



# **Taxation Laws Amendment Act (No. 1) 1997**

**No. 122, 1997**

**An Act to amend the law relating to taxation**



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2
4	Amendment of income tax assessments .....	2
<b>Schedule 1—Amendment of the Income Tax Assessment Act 1936: various measures</b>		<b>4</b>
Part 1—Special depreciation on trading ships		4
Part 2—Commonwealth education or training payments		5
Part 3—Controlled foreign companies and foreign investment funds		12
<b>Schedule 2—Amendment of the Taxation Laws Amendment Act (No.4) 1995: dividend imputation</b>		<b>15</b>
<b>Schedule 3—Amendment of the Income Tax Assessment Act 1936: employee share schemes</b>		<b>17</b>
<b>Schedule 4—Amendment of the Income Tax Assessment Act 1936: underlying interests in assets for CGT purposes</b>		<b>21</b>
<b>Schedule 5—Amendment of the Income Tax Assessment Act 1936: disposals of small business assets for CGT purposes</b>		<b>45</b>
Part 1—Insertion of Division 17A in Part IIIA		45
Part 2—Consequential amendments		70
Part 3—Application		71
<b>Schedule 6—Amendment of Schedule 2C to the Income Tax Assessment Act 1936: forgiveness of commercial debts</b>		<b>72</b>
<b>Schedule 7—Amendment of the Superannuation Industry (Supervision) Act 1993: tax file numbers</b>		<b>76</b>
<b>Schedule 8—Amendment of the Income Tax Assessment Act 1936: equity investment in small-medium enterprises</b>		<b>77</b>





# Taxation Laws Amendment Act (No. 1) 1997

No. 122, 1997

---

---

## An Act to amend the law relating to taxation

[Assented to 8 July 1997]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 1) 1997*.

### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Items 17, 18 and 19 of Schedule 1 are taken to have commenced on 3 June 1990.
  - (3) Item 24 of Schedule 1 is taken to have commenced on 1 January 1993.
-

- 
- (4) Items 22 and 23 of Schedule 1 are taken to have commenced on 1 September 1994.
  - (5) Schedule 2 is taken to have commenced immediately after the commencement of item 159 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.
  - (6) Items 3 and 4 of Schedule 3 are taken to have commenced immediately after the commencement of the *Income Tax Assessment Amendment (Capital Gains) Act 1986*.
  - (7) Item 5 of Schedule 3 is taken to have commenced immediately after the commencement of the *Taxation Laws Amendment (Self Assessment) Act 1992*.
  - (8) Schedule 4 is taken to have commenced on 20 January 1997.
  - (9) Schedule 6 is taken to have commenced immediately after the commencement of Schedule 2C to the *Income Tax Assessment Act 1936*.
  - (10) Schedule 7 is taken to have commenced immediately after the commencement of section 299G of the *Superannuation Industry (Supervision) Act 1993*.
  - (11) Schedule 8 is taken to have commenced immediately after the commencement of Part 5 of Schedule 1 to the *Taxation Laws Amendment Act (No. 3) 1996*.

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

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

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

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

## **Schedule 1—Amendment of the Income Tax Assessment Act 1936: various measures**

### **Part 1—Special depreciation on trading ships**

#### **1 Paragraph 57AM(4)(ba)**

Omit “2002”, substitute “1997”.

## Part 2—Commonwealth education or training payments

### 2 Subsection 6(1)

Insert:

*Commonwealth education or training payment* means a payment by the Commonwealth, or in connection with a payment by the Commonwealth, of an allowance or reimbursement:

- (a) to or on behalf of a participant in a Commonwealth labour market program; or
  - (b) to or on behalf of a student under:
    - (i) the scheme known as AUSTUDY; or
    - (ii) the scheme known as ABSTUDY; or
    - (iii) the scheme known as the Assistance for Isolated Children Scheme; or
    - (iv) the scheme known as the Veterans' Children Education Scheme;
- in respect of a period commencing at a time when the student was at least 16 years old.

### 3 Subsection 6(1)

Insert:

*Commonwealth labour market program* means a program administered by the Commonwealth under which:

- (a) unemployed persons are given training in skills to improve their employment prospects; or
- (b) unemployed persons are assisted in obtaining employment or to become self-employed; or
- (c) employed persons are given training in skills and other assistance to aid them in continuing to be employed by their current employer or in obtaining other employment.

### 4 Subparagraph 23(z)(i)

Repeal the subparagraph, substitute:



- (i) an amount received by a student from a person or authority upon condition that the student will (or will if required) become, or continue to be, an employee of the person or authority;
- (ia) an amount received by a student from a person or authority upon condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the person or authority that is wholly or principally for the labour of the student;
- (ib) an amount received by a student under a scholarship where the scholarship is not provided principally for educational purposes;

**5 Subparagraphs 23(z)(ii) to (x)**

Repeal the subparagraphs, substitute:

- (ii) a Commonwealth education or training payment (see subsection 6(1)); or

Note: Although the payment is not exempt from income tax under this paragraph, the whole or part of the payment may be exempt under section 24ABZF.

- (iii) an education entry payment received under Part 2.13A of the *Social Security Act 1991*;

**6 Subparagraphs 23(zaa)(i) to (vii)**

Repeal the subparagraphs, substitute:

- (i) a Commonwealth education or training payment (see subsection 6(1)); or

Note: Although the payment is not exempt from income tax under this paragraph, the whole or part of the payment may be exempt under section 24ABZF.

- (ii) an education entry payment received under Part 2.13A of the *Social Security Act 1991*;

**7 Division 1AA of Part III (heading)**

Repeal the heading, substitute:

**Division 1AA—Exemption from income tax: payments under the Social Security Act 1991 and the Veterans’ Entitlements Act 1986, and similar payments**

**8 Section 24AAA (table)**

Omit “Payments under Part 8 of the *Student and Youth Assistance Act 1973*”, substitute “Commonwealth education or training payments”.

**9 Subdivision BA of Division 1AA of Part III**

Repeal the Subdivision, substitute:

**Subdivision BA—Exemption from income tax: Commonwealth education or training payments**

**24ABZE Interpretation**

- (1) For the purpose of applying this Subdivision to a Commonwealth education or training payment (see subsection 6(1)) derived by a taxpayer, there are 2 kinds of supplementary amount.
- (2) One kind of supplementary amount is so much of the payment as was included in the payment to assist with, or to reimburse, the costs of any one or more of the following:
  - (a) rent;
  - (b) living in a remote area;
  - (c) commencing employment;
  - (d) travel to, or participation in, courses, interviews, education or training;
  - (e) a child or children wholly or substantially dependent on the taxpayer;
  - (f) telephone bills;
  - (g) living away from the taxpayer’s usual residence;
  - (h) maintaining the taxpayer’s usual residence while living away from that residence;
  - (i) accommodation, books or equipment;
  - (j) discharging a HEC assessment debt (within the meaning of Chapter 4 of the *Higher Education Funding Act 1988*);

- (k) transport in travelling to undertake education or training, or to visit the taxpayer's usual residence when undertaking education or training away from that residence;
  - (l) if the taxpayer is disabled—acquiring any special equipment, services or transport as a result of the disability;
  - (m) anything that would otherwise prevent the taxpayer from beginning, continuing or completing any education or training.
- (3) The other kind of supplementary amount is so much of the payment as was included in the payment by way of pharmaceutical allowance.
  - (4) Expressions used in this Subdivision that are also used in Part 8 of the *Student and Youth Assistance Act 1973* have the same meanings as in that Part.
  - (5) Expressions used in a section of this Subdivision that relates to payments under a particular provision of Part 8 of the *Student and Youth Assistance Act 1973* that are also used in that provision have the same meanings as in that provision.

