannuation income stream is a \*deferred superannuation income stream that had not commenced before the time the commutation happened—just before the time the commutation happened;
  - (d) despite paragraphs (a) and (b), if:
    - (i) the superannuation benefit is an \*involuntary roll-over superannuation benefit paid from a superannuation interest; and
    - (ii) that interest was supporting a superannuation income stream immediately before that benefit was paid; when that superannuation income stream commenced.
- (4) Subsection (2) does not apply to a \*superannuation benefit if any of the following applies:
- (a) the regulations specify an alternative method for determining those components of the benefit;
  - (b) a determination under subsection (5) specifies an alternative method for determining those components of the benefit;

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



- (c) the Commissioner consents in writing to the use of another method for determining those components of the benefit.  
If so, use that method to determine those components of the benefit.
- (5) For the purposes of paragraph (4)(b), the Commissioner may determine, by legislative instrument, one or more alternative methods for determining those components of a \*superannuation benefit.
- (6) If the \*superannuation benefit is an \*unclaimed money payment or a \*small superannuation account payment, for the purposes of this section:
- (a) treat the benefit as a superannuation benefit paid from a \*superannuation interest; and
  - (b) treat the amount of the benefit as the \*value of that superannuation interest just before the time the benefit is paid.

### **307-130 Superannuation guarantee payment consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*superannuation guarantee payment are as follows:

- (a) the \*tax free component is nil;
- (b) the \*taxable component is the amount of the benefit.

### **307-135 Superannuation co-contribution benefit payment consists entirely of tax free component**

The components of a \*superannuation benefit that is a \*superannuation co-contribution benefit payment are as follows:

- (a) the \*tax free component is the amount of the benefit;
- (b) the \*taxable component is nil.

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

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**307-140 Contributions-splitting superannuation benefit consists entirely of taxable component**

The components of a \*superannuation benefit that is a \*contributions-splitting superannuation benefit are as follows:

- (a) the \*tax free component is nil;
- (b) the \*taxable component is the amount of the benefit.

**307-142 Components of certain unclaimed money payments**

*Preliminary*

- (1) This section explains how to work out the \*tax free component, and the \*taxable component, of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2), (2AB) or (2AC), 20H(2), (2AA), (2A) or (3) or 24G(2), (3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or by a State or Territory authority as mentioned in subsection 18(5) of that Act, in respect of a person.

*Tax free component*

- (2) Work out the \*tax free component as follows (unless subsection (3B) or (3C) applies):

*Method statement*

Step 1. Work out the amount (the **unclaimed amount**) (or amounts), set out in column 1 of the table in subsection (3), to which the \*superannuation benefit is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under subsection 20H(2) or (3) of that Act may be attributable to more than one unclaimed amount.

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

A payment made under subsection 24G(2) of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The \*tax free component of the \*superannuation benefit consists of so much of the superannuation benefit as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

<b>Tax free component</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Tax free component of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act; in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

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

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 307** Key concepts relating to superannuation benefits

Section 307-142

<b>Tax free component</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Tax free component of claimed equivalent</b>
2	an amount paid, before 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act;  in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the total of the components, of that eligible termination payment, referred to in subsection 307-225(2) of this Act
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
4	an amount paid to the Commissioner under section 24E of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts

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

paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the taxable component includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the taxable component includes so much of the superannuation benefit as is attributable to such interest.

- (3A) Treat the amount set out in column 3 of an item of the table in subsection (3) as being nil, if:
- (a) the unclaimed amount set out in column 1 of the item is an amount paid to the Commissioner by a State or Territory authority (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*) in the circumstances mentioned in section 18AA, 20JA or 24HA of that Act; and
  - (b) the Commissioner does not have sufficient information to work out the amount set out in column 3 of the item.
- (3B) The \*tax free component is the amount of the benefit, if the \*superannuation benefit is paid under subsection 17(2AB) or (2AC), 20H(2AA) or 24G(3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest).
- (3C) Despite subsection (3B), the \*tax free component is nil, if the \*superannuation benefit is paid under subsection 20H(2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest) in respect of a person who:
- (a) is a former temporary resident (within the meaning of that Act) when the payment is made; or
  - (b) if the person died before the payment is made—was a former temporary resident just before dying.

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

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*Taxable component*

- (4) The \*taxable component is so much (if any) of the \*superannuation benefit as is not the \*tax free component.

**307-145 Modification for disability benefits**

- (1) Work out the **tax free component** of the \*superannuation benefit under subsection (2) if the benefit is a \*superannuation lump sum and a \*disability superannuation benefit.

Note: This section does not apply to an unclaimed money payment.

- (2) The **tax free component** is the sum of:
- (a) the \*tax free component of the benefit worked out apart from this section; and
  - (b) the amount worked out under subsection (3).

However, the tax free component cannot exceed the amount of the benefit.

- (3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

where:

**days to retirement** is the number of days from the day on which the person stopped being capable of being \*gainfully employed to his or her \*last retirement day.

**service days** is the number of days in the \*service period for the lump sum.

- (4) The balance of the \*superannuation benefit is the **taxable component** of the benefit.

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

**307-150 Modification in respect of superannuation lump sum with element untaxed in fund**

- (1) This section applies to a \*superannuation lump sum if:
  - (a) it is not a \*roll-over superannuation benefit; or
  - (b) it is a roll-over superannuation benefit that includes an \*element untaxed in the fund, all or part of which will be included in the assessable income of the \*superannuation provider in relation to the \*superannuation fund into which the benefit is paid.
- (2) However, this section applies to the \*superannuation lump sum only to the extent that it is attributable to a \*superannuation interest that existed just before 1 July 2007.
- (3) If the \*superannuation lump sum includes an \*element untaxed in the fund:
  - (a) increase the \*tax free component of the benefit by the amount that is the lesser of these amounts:
    - (i) the amount worked out under subsection (4); and
    - (ii) the amount of the element untaxed in the fund (apart from this section); and
  - (b) reduce the element untaxed in the fund by the lesser of those amounts.
- (4) Work out the amount by applying the following formula:

$$\text{Original tax free component and untaxed element} \times \frac{\text{Number of days in the *service period for the lump sum that occurred before 1 July 1983}}{\text{Number of days in the *service period for the lump sum}}$$

where:

***original tax free component and untaxed element*** is the sum of:

- (a) the \*tax free component of the \*superannuation benefit (apart from this section); 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 \*element untaxed in the fund of the superannuation benefit (apart from this section).
- (5) If the benefit is in part attributable to a \*crystallised pre-July 83 amount, in working out the \*tax free component of the \*superannuation benefit (apart from this section) for the purposes of subsection (4), disregard the amount of the benefit that is attributable to the \*crystallised segment of the \*superannuation interest from which the benefit is paid.

**Subdivision 307-D—Superannuation interests**

**Table of sections**

307-200	Regulations relating to meaning of superannuation interests
307-205	<i>Value</i> of superannuation interest
307-210	<i>Tax free component</i> of superannuation interest
307-215	<i>Taxable component</i> of superannuation interest
307-220	What is the <i>contributions segment</i> ?
307-225	What is the <i>crystallised segment</i> ?
307-230	Total superannuation balance

**307-200 Regulations relating to meaning of superannuation interests**

- (1) In the circumstances specified in the regulations, treat a *superannuation interest* as two or more superannuation interests in the way specified in the regulations.
- (2) In the circumstances specified in the regulations, treat 2 or more *superannuation interests* as one superannuation interest in the way specified in the regulations.
- (3) Regulations for the purposes of this section may specify a way of treating a \*superannuation interest in relation to one or more of the following aspects of the interest:
  - (a) the \*tax free component (and the \*contributions segment and \*crystallised segment relating to that component);
  - (b) the \*taxable component;
  - (c) the \*element taxed in the fund of the taxable component;

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



- (d) the \*element untaxed in the fund of the taxable component.
- (4) Regulations for the purposes of subsection (1) may specify a way of allocating an amount relating to a \*superannuation interest treated as two or more superannuation interests in accordance with those regulations to those interests.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

### **307-205 Value of superannuation interest**

- (1) The **value** of a \*superannuation interest at a particular time is:
- (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or
  - (b) otherwise—the total amount of all the \*superannuation lump sums that could be payable from the interest at that time.
- (2) The **accumulation phase value** of an individual's \*superannuation interest, at a particular time when the interest is not in the \*retirement phase, is:
- (a) if the regulations specify that value or a method for determining that value—that value; or
  - (b) otherwise—the total amount of the \*superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at that time.

### **307-210 Tax free component of superannuation interest**

- (1) The **tax free component** of a \*superannuation interest is so much of the \*value of the interest as consists of:
- (a) the \*contributions segment of the interest; and
  - (b) the \*crystallised segment of the interest.

*Tax free component reduces if a benefit is paid*

- (2) If a \*superannuation benefit is paid from the \*superannuation interest:

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

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- (a) the \*crystallised segment of the interest is reduced (but not below zero) by an amount equal to the \*tax free component of the benefit; and
- (b) if any of that amount remains, the \*contributions segment of the interest is reduced (but not below zero) by that remaining amount.

Note: This has the effect of reducing the interest's tax free component by the amount of the benefit's tax free component.

**307-215 Taxable component of superannuation interest**

The *taxable component* of a \*superannuation interest is the \*value of the interest less the \*tax free component of the interest.

**307-220 What is the *contributions segment*?**

- (1) The *contributions segment* of a \*superannuation interest is the total amount of the contributions to the interest:
  - (a) that were made after 30 June 2007; and
  - (b) to the extent that they have not been and will not be included in the assessable income of the \*superannuation provider in relation to the \*superannuation plan in which the interest is held.

This section has effect subject to subsection 307-210(2).

Note: This segment may be reduced if a superannuation benefit is paid from the superannuation interest: see subsection 307-210(2).

- (2) For the purposes of this section:
  - (a) in determining whether contributions are included in the contributions segment under subsection (1):
    - (i) disregard the \*taxable component of a \*roll-over superannuation benefit paid into the interest; and
    - (ia) disregard the \*tax free component of an \*involuntary roll-over superannuation benefit paid into the interest from another superannuation interest (the *earlier interest*) (other than an earlier interest that was

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

- supporting a \*superannuation income stream immediately before that benefit was paid); and
- (ib) if subparagraph (ia) applies—include as a contribution an amount equal to the amount referred to in subsection (5); and
  - (ii) for a \*superannuation plan that is a \*constitutionally protected fund—treat the superannuation plan as if it were not a constitutionally protected fund; and
- (b) disregard section 295-180 and Subdivision 295-D.
- (3) For the purposes of subparagraph (2)(a)(i), treat the \*excess untaxed roll-over amount (if any) of the \*roll-over superannuation benefit as part of the \*tax free component of the benefit instead of the \*taxable component of the benefit.
- (4) Subparagraph (2)(a)(i) does not apply to a \*roll-over superannuation benefit that is a \*departing Australia superannuation payment made under subsection 20H(2), (2AA) or (2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- Note 1: The whole departing Australia superannuation payment is included in the contributions segment of the superannuation interest, as none of the payment has been or will be included in the superannuation provider's assessable income.
- Note 2: Including the whole payment in that segment, and thus the tax free component, of the superannuation interest ensures that the amount of the payment, which is taxed by the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*, does not attract more tax when paid as a superannuation benefit from the interest.
- (5) For the purposes of subparagraph (2)(a)(ib), the amount is:
- (a) if the \*involuntary roll-over superannuation benefit is covered by paragraph 306-12(a) or (c)—the sum of the contributions segment, and crystallised segment, of the earlier interest immediately before the benefit was paid; or
  - (b) if the benefit is covered by paragraph 306-12(b)—the proportion of that sum that the benefit was to the \*value of the earlier interest immediately before the benefit was paid.

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

Section 307-225

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**307-225 What is the *crystallised segment*?**

- (1) To work out the *crystallised segment* of a \*superannuation interest, first assume that:
  - (a) an eligible termination payment had been made in respect of the holder of the interest just before 1 July 2007; and
  - (b) the amount of the eligible termination payment had been equal to the \*value of the interest at that time.
- (2) The *crystallised segment* of the \*superannuation interest is the total amount of the following components of the eligible termination payment:
  - (a) the concessional component;
  - (b) the post-June 1994 invalidity component;
  - (c) the undeducted contributions;
  - (d) the CGT exempt component;
  - (e) the pre-July 83 component.

This section has effect subject to subsection 307-210(2).

Note: This segment may be reduced if a superannuation benefit is paid from the superannuation interest: see subsection 307-210(2).

- (3) For the purposes of paragraph (2)(e), disregard the \*value of the interest just before 1 July 2007 to the extent that it would consist, apart from this subsection, of the \*element untaxed in the fund of the \*taxable component of a \*superannuation benefit constituted by the eligible termination payment.
- (4) In this section, the following terms have the same meaning as in subsection 27A(1) of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007):
  - (a) *concessional component*;
  - (b) *post-June 1994 invalidity component*;
  - (c) *undeducted contributions*;
  - (d) *CGT exempt component*;
  - (e) *pre-July 83 component*;
  - (f) *eligible termination payment*.

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

### **307-230 Total superannuation balance**

- (1) Your ***total superannuation balance***, at a particular time, is the sum of the following:
- (a) if you have one or more \*superannuation interests that are not in the \*retirement phase—the \*accumulation phase values, at that time, of each such interest;
  - (b) if you have a \*transfer balance account—the \*transfer balance of the account at that time (but not less than nil);
  - (c) the amount of each \*roll-over superannuation benefit:
    - (i) paid at or before that time; and
    - (ii) received by the \*complying superannuation plan, or the entity from which the \*superannuation annuity is being purchased, after that time; and
    - (iii) not reflected in the value in paragraph (a) or the balance in paragraph (b).

#### *Modification for structured settlement contributions*

- (2) However, if a \*structured settlement contribution is made at or before a time in respect of you, your ***total superannuation balance*** at that time is modified by:
- (a) if you do not have a \*transfer balance account—reducing the sum worked out under subsection (1) by the sum of any such structured settlement contributions; and
  - (b) if you have a transfer balance account:
    - (i) first, working out the \*transfer balance mentioned in paragraph (1)(b) disregarding the operation of item 2 of the table in subsection 294-80(1); and
    - (ii) then, reducing the sum worked out under subsection (1) (having regard to subparagraph (i) of this paragraph) by the sum of any such structured settlement contributions.