**24ABZF Commonwealth education or training payments**

- (1) The treatment of a Commonwealth education or training payment is as follows:
  - (a) the supplementary amounts are exempt;
  - (b) the balance is not exempt.
- (2) Payments under section 169 of the *Student and Youth Assistance Act 1973* (which deal with bereavement payments) are exempt.
- (3) If a taxpayer derives a payment under section 170 of the *Student and Youth Assistance Act 1973*:
  - (a) so much of the sum of that payment and other payments under Part 8 of the *Student and Youth Assistance Act 1973* derived by the taxpayer during the bereavement lump sum period as is not more than the tax-free amount calculated in accordance with subsection (5) is exempt; and
  - (b) the balance of the sum is not exempt.
- (4) If:

- (a) a taxpayer's partner died; and
  - (b) the taxpayer would have been qualified for payments under Division 10 of Part 8 of the *Student and Youth Assistance Act 1973* apart from paragraph 168(1)(f) of that Act (taxpayer's allowance increased on partner's death to such an extent that no bereavement payments); and
  - (c) the taxpayer derives payments of youth training allowance during the bereavement period;
- then those payments are not treated under subsection (1) but are treated as follows:
- (d) the supplementary amounts are exempt;
  - (e) so much of the balance as is more than what would have been the balance (payments less supplementary amounts) if the partner had not died is exempt;
  - (f) the rest of the balance is not exempt.
- (5) The tax-free amount referred to in paragraph (3)(a) is worked out as follows:

*Method Statement*

*Step 1.* Work out the amount of payments under Part 8 of the *Student and Youth Assistance Act 1973* that would have been derived by the taxpayer during the bereavement lump sum period and would have been exempt if:

- (a) the partner had not died; and
- (b) if immediately before the partner's death the couple were an illness separated couple or a respite care couple—they were not such a couple;

the result is called the ***notional exempt amount for the taxpayer***.

*Step 2.* Work out the amount of payments (if any) under Part 8 of the *Student and Youth Assistance Act 1973* or the *Social Security Act 1991* that would have been derived by the partner during the bereavement lump sum period if the

partner had not died: the result is called the *notional amount for the partner*.

*Step 3.* Add up the notional exempt amount for the taxpayer and the notional amount for the partner: the result is the *tax-free amount*.

**10 Subsection 159ZR(1) (paragraph (d) of the definition of eligible income)**

Repeal the paragraph, substitute:

- (d) a Commonwealth education or training payment (see subsection 6(1));

**11 Subsection 160AAA(1) (paragraphs (b) to (d) of the definition of rebatable benefit)**

Repeal the paragraphs, substitute:

- (b) consisting of a Commonwealth education or training payment (see subsection 6(1)), except where the recipient, or the individual on whose behalf the recipient receives the payment, is an employee of any person who is entitled to a Commonwealth subsidy in respect of the employment; or

**12 Subsection 160AAA(1) (paragraph (da) of the definition of rebatable benefit)**

Omit “or”.

**13 Subsection 160AAA(1) (paragraph (e) of the definition of rebatable benefit)**

Repeal the paragraph.

**14 Subsection 221A(1) (at the end of paragraphs (a) to (f) of the definition of salary or wages)**

Add “or”.

**15 Subsection 221A(1) (paragraphs (g) to (nb) of the definition of salary or wages)**

Repeal the paragraphs, substitute:

- (g) by way of Commonwealth education or training payment  
(see subsection 6(1));

## **16 Application**

- (1) The amendments made by this Part, other than items 14 and 15, apply to amounts received on or after 1 July 1996.
- (2) The amendments made by items 14 and 15 apply to payments made after the 28th day after the day on which this Part commences.

## **Part 3—Controlled foreign companies and foreign investment funds**

### **17 Subsection 47A(9)**

After “there is no entity”, insert “(other than the provider referred to in that subsection)”.

### **18 Subsection 47A(12)**

After “there is no entity”, insert “(other than the provider referred to in that subsection)”.

### **19 Paragraph 47A(13)(b)**

After “there is an entity”, insert “(other than the provider referred to in subsection (8) or (11), as the case may be)”.

### **20 At the end of section 385**

Add:

- (5) In determining for the purposes of paragraph (4)(b) the gross turnover of the eligible CFC for the eligible period, section 434 has effect as if:
- (a) subparagraph 434(1)(a)(i) were omitted; and
  - (b) the words “, but not including amounts that are shown in those recognised accounts as amounts covered by section 436” were omitted from paragraphs 434(1)(b), (c) and (d); and
  - (c) the words “(other than an exclusion of amounts shown in those recognised accounts as amounts covered by section 436)” were omitted from subsection 434(2).

### **21 Application**

Item 20 applies in respect of statutory accounting periods of a controlled foreign company that began or begin on or after 1 July 1990.

### **22 Paragraphs 517(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the person was lawfully in Australia because the person was the holder of a temporary visa (the *current visa*) granted under the *Migration Act 1958*; and
- (b) the period from the time when:
  - (i) the current visa; or
  - (ii) if the current visa was granted by way of an extension of a previous temporary visa or of extensions of previous temporary entry visas—the earlier or earliest previous temporary visa;was granted until the current visa is due to expire does not exceed 4 years; and

### **23 At the end of section 517**

Add:

- (3) A reference in subsection (2) to a temporary visa includes a reference to a temporary entry permit granted before 1 September 1994.
- (4) For the purposes of this section, a person who is a citizen of New Zealand is an exempt visitor to Australia in relation to a year of income if:
  - (a) at the end of that year of income:
    - (i) the person had not been a resident of Australia for a continuous period exceeding 4 years; and
    - (ii) had the person not been a citizen of New Zealand, he or she would have been required to be the holder of a temporary visa; and
  - (b) the person has not come to live in Australia permanently.

### **24 After section 567**

Insert:

#### **567A Notional deductions: net capital losses**

- (1) Any net capital losses incurred by the FIF during the relevant period (other than losses taken into account under section 567) are notional deductions from the notional income of the FIF of that period.