#### *Modification for account-based income streams*

- (3) For the purposes of working out the \*transfer balance mentioned in paragraph (1)(b):

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

Section 307-230

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- (a) if a \*transfer balance credit has arisen, at or before that time, in your \*transfer balance account in respect of a \*superannuation income stream covered by subsection (4)—disregard the operation of the following provisions in relation to the superannuation income stream:
    - (i) items 1 and 2 of the table in subsection 294-25(1);
    - (ii) items 1, 3, 4, 5 and 6 of the table in subsection 294-80(1); and
  - (b) if, at that time, you have a \*superannuation interest that supports a superannuation income stream covered by subsection (4) of this section—increase the amount of that balance by the total amount of the \*superannuation benefits that would become payable if:
    - (i) you had the right to cause the superannuation interest to cease at that time; and
    - (ii) you voluntarily caused the superannuation interest to cease at that time.
- (4) This subsection covers a \*superannuation income stream that is any of the following:
- (a) an \*allocated annuity;
  - (b) an \*allocated pension;
  - (c) an allocated pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);
  - (d) an \*account-based annuity;
  - (e) an account-based pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
  - (f) an account based pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);
  - (g) a market linked annuity (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
  - (h) a market linked pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
  - (i) a market linked pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*).

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

## **Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit**

### **Table of sections**

307-275	<i>Element taxed in the fund and element untaxed in the fund</i> of superannuation benefits
307-280	Superannuation benefits from constitutionally protected funds etc.
307-285	Trustee can choose to convert element taxed in the fund to element untaxed in the fund
307-290	Taxed and untaxed elements of death benefit superannuation lump sums
307-295	Superannuation benefits from public sector superannuation schemes may include untaxed element
307-297	Public sector superannuation schemes—elements set by regulations
307-300	Certain unclaimed money payments

### **307-275 *Element taxed in the fund and element untaxed in the fund of superannuation benefits***

- (1) The \*taxable component of a \*superannuation benefit consists of an *element taxed in the fund* or an *element untaxed in the fund*, or both.
- (2) The \*taxable component of a \*superannuation benefit consists wholly of an *element taxed in the fund* except as provided in a later section of this Subdivision.
- (3) Despite subsection (2), the \*taxable component of any of the following kinds of \*superannuation benefit consists wholly of an *element untaxed in the fund*:
  - (a) a \*small superannuation account payment;
  - (b) a \*superannuation guarantee payment.

### **307-280 Superannuation benefits from constitutionally protected funds etc.**

- (1) The \*taxable component of a \*superannuation benefit paid from a \*superannuation fund that is a \*constitutionally protected fund consists wholly of an *element untaxed in the fund*.

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

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- (2) Despite subsection (1), if:
- (a) the benefit is a \*superannuation lump sum; and
  - (b) the benefit is attributable to one or more \*roll-over superannuation benefits that consisted of, or included, an \*element taxed in the fund;
- the \*taxable component of the benefit has an ***element taxed in the fund*** equal to the total of those elements taxed in the fund.
- (3) The \*taxable component of a \*superannuation income stream benefit consists wholly of an ***element untaxed in the fund*** if it is paid from a \*superannuation fund that was a \*constitutionally protected fund on the first day of the period to which the \*superannuation income stream relates.

**307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund**

- (1) If:
- (a) you receive a \*superannuation benefit from a \*public sector superannuation scheme; and
  - (b) the trustee of the scheme gives you written notice specifying an amount as the \*element untaxed in the fund of the \*taxable component of the benefit; and
  - (c) the notice is given within the time and in the manner approved by the Commissioner in writing; and
  - (d) the scheme came into operation on or before 5 September 2006;
- the taxable component consists of an ***element untaxed in the fund*** equal to the specified amount.
- (2) The trustee of the scheme can give only one notice under subsection (1) in relation to a particular \*superannuation lump sum.

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



**307-290 Taxed and untaxed elements of death benefit superannuation lump sums**

- (1) This section applies to a \*superannuation death benefit that is a \*superannuation lump sum, in relation to which a deduction has been, or is to be, claimed under section 295-465 or 295-470.

Note 1: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

Note 2: Deductions made under former section 279 or 279B of the *Income Tax Assessment Act 1936* are treated for the purposes of this section as having been made under section 295-465 or 295-470 (see section 307-290 of the *Income Tax (Transitional Provisions) Act 1997*).

- (2) The \*taxable component of the \*superannuation lump sum includes an ***element taxed in the fund*** worked out as follows:
- (a) first, work out the amount under the formula in subsection (3);
  - (b) next, reduce that amount (but not below zero) by the \*tax free component (if any) of the superannuation lump sum.
- (3) For the purposes of paragraph (2)(a), the formula is:

$$\text{*superannuation lump sum} \times \frac{\text{Service days}}{\text{Service days} + \text{Days to retirement}}$$

where:

***days to retirement*** is the number of days from the day on which the deceased died to the deceased's \*last retirement day.

***service days*** is the number of days in the \*service period for the lump sum.

- (4) The ***element untaxed in the fund*** of the \*taxable component is the balance of the taxable component.

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

Section 307-295

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**307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element**

- (1) This section applies to a \*superannuation benefit that is paid from a \*public sector superannuation scheme that is not a \*constitutionally protected fund.
- (2) If the \*superannuation benefit paid is not sourced to any extent from contributions made into a \*superannuation fund or earnings on such contributions, the \*taxable component of the superannuation benefit consists wholly of an ***element untaxed in the fund***.
- (3) If the benefit is a \*superannuation lump sum that is partly sourced from contributions made into a \*superannuation fund or earnings on such contributions, the ***element taxed in the fund*** and the ***element untaxed in the fund*** of the \*taxable component of the benefit are worked out as follows:

*Method statement*

- Step 1. Subdivide the \*taxable component of the \*superannuation lump sum (the ***original benefit***) into 2 notional superannuation lump sums as follows:
  - (a) the amount sourced from contributions made into a \*superannuation fund or earnings on such contributions (the ***fund benefit***);
  - (b) the remainder of the taxable component of the lump sum (the ***non-fund benefit***).
- Step 2. The fund benefit consists of an ***element taxed in the fund***, an ***element untaxed in the fund***, or both, as worked out under this Subdivision.
- Step 3. The non-fund benefit consists wholly of an ***element untaxed in the fund***.

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

- Step 4. The *element taxed in the fund* of the original benefit equals the element taxed in the fund of the fund benefit.
- Step 5. The *element untaxed in the fund* of the original benefit is the sum of the elements untaxed in the fund worked out under steps 2 and 3.

### **307-297 Public sector superannuation schemes—elements set by regulations**

- (1) This section applies to a \*superannuation benefit that is paid from a \*public sector superannuation scheme that is not a \*constitutionally protected fund.
- (2) Despite any other provision of this Subdivision, the \*taxable component of the \*superannuation benefit consists of an *element untaxed in the fund* equal to the amount (if any) specified by the regulations in relation to the benefit for the purposes of this section.
- (3) The amount specified must not be less than the amount that would be the \*element untaxed in the fund under the other provisions of this Subdivision.

### **307-300 Certain unclaimed money payments**

#### *Preliminary*

- (1) This section explains how to work out the \*element taxed in the fund, and the \*element untaxed in the fund, of the \*taxable component of a \*superannuation benefit that is a payment by the Commissioner under subsection 17(2), 20H(2), (2AA), (2A) or (3) or 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

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

Section 307-300

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*Element taxed in the fund*

- (2) Work out the ***element taxed in the fund*** as follows (unless subsection (3A) applies):

*Method statement*

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the \*taxable component is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under subsection 20H(2) or (3) of that Act may be attributable to more than one unclaimed amount.

A payment made under subsection 24G(2) of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The ***element taxed in the fund*** of the \*taxable component consists of so much of the taxable component as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

- (3) This is the table mentioned in subsection (2):

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

<b>Element taxed in the fund</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Taxed element of claimed equivalent</b>
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the taxed element of the post-June 83 component of that eligible termination payment under Subdivision AA of Division 2 of Part III of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i> )	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

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

Chapter 3 Specialist liability rules

Part 3-30 Superannuation

Division 307 Key concepts relating to superannuation benefits

Section 307-300

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<b>Element taxed in the fund</b>			
<b>Item</b>	<b>Column 1 Unclaimed amount</b>	<b>Column 2 Claimed equivalent</b>	<b>Column 3 Taxed element of claimed equivalent</b>
4	an amount paid to the Commissioner under section 24E of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

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Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the element untaxed in the fund includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the element untaxed in the fund of the taxable component includes so much of the superannuation benefit as is attributable to such interest.

(3A) The ***element taxed in the fund*** is nil, if the \*superannuation benefit is paid under subsection 20H(2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (interest).

Note: The taxable component of a superannuation benefit paid by the Commissioner under subsection 17(2AB) or (2AC) or 24G(3A) or (3B) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or under subsection 20H(2AA) in respect of a person who is not a former temporary resident, is nil: see subsections 307-142(3B) and (4) of this Act.

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

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*Element untaxed in the fund*

- (4) The ***element untaxed in the fund*** of the \*taxable component is so much (if any) of the taxable component as is not the element taxed in the fund.

**Subdivision 307-F—Low rate cap and untaxed plan cap amounts**

**Table of sections**

307-345	<i>Low rate cap amount</i>
307-350	<i>Untaxed plan cap amount</i>

**307-345 Low rate cap amount**

*Starting amount*

- (1) Your ***low rate cap amount*** for the 2007-2008 income year is \$140,000.

Note: However, if you became entitled to a rebate under the corresponding provision of the *Income Tax Assessment Act 1936*, see section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*.

*Reductions and increases*

- (2) If you receive one or more \*superannuation member benefits that are \*superannuation lump sums in an income year, reduce your ***low rate cap amount*** for the next income year (but not below zero) by the total of the amounts that:
- (a) are included in your assessable income for the first year in respect of those lump sums; and
  - (b) are counted towards your entitlement to a \*tax offset under subsection 301-20(2) or 301-105(4) for the first year.

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

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Section 307-350

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- (3) At the start of each income year after the 2007-2008 income year, increase your **low rate cap amount** by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$140,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

**307-350 *Untaxed plan cap amount***

- (1) Your **untaxed plan cap amount** for a \*superannuation plan at the start of the 2007-2008 income year is \$1,000,000.

*Reductions and increases*

- (1A) Subsection (2) applies if:
  - (a) you receive one or more \*superannuation member benefits from a \*superannuation plan at a time; and
  - (b) the benefit, or one or more of the benefits:
    - (i) is a \*superannuation lump sum; and
    - (ii) includes an \*element untaxed in the fund.
- (2) Reduce your **untaxed plan cap amount** just after that time:
  - (a) if the total of the \*elements untaxed in the fund of the \*superannuation member benefits to which paragraph (1A)(b) applies falls short of your untaxed plan cap amount at that time—by that total; or
  - (b) otherwise—to nil.
- (2A) For the purposes of subsections (1A) and (2), disregard subsection 307-5(8).

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



- (2B) For the purposes of the application of this section in relation to \*superannuation lump sums paid by the Commissioner under subsections 17(2), 20H(2), (2AA), (2A) and (3) and 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, treat all such lump sums as if they were paid from a single \*superannuation plan.
- (3) At the start of each income year after the 2007-2008 income year, increase your ***untaxed plan cap amount*** for the \*superannuation plan by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

### **Subdivision 307-G—Other concepts**

#### **Table of sections**

307-400 Meaning of *service period* for a superannuation lump sum

#### **307-400 Meaning of *service period* for a superannuation lump sum**

- (1) The ***service period*** for a \*superannuation lump sum consists of each day that is in the period worked out under the table or a period covered by subsection (2).

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

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Section 307-400

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**Service period for superannuation lump sum types**

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<b>Item</b>	<b>For this superannuation lump sum type:</b>	<b>The <i>service period</i> includes:</b>
1	*Superannuation fund payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, a member of the *superannuation fund—the period of membership; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.
2	*approved deposit fund payment	The period starting when you or the deceased first made a deposit to the *approved deposit fund and ending when the payment is made.
3	*RSA payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, the holder of the *RSA—the period during which you were, or the deceased was, the holder of the RSA; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.

- (2) The *service period* for the \*superannuation lump sum (the **later lump sum**) also includes each day that is in the \*service period for an earlier superannuation lump sum if some or all of the later lump sum is attributable, directly or indirectly, to some or all of the earlier lump sum through the payment of one or more \*roll-over superannuation benefits.

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

## **Division 310—Loss relief for merging superannuation funds**

### **Table of Subdivisions**

	Guide to Division 310
310-A	Object of this Division
310-B	Choice to transfer losses
310-C	Consequences of choosing to transfer losses
310-D	Choice for assets roll-over
310-E	Consequences of choosing assets roll-over
310-F	Choices

### **Guide to Division 310**

#### **310-1 What this Division is about**

This Division sets out special rules for certain merging superannuation funds. These rules relate to the transfer of losses, the treatment of CGT events related to the merger and the treatment of assets related to the merger.

Note 1: This Division applies to mergers happening between 24 December 2008 and 30 June 2011 (or, in certain cases, 30 September 2011), or between 1 October 2011 and 1 July 2017 (see Part 3 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*).

Note 2: This Division and associated provisions will be repealed on 1 July 2019 (see Parts 4 and 5 of that Schedule).

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

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Section 310-5

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## Operative provisions

### Subdivision 310-A—Object of this Division

#### 310-5 Object

The main object of this Division is to facilitate the consolidation of the superannuation industry by allowing certain merging \*superannuation funds to retain the value, for income tax purposes, of certain losses that might otherwise cease to be able to be utilised as a result of the merger.

### Subdivision 310-B—Choice to transfer losses

#### Table of sections

310-10	Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts
310-15	Original fund's assets include a complying superannuation life insurance policy
310-20	Original fund's assets include units in a pooled superannuation trust

#### 310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts

- (1) A trustee of:
- (a) a \*complying superannuation fund (other than a \*self managed superannuation fund) (the *transferring entity* or the *original fund*); or
  - (b) a \*complying approved deposit fund (the *transferring entity* or the *original fund*);

can choose to transfer losses if an \*arrangement is made for which the conditions in this section are satisfied.

*Transferring entity's assets include other assets*

- (2) The first condition is satisfied if, just before the \*arrangement was made, the transferring entity's assets included assets other than:

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

- (a) a \*complying superannuation life insurance policy; or
- (b) units in a \*pooled superannuation trust.

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the transferring entity holds a complying superannuation life insurance policy or units in a pooled superannuation trust.

*Original fund's members transfer to a continuing fund*

- (3) The second condition is satisfied if, under the \*arrangement:
  - (a) the transferring entity ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the **completion time**); and
  - (b) the individuals who cease to be members (within the meaning of that Act) of the transferring entity become members (within the meaning of that Act) of one or more \*complying superannuation funds (the **continuing funds**).

*Continuing funds will usually not be able to be small funds*

- (4) The third condition is satisfied if either:
  - (a) none of the continuing funds was a \*small superannuation fund, and all existed, just before the \*arrangement was made; or
  - (b) the following subparagraphs apply:
    - (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
    - (ii) under the arrangement, a \*complying superannuation fund or \*complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
    - (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;

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

Section 310-15

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- (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
- (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

*Ignore members who cannot transfer to a continuing fund*

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a \*complying superannuation fund or \*complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

**310-15 Original fund's assets include a complying superannuation life insurance policy**

- (1) A \*life insurance company (the *transferring entity*) can choose to transfer losses if an \*arrangement is made for which the conditions in this section are satisfied.