- (2) For the purposes of the application of this Subdivision to the taxpayer in relation to a FIF, an amount (the *excluded amount*) is not taken into account in determining whether an amount is a notional deduction from the notional income of the FIF of the relevant period, or in calculating the amount of such a deduction, to the extent (if any) to which the excluded amount:
- (a) has been, or is to be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of the relevant period or a previous notional accounting period; or
  - (b) would have been, or would be, allowed as a notional deduction, or taken into account in the calculation of a notional deduction, from the notional income of the FIF in respect of a previous notional accounting period if the taxpayer had been required for the purposes of this Part to work out the notional deductions from that notional income.

## **Schedule 2—Amendment of the Taxation Laws Amendment Act (No.4) 1995: dividend imputation**

### **1 Paragraph 159(1)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) the company would have been liable to pay tax under subsection 160AQJ(1) of the *Income Tax Assessment Act 1936* for its 1995-96 franking year on the following assumptions:
  - (i) the amendments made by this Schedule did not apply in respect of the company for its 1995-96 franking year; and
  - (ii) no class A franking debit of the company arose under subsection 160AQB(1) of the *Income Tax Assessment Act 1936* after the class C conversion time of the company.

### **2 Paragraph 159(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

- (c) the company would have been liable to pay tax under subsection 160ARX(1) of the *Income Tax Assessment Act 1936* for its 1995-96 franking year on the following assumptions:
  - (i) the amendments made by this Schedule did not apply in respect of the company for its 1995-96 franking year; and
  - (ii) no class A franking debit of the company arose under subsection 160AQB(1) of the *Income Tax Assessment Act 1936* after the class C conversion time of the company.

### **3 After item 159 of Schedule 2**

Insert:

**159A Transitional—companies may defer or decline certain franking credits**

- (1) This item applies if, apart from this item, a class C franking credit of a company would arise on a particular day in the 1995-96 franking year of the company because:
  - (a) a class C franked dividend is paid to the company on that day; or
  - (b) there is a class C flow-on franking amount in relation to a trust amount or partnership amount that is included in, or a partnership amount that is allowed as a deduction from, the assessable income of the company.
- (2) The company may elect that:
  - (a) the class C franking credit does not arise; or
  - (b) the class C franking credit does not arise on that day but arises on a later day nominated by the company.
- (3) If the company nominates a later day:
  - (a) the later day must be within 14 days (or within such longer period as the Commissioner allows) of the day on which the class C franking credit would have arisen; and
  - (b) the later day must be before the end of the 1995-96 franking year of the company.
- (4) Any election or nomination under subitem (2):
  - (a) must be in writing; and
  - (b) is irrevocable.
- (5) This item does not apply where a class C franking credit arises on a particular day as the result of a previous operation of this item.

## **Schedule 3—Amendment of the Income Tax Assessment Act 1936: employee share schemes**

### **1 Paragraph 26AAC(4AA)(a)**

Omit “the taxpayer”, substitute “a taxpayer”.

### **2 After paragraph 26AAC(4AA)(a)**

Insert:

- (aa) the consideration for the acquisition is equal to, or more than, the market value of the share or right (within the meaning of Subdivision F of Division 13A) at the time of the acquisition;
- or

### **3 Subsection 26AAC(15A)**

Omit “issued to”, substitute “acquired by”.

### **4 Paragraph 26AAC(15B)(b)**

Omit “issued”, substitute “acquired by the taxpayer”.

### **5 Subsection 26AAC(15B)**

Omit “issued”, substitute “acquired by the taxpayer”.

### **6 Subsection 139BA(2)**

Omit “\$500”, substitute “\$1,000”.

### **7 Subsection 139C(5)**

After “the taxpayer is”, insert “the trustee of”.

### **8 Subsection 139CD(8)**

Omit “or right”.

### **9 Subsection 139CE(4)**

Omit “139GE”, substitute “139GF”.

### **10 Paragraph 139DC(2)(a)**

Omit “\$500”, substitute “\$1,000”.

**11 Paragraph 139FA(a)**

Omit “before”, substitute “up to and including”.

**12 Paragraph 139FA(b)**

Repeal the paragraph, substitute:

- (b) if there were no transactions on that stock market in that one week period in such shares and rights:
  - (i) the last price at which an offer was made on that stock market in that period to buy such a share or right; or
  - (ii) if, in the case of a share, no such offer has been made—the value of the share that would have been determined under section 139FB if that section applied to the share; or
  - (iii) if, in the case of a right, no such offer has been made—the value of the right that would have been determined under section 139FC if that section applied to the right.

**13 At the end of section 139FA**

Add:

- (2) If a share or right is quoted on 2 or more approved stock markets on that day, the market value is the value determined under subsection (1) in respect of whichever of those the taxpayer chooses.

**14 Section 139FH**

Repeal the section.

**15 Section 139FI**

Omit “30”, substitute “60”.

**16 Subsection 139FN(2)**

After “exercised”, insert “(the *exercise period*)”.

**17 Subsection 139FN(3)**

Omit “(the *exercise period*)”.

**18 Paragraph 139GF(4)(b)**

Omit “75%”, substitute “<sup>2</sup>/<sub>3</sub>”.

**19 Section 139GH (table item relating to Published price)**

Repeal the item.

**20 After subsection 160ZZC(9)**

Insert:

- (9A) For the purposes of subsections (8) and (9), despite paragraph 160M(5)(a), an issue of shares in a company is taken to constitute a disposal of shares by the company.

**21 Subsection 160ZZC(10)**

Omit “or (8)”, substitute “, (8) or (9)”.

**22 Application**

- (1) Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* applies in the same way to the amendments made by items 1, 7, 8, 9, 11, 12, 13, 14, 16, 17 and 19 of this Schedule as it applied to the amendments made by Schedule 2 to that Act.
- (2) The amendments made by items 2 and 15 apply to shares acquired on or after the day that this Act receives the Royal Assent.
- (3) The amendments made by items 3, 4 and 5 apply in relation to shares acquired on or after 20 September 1985.
- (4) The amendments made by items 6, 10 and 18 apply to shares or rights acquired on or after 1 July 1996.
- (5) The amendments made by items 20 and 21 apply in relation to options exercised on or after 20 September 1985.

**23 Transitional—market value of shares and rights**

For the purposes of Division 13A of Part III of the *Income Tax Assessment Act 1936*, the market value of a share or right on a particular day on or after 28 March 1995 and before 12 December 1996 where the share or right is quoted on a share market of an approved stock exchange on that day may be determined under whichever of the following is chosen by the relevant taxpayer:

---

- (a) section 139FA of the *Income Tax Assessment Act 1936* as amended by this Schedule;
- (b) section 139FA of the *Income Tax Assessment Act 1936* before being amended by this Schedule.