*Original fund holds a complying superannuation life insurance policy*

- (2) The first condition is satisfied if, just before the \*arrangement was made, a \*complying superannuation life insurance policy issued by the transferring entity was held by:
  - (a) a \*complying superannuation fund (the *original fund*); or
  - (b) a \*complying approved deposit fund (the *original fund*).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

*Original fund's members transfer to a continuing fund*

- (3) The second condition is satisfied if, under the \*arrangement:

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

- (a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the **completion time**); and
- (b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more \*complying superannuation funds (the **continuing funds**).

*Continuing funds will usually not be able to be small funds*

- (4) The third condition is satisfied if either:
  - (a) none of the continuing funds was a \*small superannuation fund, and all existed, just before the \*arrangement was made; or
  - (b) the following subparagraphs apply:
    - (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
    - (ii) under the arrangement, a \*complying superannuation fund or \*complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
    - (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;
    - (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
    - (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning 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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Section 310-20

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*Ignore members who cannot transfer to a continuing fund*

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a \*complying superannuation fund or \*complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

**310-20 Original fund's assets include units in a pooled superannuation trust**

- (1) A trustee of a \*pooled superannuation trust (the **transferring entity**) can choose to transfer losses if an \*arrangement is made for which the conditions in this section are satisfied.

*Units in the trust were held by the original fund*

- (2) The first condition is satisfied if, just before the \*arrangement was made, units in the transferring entity were held by:
- (a) a \*complying superannuation fund (the **original fund**); or
  - (b) a \*complying approved deposit fund (the **original fund**).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

*Original fund's members transfer to a continuing fund*

- (3) The second condition is satisfied if, under the \*arrangement:
- (a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the **completion time**); and
  - (b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more \*complying superannuation funds (the **continuing funds**).

*Continuing funds will usually not be able to be small funds*

- (4) The third condition is satisfied if either:

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



- (a) none of the continuing funds was a \*small superannuation fund, and all existed, just before the \*arrangement was made; or
- (b) the following subparagraphs apply:
  - (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
  - (ii) under the arrangement, a \*complying superannuation fund or \*complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
  - (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;
  - (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
  - (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

*Ignore members who cannot transfer to a continuing fund*

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a \*complying superannuation fund or \*complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

### **Subdivision 310-C—Consequences of choosing to transfer losses**

#### **Table of sections**

310-25 Who losses can be transferred to

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

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Section 310-25

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- 310-30 Losses that can be transferred
- 310-35 Effect of transferring a net capital loss
- 310-40 Effect of transferring a tax loss

**310-25 Who losses can be transferred to**

An entity choosing under Subdivision 310-B to transfer losses can choose to transfer any or all of the transferring entity's losses set out in section 310-30, in whole or in part, to one or more of the following entities (a *receiving entity*):

- (a) a continuing fund for the choice;
- (b) a \*pooled superannuation trust in which units are held by a continuing fund for the choice just after the completion time;
- (c) a \*life insurance company with which a \*complying superannuation life insurance policy is held by a continuing fund for the choice just after the completion time.

**310-30 Losses that can be transferred**

(1) The transferring entity's losses that can be transferred are:

- (a) any of its \*net capital losses for income years earlier than the income year for the transferring entity that includes the completion time (the *transfer year*), to the extent that it was not \*utilised before the completion time (an *earlier year net capital loss*); and
- (b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time (a *transfer year net capital loss*); and
- (c) any of its \*tax losses for income years earlier than the transfer year, to the extent that it was not utilised before the completion time (an *earlier year tax loss*); and
- (d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time (a *transfer year tax loss*);

worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over under Subdivision 310-D for the same arrangement, none of the

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

transfer events for the roll-over will contribute towards a loss transferred under this Subdivision (see subsections 310-55(1), 310-60(3), 310-65(1) and 310-70(1)).

- (2) For a choice under section 310-15 (life insurance companies), work out those losses by only considering the following to the extent that they relate to assets reasonably attributable to a \*complying superannuation life insurance policy issued by the transferring entity and held by the original fund:
  - (a) \*capital gains from \*complying superannuation assets;
  - (b) \*capital losses from complying superannuation assets;
  - (c) assessable income covered by subsection 320-137(2) (about complying superannuation assets);
  - (d) deductions covered by subsection 320-137(4) (about complying superannuation assets).
- (3) For a choice under section 310-20 (pooled superannuation trusts), work out those losses by only considering \*capital gains, \*capital losses, assessable income and deductions to the extent that they relate to assets reasonably attributable to units in the transferring entity held by the original fund.

### **310-35 Effect of transferring a net capital loss**

- (1) To the extent that an earlier year net capital loss is transferred to a receiving entity:
  - (a) the transferring entity is taken not to have made the loss for that earlier income year; and
  - (b) an amount equal to the transferred amount is taken to be:
    - (i) if the receiving entity is a \*life insurance company—a \*capital loss from \*complying superannuation assets made by the receiving entity for the transfer year; and
    - (ii) otherwise—a capital loss made by the receiving entity for the transfer year.
- (2) To the extent that a transfer year net capital loss is transferred to a receiving entity:

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

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Section 310-40

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- (a) if the transferring entity is a \*life insurance company—the sum of the transferring entity’s \*capital losses from \*complying superannuation assets for the transfer year is reduced by an amount equal to the transferred amount; and
- (b) if the transferring entity is not a life insurance company—the sum of the transferring entity’s capital losses for the transfer year is reduced by an amount equal to the transferred amount; and
- (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation assets made by the receiving entity for the transfer year; and
- (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity for the transfer year.

**310-40 Effect of transferring a tax loss**

- (1) To the extent that an earlier year tax loss is transferred to a receiving entity:
  - (a) the transferring entity is taken not to have incurred the loss for that earlier income year; and
  - (b) for the purposes of section 36-15, an amount equal to the transferred amount is taken to be:
    - (i) if the receiving entity is a \*life insurance company—a \*tax loss of the \*complying superannuation class incurred by the receiving entity for the income year immediately prior to the transfer year; and
    - (ii) otherwise—a tax loss incurred by the receiving entity for the income year immediately prior to the transfer year; and
  - (c) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:
    - (i) if the receiving entity is a life insurance company—a tax loss of the complying superannuation class incurred by the receiving entity for the transfer year; and

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

- (ii) otherwise—a tax loss incurred by the receiving entity for the transfer year.
- (2) To the extent that a transfer year tax loss is transferred to a receiving entity:
  - (a) if the transferring entity is a \*life insurance company—the sum of the transferring entity’s deductions covered by subsection 320-137(4) (about complying superannuation assets) for the transfer year is reduced by an amount equal to the transferred amount; and
  - (b) if the transferring entity is not a life insurance company—the sum of the transferring entity’s deductions for the transfer year is reduced by an amount equal to the transferred amount; and
  - (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a \*tax loss of the \*complying superannuation class incurred by the receiving entity for the transfer year; and
  - (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a tax loss incurred by the receiving entity for the transfer year.

### **Subdivision 310-D—Choice for assets roll-over**

#### **Table of sections**

310-45	Choosing the assets roll-over
310-50	Choosing the form of the assets roll-over

#### **310-45 Choosing the assets roll-over**

- (1) An entity can choose a roll-over under this Subdivision if:
  - (a) the entity makes or could make a choice under Subdivision 310-B (the **losses choice**) to transfer the losses of an entity (the **transferring entity**); and
  - (b) the conditions in this section are satisfied for the \*arrangement to which the losses choice relates.