## Schedule 4—Amendment of the Income Tax Assessment Act 1936: underlying interests in assets for CGT purposes

### 1 Division 20 of Part IIIA (heading)

Repeal the heading, substitute:

### Division 20—Changes in majority underlying interests in assets

### 2 Before section 160ZZS

Insert:

#### Subdivision A—Preliminary

#### 160ZZRR Interpretation

(1) In this Division:

*abnormal trading* has the meaning given by Subdivision D.

*approved stock exchange* has the same meaning as in section 470.

*base time*, in relation to a public entity, means:

- (a) the last moment of a day within the period beginning on 1 July 1985 and ending on 30 June 1986 that is chosen by the entity and is a day the choice of which will result in a determination that gives a reasonable approximation of the natural persons who held underlying interests in the assets of the entity at the last moment of 19 September 1985; or
- (b) if no day within that period is so chosen—the last moment of 19 September 1985.

*business day*, in relation to the application of paragraph (b) of the definition of *test time* to a public entity, means a day other than:

- (a) a Saturday; or
- (b) a Sunday; or



- (c) a day that is a public holiday or a bank holiday in the place where the records of ownership of shares or other interests in the entity are kept.

**capital shareholding of less than 1%** has the meaning given by subsection 160ZZSN(1).

**capital unitholding of less than 1%** has the meaning given by subsection 160ZZSO(1).

**complying approved deposit fund** means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

**complying superannuation fund** means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

**dividend shareholding of less than 1%** has the meaning given by subsection 160ZZSN(2).

**first test time** means the last moment of 20 January 1997.

**government body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal corporation or other local government body; or
- (c) a foreign state.

**head company** has the meaning given by section 160ZZSK.

**head trust** has the meaning given by section 160ZZSK.

**hold** includes have.

**in a position to affect rights** has the meaning given by section 160ZZRRB.

**income unitholding of less than 1%** has the meaning given by subsection 160ZZSO(2).

**indirect beneficial interest:**

- (a) in relation to an asset, has the meaning given by section 160ZZRS; and

- (b) in relation to income derived from an asset, has the meaning given by section 160ZZRT.

***interposed entity*** has the meaning given by section 160ZZSL.

***last moment***, in relation to a day, has the meaning given by subsection (3).

***listed public company*** means a company in which any of the shares (except shares that carry the right to a fixed rate of dividend) are listed for quotation in the official list of an approved stock exchange.

***majority underlying interests***, in relation to an asset, means more than one-half of:

- (a) the beneficial interests that natural persons hold (whether directly or indirectly) in the asset; and
- (b) the beneficial interests that natural persons hold (whether directly or indirectly) in any income that may be derived from the asset.

***mutual insurance organisation*** means:

- (a) a mutual insurance company within the meaning of section 121AB; or
- (b) a mutual affiliate company within the meaning of section 121AC.

***part of a substantial shareholding*** has the meaning given by section 160ZZSP.

***prescribed period***, in relation to a test time, means:

- (a) the period of 6 months beginning on the day after the day on which that time occurs; or
- (b) the period of 3 months beginning on the day after the day on which the *Taxation Laws Amendment Act (No. 1) 1997* received the Royal Assent;

whichever period ends last.

***public company*** means:

- (a) a listed public company; or

- (b) a company (other than a listed public company) all the shares in which are beneficially owned by any one or more of the following:
  - (i) listed public companies;
  - (ii) mutual insurance organisations;
  - (iii) publicly traded unit trusts; or
- (c) a 100% subsidiary of a company to which paragraph (b) applies.

**public entity** means:

- (a) a public company; or
- (b) a mutual insurance organisation; or
- (c) a publicly traded unit trust.

**publicly traded unit trust** means a unit trust the units in which:

- (a) are listed for quotation in the official list of an approved stock exchange; or
- (b) are ordinarily available for subscription or purchase by the public.

**relevant interest** has the meaning given by Division 5 of Part 1.2 of the Corporations Law.

**special company** means:

- (a) a mutual insurance organisation; or
- (b) a company whose constituent document prevents it from making any distribution, whether in money, property or otherwise, to its members; or
- (c) a company that is prescribed by the regulations.

**subsidiary**: the expression **100% subsidiary** has the meaning given by section 160ZZRRA.

**test time**, in relation to a public entity, means:

- (a) the last moment of 20 January 1997; or
- (b) the last moment of a day that is 5 years (or a multiple of 5 years) after the day referred to in paragraph (a) or, if a day worked out under this paragraph is not a business day, the last moment of the next day that is a business day; or

- (c) if the public entity is a public company or a publicly traded unit trust—the last moment of any day after 20 January 1997 on which:
- (i) there is abnormal trading in shares in the company or in units in the trust; or
  - (ii) in respect of a public entity that is, or is a 100% subsidiary of, a public company all the shares in which are beneficially owned by a listed public company or are beneficially owned by a publicly traded unit trust—there is abnormal trading in shares in the listed public company or in the publicly traded unit trust.

**trading**, in relation to shares in a public company or units in a publicly traded unit trust, has the meaning given by subsections 160ZZSE(2) and (3).

**underlying interest**, in relation to an asset, means a beneficial interest that a natural person holds (whether directly or indirectly) in the asset or in any income that may be derived from the asset.

- (2) A reference in this Division to a requirement having, or not having, been made of a public entity, or to a public entity having done or failed to do any thing, is, if the entity is a publicly traded unit trust, taken to be a reference to the requirement having, or not having, been made of the trustee of the trust or to the trustee of the trust having done or failed to do that thing, as the case may be.
- (3) A reference in the definition of **base time** or **test time**, for the purposes of the application of that definition to a public entity, to the last moment of a day is a reference to the **last moment** of that day by legal time in the place where the records of ownership of shares or other interests in the entity are kept.
- (4) For the purposes of this Division, the following are taken to be natural persons:
  - (a) a government body;
  - (b) a company whose constituent document prevents it from making any distribution, whether in money, property or otherwise, to its members.

---

**160ZZRRA What is a 100% subsidiary**

- (1) A company (the *subsidiary company*) is a **100% subsidiary** of another company (the *holding company*) if all the shares in the subsidiary company are beneficially owned by:
  - (a) the holding company; or
  - (b) one or more 100% subsidiaries of the holding company; or
  - (c) the holding company and one or more 100% subsidiaries of the holding company.
- (2) However, the subsidiary company is *not* a **100% subsidiary** of the holding company if a person is in a position to affect rights, in relation to the subsidiary company, of:
  - (a) the holding company; or
  - (b) a 100% subsidiary of the holding company.
- (3) The subsidiary company is also *not* a **100% subsidiary** of the holding company if at some future time a person will be in a position to affect rights as described in subsection (2).
- (4) A company (other than the subsidiary company) is a **100% subsidiary** of the holding company if, and only if:
  - (a) it is a 100% subsidiary of the holding company; or
  - (b) it is a 100% subsidiary of a 100% subsidiary of the holding company;because of any other application or applications of this section.