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

Section 310-45

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- (2) The first condition is that, under the \*arrangement, one or more \*CGT events (the *transfer events*) happen in relation to the following assets (the *original assets*) of the transferring entity with the result that it ceases to own those assets:
  - (a) for a losses choice under section 310-10 (original funds)—all of its \*CGT assets;
  - (b) for a losses choice under section 310-15 (life insurance companies)—all of its CGT assets reasonably attributable to the \*complying superannuation life insurance policy held by the original fund for the losses choice just before the arrangement was made;
  - (c) for a losses choice under section 310-20 (pooled superannuation trusts)—all of its CGT assets reasonably attributable to the units in that entity held by the original fund for the losses choice just before the arrangement was made.
- (3) The second condition is that the transfer events all happen in the income year (the *transfer year*) for the transferring entity that includes the completion time for the losses choice.
- (4) The third condition is that, for each transfer event, an asset (the *received asset*) becomes an asset of one of the following (the *receiving entity*) as a result of the event:
  - (a) a continuing fund for the losses choice;
  - (b) a \*pooled superannuation trust in which units are held by a continuing fund for the losses choice just after the completion time;
  - (c) a \*life insurance company with which a \*complying superannuation life insurance policy is held by a continuing fund for the losses choice just after the completion time.
- (5) For the purposes of subsection (2), ignore any \*CGT assets retained by the transferring entity:
  - (a) to pay its existing or expected debts relating to the \*arrangement; or
  - (b) to meet its liabilities relating to individuals who have remained members (within the meaning of the

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

*Superannuation Industry (Supervision) Act 1993*) of the original fund because of circumstances beyond the control of the trustee of that fund.

### **310-50 Choosing the form of the assets roll-over**

- (1) An entity that chooses a roll-over under this Subdivision must choose the form of the roll-over that applies to each of the following:
  - (a) the original assets that are not \*revenue assets;
  - (b) the original assets that are revenue assets.
- (2) In respect of original assets that are not \*revenue assets, the entity choosing the roll-over must choose either section 310-55 (global asset approach) or 310-60 (individual asset approach) to apply to the original assets and the corresponding received assets.
- (3) In respect of original assets that are \*revenue assets, the entity choosing the roll-over must choose either section 310-65 (global asset approach) or 310-70 (individual asset approach) to apply to the original assets and the corresponding received assets.

Note: The entity choosing the form of the roll-over may choose different forms of roll-over for its CGT assets and revenue assets.

### **Subdivision 310-E—Consequences of choosing assets roll-over**

#### **Table of sections**

310-55	CGT assets—if global asset approach chosen
310-60	CGT assets—individual asset approach
310-65	Revenue assets—if global asset approach chosen
310-70	Revenue assets—individual asset approach
310-75	Further consequences for roll-overs involving life insurance companies

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

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Section 310-55

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**310-55 CGT assets—if global asset approach chosen**

*Consequences for transferring entity*

- (1) For each of the original assets to which this section applies, the transferring entity's \*capital proceeds from the relevant transfer event are taken to be an amount equal to:
  - (a) if, apart from this subsection, the event would result in a \*capital gain—the asset's \*cost base just before the event; or
  - (b) if, apart from this subsection, the event would result in a \*capital loss—the asset's \*reduced cost base just before the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

*Consequences for receiving entity*

- (2) For each of the received assets to which this section applies, the first element of the \*cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the corresponding original asset just before the relevant transfer event.
- (3) For each of the received assets to which this section applies, the first element of the \*reduced cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the corresponding original asset just before the relevant transfer event.

**310-60 CGT assets—individual asset approach**

*Consequences for transferring entity*

- (1) The transferring entity may disregard any \*capital gain or \*capital loss for a transfer event relating to an original asset to which this section applies.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

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

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- (2) Subsections (3), (4) and (5) apply if under subsection (1) the transferring entity disregards a \*capital gain or \*capital loss for a transfer event relating to an original asset.
- (3) The transferring entity's \*capital proceeds from the transfer event are taken to be an amount equal to:
  - (a) if, apart from this subsection, the event would result in a \*capital gain—the asset's \*cost base just before the event; or
  - (b) if, apart from this subsection, the event would result in a \*capital loss—the asset's \*reduced cost base just before the event.

*Consequences for receiving entity*

- (4) The first element of the \*cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the original asset just before the event.
- (5) The first element of the \*reduced cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the original asset just before the event.

### **310-65 Revenue assets—if global asset approach chosen**

*Consequences for transferring entity*

- (1) For each of the original assets to which this section applies, the transferring entity's gross proceeds for the relevant transfer event are taken to be the amount (the *deemed proceeds*) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

*Consequences for receiving entity*

- (2) For each of the received assets to which this section applies, the receiving entity is taken, for the purposes of this Act, to have paid

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

Section 310-70

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an amount for that asset at the time of the transfer event that is equal to the deemed proceeds for the corresponding original asset.

**310-70 Revenue assets—individual asset approach**

*Consequences for transferring entity*

- (1) If the transferring entity derives assessable income (other than a \*capital gain) or incurs a \*tax loss for a transfer event relating to an original asset to which this section applies, the entity choosing the roll-over can choose for the transferring entity's gross proceeds for the event to be taken to be the amount (the **deemed proceeds**) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

*Consequences for receiving entity*

- (2) If a choice is made under subsection (1), the receiving entity is taken to have paid an amount for the corresponding received asset at the time of the transfer event that is equal to the deemed proceeds for the event.

**310-75 Further consequences for roll-overs involving life insurance companies**

- (1) Section 320-200 (about consequences of transferring assets to or from a complying superannuation asset pool) does not apply for a transfer event for the roll-over if either the transferring entity or the receiving entity is a \*life insurance company.
- (2) If the receiving entity for the roll-over is a \*life insurance company, each received asset of that entity is taken:
  - (a) to be a \*complying superannuation asset of that entity; and
  - (b) not to be, in whole or in part, a \*life insurance premium.

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

## **Subdivision 310-F—Choices**

### **Table of sections**

310-85 Choices

### **310-85 Choices**

- (1) A choice under this Division must be made:
  - (a) by the day the transferring entity's \*income tax return is lodged for the transfer year for the entity; or
  - (b) within a further time allowed by the Commissioner.
- (2) The way the transferring entity's \*income tax return is prepared is sufficient evidence of the making of the choice.

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

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## Division 311—Loss relief and asset roll-over for transfer of amounts to a MySuper product

### Table of Subdivisions

	Guide to Division 311
311-A	Object of this Division
311-B	Choosing loss transfers and asset roll-overs
311-C	Consequences of choosing to transfer losses
311-D	Consequences of choosing asset roll-over
311-E	Choices

### Guide to Division 311

#### 311-1 What this Division is about

This Division provides tax relief for certain entities if a member's accrued default amount is required to be transferred to a MySuper product in another complying superannuation fund.

A trustee of a complying superannuation fund, a life insurance company or a trustee of a pooled superannuation trust that satisfies certain conditions can:

- (a) choose to transfer a loss; or
- (b) choose an asset roll-over; or
- (c) choose to transfer a loss and choose an asset roll-over.

Note 1: This Division and associated provisions will be repealed on 2 July 2019: see Part 3 of Schedule 1 to the *Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013*.

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

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Note 2: Part 2C of the *Superannuation Industry (Supervision) Act 1993* provides rules about MySuper products.

## Operative provisions

### Subdivision 311-A—Object of this Division

#### Table of sections

311-5 Object

#### 311-5 Object

The object of this Division is to ensure that default members of \*complying superannuation funds are not adversely affected if their \*accrued default amounts are compulsorily transferred to MySuper products in other complying superannuation funds.

### Subdivision 311-B—Choosing loss transfers and asset roll-overs

#### Table of sections

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

#### 311-10 Certain entities can choose transfer of losses, asset roll-overs, or both

- (1) If an \*arrangement is made for which the conditions in this section are satisfied, a trustee of a \*complying superannuation fund, a \*life insurance company or a trustee of a \*pooled superannuation trust (the *transferring entity*) can:
  - (a) choose to transfer a loss; or
  - (b) choose an asset roll-over; or
  - (c) choose to transfer a loss and choose an asset roll-over.

*Entity must hold certain assets*

- (2) The first condition is satisfied if, just before the \*arrangement was made:

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

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Section 311-10

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- (a) for an entity that is a trustee of a \*complying superannuation fund (the **original fund**)—its assets included assets other than:
  - (i) a \*complying superannuation life insurance policy; or
  - (ii) units in a \*pooled superannuation trust; or
- (b) for an entity that is a \*life insurance company—a complying superannuation life insurance policy issued by the entity was held by a complying superannuation fund (the **original fund**); or
- (c) for an entity that is a trustee of a \*pooled superannuation trust—units in the entity were held by a complying superannuation fund (the **original fund**).

*Transfer of accrued default amount and membership of continuing fund*

- (3) The second condition is satisfied if:
  - (a) under the \*arrangement, the original fund transfers, to a \*complying superannuation fund (the **continuing fund**), an \*accrued default amount of a person who is a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
  - (b) the amount is transferred to the continuing fund:
    - (i) as a result of an election made under paragraph 29SAA(1)(b) of that Act; or
    - (ii) under section 388 of that Act; and
  - (c) the member is a member of the continuing fund immediately after the time that the transfer occurs (the **completion time**).

*Choice relates to period from 1 July 2013 to 1 July 2017*

- (4) The third condition is satisfied if the completion time occurs during the period beginning on 1 July 2013 and ending on 1 July 2017.

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

## **Subdivision 311-C—Consequences of choosing to transfer losses**

### **Table of sections**

311-15	Who losses can be transferred to
311-20	Losses that can be transferred
311-25	Effect of transferring a net capital loss
311-30	Effect of transferring a tax loss
311-35	Realisation of certain assets after completion time

### **311-15 Who losses can be transferred to**

The transferring entity can choose to transfer any or all of the transferring entity's losses set out in section 311-20, in whole or in part, to one or more of the following entities (a *receiving entity*):

- (a) the continuing fund for the choice;
- (b) a \*pooled superannuation trust in which units are held by the continuing fund for the choice just after the completion time;
- (c) a \*life insurance company with which a \*complying superannuation life insurance policy is held by the continuing fund for the choice just after the completion time.

### **311-20 Losses that can be transferred**

- (1) The transferring entity's losses that can be transferred are:
  - (a) any of its \*net capital losses for income years earlier than the income year that includes the completion time (the *transfer year*), to the extent that they were not \*utilised before the completion time; and
  - (b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time; and
  - (c) any of its \*tax losses for income years earlier than the transfer year, to the extent that they were not utilised before the completion time; and

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

**Section 311-20**

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(d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time; worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over for the same arrangement, none of the CGT events for the roll-over will contribute towards a loss transferred under this Subdivision (see section 311-45 and subsections 311-50(1) and 311-55(1)).

*Modifications for transferred losses*

- (2) For a choice under Subdivision 311-B by an entity that is a trustee of a \*complying superannuation fund, work out those losses by only considering \*capital gains, \*capital losses, assessable income and deductions to the extent that they are reasonably attributable to the \*accrued default amount of the member.
- (3) For a choice under Subdivision 311-B by an entity that is a \*life insurance company, work out those losses by only considering the following to the extent that they are reasonably attributable to the \*accrued default amount of the member, and to a \*complying superannuation life insurance policy issued by the transferring entity and held by the original fund:
  - (a) \*capital gains from \*complying superannuation assets;
  - (b) \*capital losses from complying superannuation assets;
  - (c) assessable income covered by subsection 320-137(2) (about complying superannuation assets);
  - (d) deductions covered by subsection 320-137(4) (about complying superannuation assets).
- (4) For a choice under Subdivision 311-B by an entity that is a trustee of a \*pooled superannuation trust, work out those losses by only considering \*capital gains, \*capital losses, assessable income and deductions to the extent that they are reasonably attributable:
  - (a) to the \*accrued default amount of the member; and
  - (b) to units in the transferring entity held by the original fund.

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



**311-25 Effect of transferring a net capital loss**

To the extent that a loss of a kind referred to in paragraph 311-20(1)(a) or (b) is transferred to a receiving entity:

- (a) if the loss is for an income year earlier than the transfer year—the transferring entity is taken not to have made the loss for that earlier income year; and
- (b) if the loss is for the transfer year—the following is reduced by an amount equal to the transferred amount:
  - (i) if the transferring entity is a \*life insurance company—the sum of the transferring entity’s \*capital losses from \*complying superannuation assets for the transfer year;
  - (ii) otherwise—the sum of the transferring entity’s capital losses for the transfer year; and
- (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation assets made by the receiving entity on the day of the completion time; and
- (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity on the day of the completion time.

**311-30 Effect of transferring a tax loss**

To the extent that a loss of a kind referred to in paragraph 311-20(1)(c) or (d) is transferred to a receiving entity:

- (a) if the loss is for an income year earlier than the transfer year—the transferring entity is taken not to have made the loss for that earlier income year; and
- (b) if the loss is for the transfer year—the following is reduced by an amount equal to the transferred amount:
  - (i) if the transferring entity is a \*life insurance company—the sum of the transferring entity’s deductions covered by subsection 320-137(4) (about complying superannuation assets) for the transfer year;

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

Section 311-35

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- (ii) otherwise—the sum of the transferring entity’s deductions for the transfer year; and
- (c) for the purposes of sections 36-15 and 36-17, an amount equal to the transferred amount is taken to be:
  - (i) if the receiving entity is a life insurance company—a \*tax loss of the \*complying superannuation class that the receiving entity incurred for the income year of the receiving entity immediately prior to the income year in which the completion time occurs; or
  - (ii) otherwise—a tax loss that the receiving entity incurred for the income year of the receiving entity immediately prior to the income year in which the completion time occurs; and
- (d) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:
  - (i) if the receiving entity is a life insurance company—a tax loss of the \*complying superannuation class that the receiving entity incurred on the day of the completion time; or
  - (ii) otherwise—a tax loss that the receiving entity incurred on the day of the completion time.

**311-35 Realisation of certain assets after completion time**

- (1) In working out the \*net capital loss referred to in paragraph 311-20(1)(b), or the sum of the transferring entity’s \*capital losses referred to in paragraph 311-25(b), treat any amount:
  - (a) that is a \*capital loss or \*capital gain that the transferring entity makes after the completion time; and
  - (b) that arises as a result of realisation of assets for the purpose of enabling payment to the receiving entity in connection with the transfer of the \*accrued default amount of the member;as if the loss or gain were made during the transfer year but before the completion time.

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

## Section 311-40

- (2) In working out the \*tax loss referred to in paragraph 311-20(1)(d), or the sum of the transferring entity's deductions referred to in paragraph 311-30(b), treat any amount:
- (a) that is an amount of a deduction for the transferring entity, or an amount of assessable income by the transferring entity, arising after the completion time; and
  - (b) that arises as a result of realisation of assets for the purpose of enabling payment to the receiving entity in connection with the transfer of the \*accrued default amount of the member;
- as if the amount of the deduction, or the amount of income, arose during the transfer year but before the completion time.