**160ZZRRB Position to affect rights in relation to a company**

- (1) A person is *in a position to affect rights* of a company in relation to another company if the person has the right, power or option:
  - (a) to acquire those rights from one or other of those companies;  
or
  - (b) to do something that would prevent one or other of those companies from exercising its rights for its own benefit, or from receiving any benefit arising from having those rights.
- (2) It does not matter whether the person has the right, power or option because of the constituent document of one or other of those companies, any agreement or otherwise.

**160ZZRS Indirect beneficial interest in asset**

A natural person is taken to hold an indirect beneficial interest in an asset of an entity (other than another natural person) for the purposes of this Division where:

- (a) if the entity were to distribute any of its capital; and
- (b) in the case where another entity or other entities are interposed between the first-mentioned entity and the person—if the capital were then distributed by the other entity or successively distributed by each of the other entities;

the person would have the right to receive any of the capital for the person's own benefit.

**160ZZRT Indirect beneficial interest in income derived from asset**

A natural person is taken to hold an indirect beneficial interest in income that may be derived from an asset of an entity (other than another natural person) for the purposes of this Division where:

- (a) if the entity were to pay a dividend or otherwise distribute any of its income; and
- (b) in the case where another entity or other entities are interposed between the first-mentioned entity and the person—if the dividend or income were then paid or distributed by the other entity or successively paid or distributed by each of the other entities;

the person would have the right to receive any of the dividend or income for the person's own benefit.

**160ZZRU Acquisition of percentage of underlying interests as a result of death**

For the purposes of this Division, if, because of a person's death, a natural person acquires a percentage (the *acquired percentage*) of the underlying interests in an asset, the natural person is taken to have held (in addition to any other part of the total underlying interests that the person held or is taken to have held), at any time when the dead person held a percentage (the *dead person's percentage*) of the total underlying interests in the asset, a percentage of the total underlying interests in the asset equal to the

acquired percentage, or the dead person's percentage at that time,  
whichever is the less.

## **Subdivision B—Provisions applying to taxpayers other than public entities**

### **3 Before subsection 160ZZS(1)**

Insert:

(1AA) This section does not apply to a taxpayer that is a public entity in  
respect of an asset to which Subdivision C applies.

Note: The heading to section 160ZZS is replaced by the heading “**Changes in majority  
underlying interests in assets of taxpayers other than public entities**”.

### **4 Subsection 160ZZS(2)**

Repeal the subsection.

### **5 Subsection 160ZZS(2A)**

Repeal the subsection.

### **6 Subsection 160ZZS(3)**

Repeal the subsection.

### **7 After section 160ZZS**

Insert:

## **Subdivision C—Provisions applying to public entities**

### **160ZZSA Public entities to determine at identified times whether changes have occurred since 19 September 1985 in majority underlying interests in assets of the entities**

*Determination to be made by entity that has not previously found a  
lack of continuity of holding of majority underlying interests*

- (1) This section applies to a public entity in relation to a test time in  
respect of an asset acquired on or before 19 September 1985 if, and  
only if:
- (a) the entity was the owner of the asset at the test time; and

- (b) the asset was not, immediately before 20 January 1997, taken, under subsection 160ZZS(1), to have been acquired by the entity after 19 September 1985; and
- (c) if the test time was a time referred to in paragraph (b) or (c) of the definition of *test time* in subsection 160ZZRR(1)—the asset was not, immediately before the day on which the test time occurred, taken, under section 160ZZS or under a previous application of this Subdivision, to have been acquired by the entity after 19 September 1985.

*Entity to examine its records to determine whether continuity exists*

- (2) The entity must, within the prescribed period after the test time or within such further period (if any) as the Commissioner approves, make a determination, by an examination of its records, showing whether majority underlying interests in the asset at the test time were held by natural persons who held majority underlying interests in the asset at the base time.

*Interests whose holders cannot be identified*

- (3) If there were, at the base time, underlying interests in the asset the holders of which cannot be identified by the entity from an examination of its records, those interests are taken, for the purposes of the determination, to have been held at the base time by natural persons who did not hold underlying interests in the asset at the test time.

**160ZZSB Date of acquisition of asset if failure to make determination on time**

*Section applies if determination not made in respect of test time*

- (1) This section applies if a public entity that is required under subsection 160ZZSA(2) to make a determination in respect of an asset in respect of a test time fails duly to make the determination within the period applying under that subsection.



*Failure to determine in respect of first test time*

- (2) If the test time is the first test time, the asset is taken for the purposes of this Part to have been acquired by the entity on 20 September 1985.

*Failure of public entity to determine in respect of first test time after it becomes a public entity*

- (3) If:
- (a) a public entity becomes a public entity after 20 January 1997; and
  - (b) the test time is the first time it is required to make a determination under subsection 160ZZSA(2) after it became a public entity;
- the asset is taken for the purposes of this Part to have been acquired by the entity at the time when it became a public entity.

*Failure to determine in respect of later test time*

- (4) If the test time is later than the test time applicable under subsection (2) or (3), as the case may be, the asset is taken for the purposes of this Part to have been acquired by the entity on the most recent day in respect of which both the following conditions were satisfied:
- (a) the day must have been a day on which a test time occurred;
  - (b) at the test time that occurred on the day, majority underlying interests in the asset must have been held by natural persons who held majority underlying interests in the asset at the base time.

*Consideration for acquisition of asset*

- (5) If an asset is taken by subsection (2), (3) or (4) to have been acquired by a public entity on a particular day, the entity is taken to have acquired the asset for a consideration equal to the market value of the asset on that day.

---

**160ZZSC If no continuity of majority underlying interests found at first test time**

*Time of, and consideration for, acquisition of asset*

- (1) If a determination by a public entity under subsection 160ZZSA(2) in relation to the first test time shows that majority underlying interests in an asset of the entity at that test time were not held by natural persons who held majority underlying interests in the asset at the base time, the asset is taken for the purposes of this Part:
- (a) to have been acquired by the entity at the time applicable under this section; and
  - (b) to have been so acquired for a consideration equal to the market value of the asset at that time.

*Commissioner may accept that the same natural persons held majority underlying interests in an asset at the base time and the first test time*

- (2) A determination referred to in subsection (1) is taken not to show that majority underlying interests in an asset of a public entity at the first test time were not held by natural persons who held majority underlying interests in the asset at the base time if the Commissioner is satisfied, or considers it reasonable to assume, that majority underlying interests in the asset at that test time were held by natural persons who held majority underlying interests in the asset at the base time.

*If no requirement to test before 20 January 1997*

- (3) If the entity was not required before 20 January 1997, under a ruling given by the Commissioner that was made available to the public, to determine whether, at a time after the base time and before the first test time, majority underlying interests in the asset were held by natural persons who held majority underlying interests in the asset at the base time, the asset is taken to have been acquired by the entity on 20 January 1997.