**Subdivision 311-D—Consequences of choosing asset roll-over****Table of sections**

311-40	Assets roll-over
311-45	CGT assets
311-50	Revenue assets
311-55	Further consequences for roll-overs involving life insurance companies

**311-40 Assets roll-over**

- (1) The transferring entity can choose an asset roll-over for an asset in relation to which, under the \*arrangement, a \*CGT event happens if:
- (a) subsection (2) applies to the asset; and
  - (b) an asset (the *received asset*) becomes an asset of one of the following (the *receiving entity*) as a result of the event:
    - (i) the continuing fund for the choice;
    - (ii) a \*pooled superannuation trust in which units are held by the continuing fund for the choice just after the completion time;
    - (iii) a \*life insurance company with which a \*complying superannuation life insurance policy is held by the

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

**Section 311-45**

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continuing fund for the choice just after the completion time.

- (2) The asset is an asset to which this subsection applies (an *original asset*) if:
- (a) in a case where the entity choosing under Subdivision 311-B is a trustee of a \*complying superannuation fund—the asset is reasonably attributable to the \*accrued default amount of the member; or
  - (b) in a case where the entity choosing under Subdivision 311-B is a \*life insurance company—the asset is reasonably attributable to:
    - (i) the accrued default amount of the member; and
    - (ii) a \*complying superannuation life insurance policy issued by the transferring entity and held by the original fund; or
  - (c) in a case where the entity choosing under Subdivision 311-B is a trustee of a \*pooled superannuation trust—the asset is reasonably attributable to:
    - (i) the accrued default amount of the member; and
    - (ii) units in a pooled superannuation trust issued by the transferring entity and held by the original fund.

**311-45 CGT assets**

If the roll-over is chosen:

- (a) disregard any \*capital gain or \*capital loss the transferring entity makes from transferring an original asset to the receiving entity; and
- (b) the first element of the received asset's \*cost base, in the hands of the receiving entity, is the transferring entity's cost base just before the time of the \*CGT event; and
- (c) the first element of the received asset's \*reduced cost base, in the hands of the receiving entity is worked out similarly.

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

**311-50 Revenue assets***Consequences for transferring entity*

- (1) For each of the original assets that are \*revenue assets, the transferring entity's gross proceeds for the relevant \*CGT event are taken, for the purposes of this Act, to be the amount (the **deemed proceeds**) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

*Consequences for receiving entity*

- (2) For each of the received assets that are \*revenue assets, the receiving entity is taken, for the purposes of this Act, to have incurred an amount for that asset at the time of the \*CGT event that is equal to the deemed proceeds for the corresponding original asset.

**311-55 Further consequences for roll-overs involving life insurance companies**

- (1) Section 320-200 does not apply for a \*CGT event for the roll-over if either the transferring entity or the receiving entity is a \*life insurance company.

Note: Section 320 is about the consequences of transferring assets to or from a complying superannuation asset pool.

- (2) If the receiving entity for the roll-over is a \*life insurance company, each received asset of that entity is taken:
- (a) to be a \*complying superannuation asset of that entity; and
  - (b) not to be, in whole or in part, a \*life insurance premium.

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

**Chapter 3** Specialist liability rules

**Part 3-30** Superannuation

**Division 311** Loss relief and asset roll-over for transfer of amounts to a MySuper product

Section 311-60

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**Subdivision 311-E—Choices**

**Table of sections**

311-60 Choices

**311-60 Choices**

- (1) A choice under this Division must be made:
  - (a) by the day the transferring entity's \*income tax return is lodged for the transfer year for the entity; or
  - (b) within a further time allowed by the Commissioner.
- (2) The way the transferring entity's \*income tax return is prepared is sufficient evidence of the making of the choice.

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

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## **Division 312—Trans-Tasman portability of retirement savings**

### **Table of Subdivisions**

	Guide to Division 312
312-A	Preliminary
312-B	Amounts contributed to complying superannuation funds from KiwiSaver schemes
312-C	Superannuation benefits paid to KiwiSaver scheme providers

### **Guide to Division 312**

#### **312-1 What this Division is about**

This Division deals with amounts transferred between KiwiSaver schemes and complying superannuation funds.

### **Subdivision 312-A—Preliminary**

#### **Table of sections**

312-5	Division implements Arrangement with New Zealand
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#### **312-5 Division implements Arrangement with New Zealand**

This Division, together with regulations made under the *Superannuation Industry (Supervision) Act 1993*, implement the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

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

Section 312-10

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**Subdivision 312-B—Amounts contributed to complying superannuation funds from KiwiSaver schemes**

**Table of sections**

312-10	Amounts contributed to complying superannuation funds from KiwiSaver schemes
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**312-10 Amounts contributed to complying superannuation funds from KiwiSaver schemes**

*Treat amount as a contribution*

- (1) An amount transferred from a \*KiwiSaver scheme to a \*complying superannuation fund in relation to you is treated as being a contribution you made to the complying superannuation fund for the purpose of providing \*superannuation benefits for yourself.

Note 1: The contribution will not be included in the assessable income of the trustee of the complying superannuation fund: see Division 295.

Note 2: The contribution is not included in your concessional contributions: see section 291-25. Some of the contribution may be included in your non-concessional contributions: see subsection (3) of this section.

- (2) Division 290 (Contributions to superannuation funds), section 295-200 (Transfers from foreign superannuation funds) and Subdivision 305-B (Superannuation benefits from foreign superannuation funds) do not apply to the contribution.

*Australian-sourced amount and returning New Zealand-sourced amount not non-concessional*

- (3) For the purposes of Subdivision 292-C (Excess non-concessional contributions tax), disregard so much of the contribution as you or the \*KiwiSaver scheme provider informs, in accordance with the regulations mentioned in section 312-5, the trustee of the \*complying superannuation fund is:
- (a) an \*Australian-sourced amount; or

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



(b) a \*returning New Zealand-sourced amount.

Note: The effect of subsection (3) is that the amounts mentioned in paragraphs (3)(a) and (b) are not included in your non-concessional contributions. The rest of the contribution is included in your non-concessional contributions: see subsection 292-90(2).

*Assessable income and capital gains*

- (4) The contribution is not assessable income of yours and is not \*exempt income of yours.
- (5) Section 118-305 (capital gain or capital loss disregarded) applies in relation to the amount transferred as if the \*KiwiSaver scheme were a \*superannuation fund.

*Tax free and taxable components of superannuation interest*

- (6) Section 307-220 (Contributions segment) only applies to so much (if any) of the contribution as you or the \*KiwiSaver scheme provider inform, in accordance with the regulations mentioned in section 312-5, the trustee of the \*complying superannuation fund is:
  - (a) a \*New Zealand-sourced amount; or
  - (b) the \*tax free component of an \*Australian-sourced amount.

Note: So much of the value of an interest in the fund as consists of the amounts mentioned in paragraphs (6)(a) and (b) is included in the contributions segment and tax free component of the interest. So much of the value of that interest as consists of the rest of the contribution is not included in the contributions segment of the interest and is included in the taxable component of the interest. (The value of the interest may also consist of amounts other than the contribution.)

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

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**Subdivision 312-C—Superannuation benefits paid to  
KiwiSaver scheme providers**

**Table of sections**

312-15 Superannuation benefits paid to KiwiSaver schemes

**312-15 Superannuation benefits paid to KiwiSaver schemes**

A \*superannuation benefit paid to a \*KiwiSaver scheme provider by the trustee of a \*complying superannuation fund in respect of you is not assessable income of yours and is not \*exempt income of yours.

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

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