*If requirement to test before 20 January 1997*

- (4) If the entity was required before 20 January 1997, under a ruling given by the Commissioner that was made available to the public,

to determine whether, at a time (the *previous determination time*) after the base time and before the first test time, majority underlying interests in the asset were held by natural persons who held majority underlying interests in the asset at the base time, the asset is taken to have been acquired by the entity on:

- (a) the earliest day in respect of which:
  - (i) the entity was required under the ruling to determine whether majority underlying interests in the asset were held by natural persons who held majority underlying interests in the asset at the base time; and
  - (ii) the entity is unable to show that majority underlying interests were so held; and
- (b) if there is no day applicable under paragraph (a)—  
20 January 1997.

**160ZZSD If no continuity of majority underlying interests at later test time**

*Time of, and consideration for, acquisition of asset*

- (1) If a determination by a public entity under subsection 160ZZSA(2) in relation to a later test time shows that majority underlying interests in an asset of the entity at that test time were not held by natural persons who held majority underlying interests in the asset at the base time, the asset is taken for the purposes of this Part:
  - (a) to have been acquired by the entity at the later test time; and
  - (b) to have been so acquired for a consideration equal to the market value of the asset at that time.

*Commissioner may accept that the same natural persons held majority underlying interests in an asset at the base time and the later test time*

- (2) A determination referred to in subsection (1) is taken not to show that majority underlying interests in an asset of a public entity at a later test time were not held by natural persons who held majority underlying interests in the asset at the base time if the Commissioner is satisfied, or considers it reasonable to assume, that majority underlying interests in the asset at that test time were held by natural persons who held majority underlying interests in the asset at the base time.

## Subdivision D—Abnormal trading

### 160ZZSE Abnormal trading in shares in a public company or units in a publicly traded unit trust

- (1) This Subdivision applies for the purpose of determining whether there has been *abnormal trading* in shares in a public company or in units in a publicly traded unit trust for the purposes of this Division.
- (2) There is taken for the purposes of this Division to have been a *trading* in shares in the company, or in units in the trust, if there was an issue, redemption or transfer of, or any other dealing in, those shares or units.
- (3) However, an issue, redemption or transfer of, or another dealing in, shares in the company or units in the trust is not a trading in the shares or units to which this Division applies if the issue, redemption, transfer or other dealing does not change the proportions in which natural persons hold underlying interests in assets of the company or trust.

### 160ZZSF Abnormal trading: general provision

- (1) There is taken to have been an *abnormal trading* in shares in the company, or in units in the trust, if a trading in the shares or units was abnormal having regard to all relevant factors, including these:
  - (a) the timing of the trading, when compared with the normal timing for trading in the company's shares or in the trust's units;
  - (b) the number of shares or units traded, when compared with the normal number of the company's shares, or the trust's units, traded;
  - (c) any connection between the trading and any other trading in the company's shares or in the trust's units.
- (2) There may also be an *abnormal trading* under section 160ZZSG, 160ZZSH or 160ZZSI.

**160ZZSG Abnormal trading: 5% of shares or units in one transaction**

There is taken to have been an *abnormal trading* in shares in the company, or in units in the trust, if 5% or more of the shares or units were traded in one transaction.

**160ZZSH Abnormal trading: suspected acquisition or merger**

There is taken to have been an *abnormal trading* in shares in the company, or in units in the trust, if there was a trading in those shares or units that the company or trustee knows or reasonably suspects was part of an acquisition or merger of the company with another company or of the trust with another trust.

**160ZZSI Abnormal trading—20% of shares or units traded over 60 day period**

- (1) There is taken to have been an *abnormal trading* in shares in the company, or in units in the trust, if more than 20% of the shares or units were traded during a 60 day period.
- (2) The abnormal trading is taken to have happened at the end of the 60 day period concerned.

**Subdivision E—How holdings of shares or units of less than 1% in certain public entities may be treated**

**160ZZSJ What this Subdivision is about**

This Subdivision has rules that make it easier for a public company or the trustee of a publicly traded unit trust to determine, as at a test time or the base time, the holders of majority underlying interests in its assets.

All holdings of shares or units of less than 1% in the company or trust are treated as if they were held by a single notional natural person. This means that the company or trustee does not have to trace through to the actual natural persons who beneficially hold underlying interests in the assets of the company or trust.

A similar rule applies if another public company or publicly traded unit trust is interposed between the company or trust and those persons. All holdings of less than 1% in the *interposed* company or *interposed* trust are treated as if they were held by a different single notional natural person. This means that the company or trustee does not have to trace through the interposed company or interposed trust to the actual natural persons who beneficially hold underlying interests in the assets of the head company or the head trust.

Note: The rules in this Subdivision may not apply if they would hide a change in the holding of majority underlying interests in the company or trust: see section 160ZZSQ.

**160ZZSK Holdings of less than 1% in public company or publicly traded unit trust**

This Subdivision modifies the way in which a public company (the *head company*) or a publicly traded unit trust (the *head trust*) may determine under subsection 160ZZSA(2) the natural persons who, at a test time or the base time, held underlying interests in:

- (a) an asset of the head company if there were at that time:
  - (i) capital shareholdings of less than 1%; or
  - (ii) dividend shareholdings of less than 1%;in the head company; or
- (b) an asset of the head trust if there were at that time:
  - (i) capital unit holdings of less than 1%; or
  - (ii) income unit holdings of less than 1%;in the head trust.

**160ZZSL Holdings of less than 1% in interposed public company or interposed publicly traded unit trust**

- (1) This Subdivision also modifies the way in which the head company or the head trust may determine under subsection 160ZZSA(2) the natural persons who, at a test time or the base time, held underlying interests in an asset of the head company or of the head trust if at that time another entity (the *interposed entity*) that is a public company or a publicly traded unit trust met the conditions in subsections (2) and (3).

- (2) The interposed entity must have been interposed between the head company or head trust and natural persons who held indirectly beneficial interests in the asset or in any income that may be derived from the asset.
- (3) There must have been:
  - (a) if the interposed entity was a public company:
    - (i) capital shareholdings of less than 1%; or
    - (ii) dividend shareholdings of less than 1%;in the interposed public company; or
  - (b) if the interposed entity was a publicly traded unit trust:
    - (i) capital unitholdings of less than 1%; or
    - (ii) income unitholdings of less than 1%;in the interposed publicly traded unit trust.

### **160ZZSM Notional single shareholder or unitholder**

#### *Application*

- (1) The head company or the head trust may apply the provisions of this section in determining the natural persons who held underlying interests in an asset of the head company or of the head trust at the base time and at a test time.

#### *Notional shareholder or unitholder of head company or head trust*

- (2) Subject to subsection (6), the natural persons who held underlying interests in the asset at the respective times may be determined as if a single notional natural person (the **notional holder**) had the right to receive, for the person's own benefit and directly:
  - (a) in respect of a determination in relation to an asset of the head company:
    - (i) any distributions of capital of the head company in respect of each capital shareholding of less than 1% in the company at each such time; and
    - (ii) any dividends the head company may pay in respect of each dividend shareholding of less than 1% in the company at each such time; and
  - (b) in respect of a determination in relation to an asset of the head trust:

**Schedule 4** Amendment of the Income Tax Assessment Act 1936: underlying interests in assets for CGT purposes

---

- (i) any distributions of capital of the head trust in respect of each capital unitholding of less than 1% in the trust at each such time; and
- (ii) any income that may be distributed by the head trust in respect of each income unitholding of less than 1% in the trust at each such time.

*Notional shareholder or unitholder of the interposed entity*

- (3) Subject to subsection (6), the natural persons who held underlying interests in the asset at the respective times may also be determined as if, for each interposed entity, a different single notional natural person (the **notional holder**) had the right to receive, for the person's own benefit and directly:
  - (a) if the interposed entity is a public company:
    - (i) any distributions of capital of the interposed entity in respect of each capital shareholding of less than 1% in the interposed entity at each such time; and
    - (ii) any dividends the interposed entity may pay in respect of each dividend shareholding of less than 1% in the interposed entity at each such time; or
  - (b) if the interposed entity is a publicly traded unit trust:
    - (i) any distributions of capital of the interposed entity in respect of each capital unitholding of less than 1% in the interposed entity at each such time; or
    - (ii) any income that may be distributed by the interposed entity in respect of each income unitholding of less than 1% in the interposed entity at each such time.

*People who actually had rights in respect of head company or head trust are taken not to have had the rights*

- (4) If subsection (2) is applied in determining the natural persons who held underlying interests in the asset at a particular time, the determination is to be made as if the natural persons who at that time had the right to receive for their own benefit (whether directly or indirectly):
    - (a) any distributions of capital of the head company or head trust in respect of each capital shareholding of less than 1% or each capital unitholding of less than 1% in the company or trust; and
-



- (b) any dividends that may be paid by the head company, or any income that may be distributed by the head trust, in respect of each dividend shareholding of less than 1% in the company or each income unitholding of less than 1% in the trust;

did not have that right.

*People who actually had rights in respect of interposed entity are taken not to have had the rights*

- (5) If subsection (3) is applied in determining the natural persons who held underlying interests in the asset at a particular time, the determination is also to be made as if the natural persons who at that time had the right to receive for their own benefit (whether directly or indirectly):
  - (a) any distributions of capital of the interposed entity in respect of each capital shareholding of less than 1% or each capital unitholding of less than 1% in the entity; and
  - (b) any dividends that may be paid by, or any income that may be distributed by, the interposed entity in respect of each dividend shareholding of less than 1% or each income unitholding of less than 1% in the entity;

did not have that right.

*Reduction of percentage of notional holder's rights to distributions*

- (6) If:
  - (a) the percentage of the distributions of capital, dividends or income of the head company or head trust, or of the interposed entity, that the notional holder had the right to receive at a test time;is greater than:
  - (b) the percentage (the **lower percentage**) of the distributions of capital, dividends or other income of the head company or head trust, or of the interposed entity, that the notional holder had the right to receive at the base time;the notional holder is taken to have the right to receive the lower percentage of the distributions of capital, dividends or other income at the test time.

**160ZZSN Capital shareholding and dividend shareholding of less than 1%**

*Meaning of capital shareholding of less than 1%*

- (1) If all the shares in the head company, or in an interposed entity that is a public company, of which an entity is the registered holder at a test time or the base time carry (between them) the right to receive less than 1% of any distribution of capital of the company, those shares (except shares that are part of a substantial shareholding) constitute a **capital shareholding of less than 1%** in the company at that time.

*Meaning of dividend shareholding of less than 1%*

- (2) If all the shares in the head company, or in an interposed entity that is a public company, of which an entity is the registered holder at a test time or the base time carry (between them) the right to receive less than 1% of any dividends that the company may pay, those shares (except shares that are part of a substantial shareholding) constitute a **dividend shareholding of less than 1%** in the company at that time.

**160ZZSO Capital unitholding and income unitholding of less than 1%**

*Meaning of capital unitholding of less than 1%*

- (1) If all the units in the head trust, or in an interposed entity that is a publicly traded unit trust, of which an entity is the registered holder at a test time or the base time carry (between them) the rights to receive less than 1% of any distribution of capital of the trust, those units constitute a **capital unitholding of less than 1%** in the trust at that time.

*Meaning of income unitholding of less than 1%*

- (2) If all the units in the head trust, or in an interposed entity that is a publicly traded unit trust, of which an entity is the registered holder at a test time or the base time carry (between them) the rights to receive less than 1% of any distribution of income of the trust,

those units constitute an *income unitholding of less than 1%* in the trust at that time.

### **160ZZSP Shares that are part of a substantial shareholding**

*When shares begin to be part of substantial shareholding*

- (1) Shares in a company *begin* to be **part of a substantial shareholding** of a person when the person gives the company:
- (a) a notice under section 709 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a relevant interest in the shares as at the day when the person became a substantial shareholder in the company; or
  - (b) a notice under section 710 of the Corporations Law from which it appears that the person or an associate (within the meaning of that section) had a relevant interest in the shares after the change in relevant interests because of which the notice had to be given;

whichever happens first.

*When shares stop being part of substantial shareholding*

- (2) The shares *stop* being part of the substantial shareholding when the person gives the company:
- (a) a notice under section 710 of the Corporations Law from which it appears that neither the person nor an associate (within the meaning of that section) had a relevant interest in the shares after the change in relevant interests because of which the notice had to be given; or
  - (b) a notice under section 711 of the Corporations Law from which it appears that the person had stopped being a substantial shareholder in the company;

whichever happens first.

### **160ZZSQ If public company or publicly traded unit trust would not otherwise have the same holding of majority underlying interests**

This Subdivision does not apply for the purposes of a determination under subsection 160ZZSA(2) in respect of an asset

---

of the head company or of the head trust in relation to a test time if the Commissioner considers it reasonable to assume that at that time a majority of underlying interests in the asset would not have been held by natural persons who held majority underlying interests in the asset at the base time if it were not for the rules in this Subdivision.

**Subdivision F—How interposed superannuation funds, approved deposit funds, special companies and government bodies may be treated**

**160ZZSR What this Subdivision is about**

This Subdivision has rules that make it easier for a public company or the trustee of a publicly traded unit trust to determine, as at a test time or the base time, the holders of underlying interests in its assets.

The company or trustee does not have to trace through any complying superannuation funds, complying approved deposit funds, special companies or government bodies that are interposed between the company or trust and the natural persons who beneficially hold underlying interests in the assets of the company or trust.

**160ZZSS When fund, special company or government body is taken to have rights to capital, dividends or other income**

- (1) A public company or a publicly traded unit trust may apply the provisions of this section in determining the natural persons who held underlying interests in an asset of the company or in an asset of the trust, as the case may be, at a test time or the base time if:
  - (a) a superannuation fund, approved deposit fund, special company or government body was interposed, at that time, between natural persons and the company or trust; and
  - (b) at that time, those persons had the right to receive for their own benefit, and indirectly through the fund, special company or government body (or through entities including it), a percentage (the *relevant percentage*) of:

- (i) any distributions of capital of the public company or publicly traded unit trust; or
- (ii) any dividends that the public company may pay or any income that the publicly traded unit trust may distribute; and
- (c) where a superannuation fund was interposed as mentioned in paragraph (a)—at the test time the fund was a complying superannuation fund or was a foreign superannuation fund; and
- (d) where an approved deposit fund was interposed as mentioned in paragraph (a)—at the test time the fund was a complying approved deposit fund.

*If fund, special company or government body has more than 50 members*

- (2) If, at the test time or the base time, the fund, special company or government body had more than 50 members, the public company or the publicly traded unit trust may determine the natural persons who held underlying interests in the asset of the company or trust at that time as if the fund, special company or government body were a natural person who had the right to receive, for the person's own benefit, the relevant percentage of those distributions of capital, those dividends or that income of the public company or publicly traded unit trust.

*If fund or special company has not more than 50 members*

- (3) If, at the test time or the base time, the fund or special company did not have more than 50 members, the public company or the publicly traded unit trust may determine the natural persons who held underlying interests in the asset of the company or trust at that time as if each member were a natural person who had a right to receive, for the person's own benefit, an equal proportion of those distributions of capital, those dividends or that income.

*Persons who actually had the right are taken not to have had the right*

- (4) If the public company or the publicly traded unit trust applies subsection (2) or (3) in determining the natural persons who held underlying interests in an asset of the company or trust at a test
-

time or the base time, those interests are to be determined as if, at that time, the natural persons who had the right to receive that percentage of those distributions of capital, those dividends or that income did not have that right (except as provided by subsection (3)).

*Notional membership of government body*

- (5) For the purposes of this section, a government body is taken to have more than 50 members.

**Subdivision G—Determination of underlying interests if mutual insurance organisation with more than 50 members ceases to be such an organisation but continues to be a public entity**

**160ZZST Members of former mutual insurance organisation taken to hold underlying interests in assets since base time**

- (1) A public entity may apply the provisions of this section in determining the natural persons who held underlying interests in an asset of the entity at a test time or the base time if:
- (a) the entity was a mutual insurance organisation at the base time; and
  - (b) the entity has, whether before or after the commencement of this section, ceased to be such an organisation but has continued in existence as a public company or a publicly traded unit trust; and
  - (c) at the time of the cessation (the *cessation time*) the entity had more than 50 members.
- (2) A natural person who:
- (a) immediately before the cessation time was a member of the entity; and
  - (b) immediately after the cessation time held:
    - (i) an underlying interest in an asset of the entity; or
    - (ii) an underlying interest, through the entity, in an asset of another entity that was a public entity;
- is taken, for the purposes of the application of this Division in determining, after the cessation time, the natural persons who held
-

underlying interests in assets of the entity or the other entity at a test time or the base time, to have held the interest at all times from and including the base time until immediately after the cessation time.

## **8 Before section 160ZZT**

Insert:

### **Division 20A—Special provisions relating to disposals of certain pre-20 September 1985 assets**

## **Schedule 5—Amendment of the Income Tax Assessment Act 1936: disposals of small business assets for CGT purposes**

### **Part 1—Insertion of Division 17A in Part IIIA**

#### **1 After Division 17 of Part IIIA**

Insert:

### **Division 17A—Roll-over relief on certain disposals of assets of small businesses**

#### **Subdivision A—Interpretative provisions**

##### **160ZZPK Definitions**

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

*active asset* has the meaning given by subsections 160ZZPL(3), (4), (5) and (6).

*asset* has the meaning given by subsections 160ZZPL(1) and (2).

*associate* has the meaning given by section 160ZZPM.

*Australian Statistician* means the Australian Statistician referred to in subsection 5(2) of the *Australian Bureau of Statistics Act 1975*.

*connected* has the meaning given by section 160ZZPN.

*depreciable asset* means an asset the cost of which is allowable as a deduction under this Act over a period of time.

*disposal test time*, in relation to the disposal of an asset, means the time immediately before the disposal.



**disposal year of income**, in relation to a taxpayer in relation to a roll-over asset, means the year of income in which the roll-over asset was disposed of by the taxpayer.

**entity** means any of the following:

- (a) an individual;
- (b) a partnership;
- (c) a company;
- (d) a trust.

**gross goodwill roll-over amount** has the meaning given by subsection 160ZZPQ(4).

**gross non-goodwill roll-over amount** has the meaning given by subsection 160ZZPQ(3).

**gross roll-over amount** means a gross goodwill roll-over amount or a gross non-goodwill roll-over amount.

**listed public company** means a company in which any of the shares (except shares that carry the right to a fixed rate of dividend) are listed for quotation in the official list of an approved stock exchange.

**mutual insurance organisation** means:

- (a) a mutual insurance company within the meaning of section 121AB; or
- (b) a mutual affiliate company within the meaning of section 121AC.

**net goodwill roll-over amount** has the meaning given by subsection 160ZZPS(5).

**net non-goodwill roll-over amount** has the meaning given by subsection 160ZZPR(5).

**net roll-over amount** means a net goodwill roll-over amount or a net non-goodwill roll-over amount.

**notional capital gain** has the meaning given by paragraph 160ZZPQ(1)(b).

**public company** means:

---

**Schedule 5** Amendment of the Income Tax Assessment Act 1936: disposals of small business assets for CGT purposes

---

- (a) a listed public company; or
- (b) a company (other than a listed public company) all the shares in which are beneficially owned by any one or more of the following:
  - (i) listed public companies;
  - (ii) mutual insurance organisations;
  - (iii) publicly traded unit trusts.

**public entity** means:

- (a) a public company; or
- (b) a mutual insurance organisation; or
- (c) a publicly traded unit trust.

**publicly traded unit trust** means a unit trust the units in which:

- (a) are listed for quotation in the official list of an approved stock exchange; or
- (b) are ordinarily available for subscription or purchase by the public.

**replacement asset** has the meaning given by subsection 160ZZPT(1) but does not include an asset in respect of whose disposal:

- (a) this Part would not apply because of a provision of section 160L; or
- (b) a capital gain would not be taken to have accrued because of subsection 160Z(6).

**replacement goodwill asset** means a replacement asset that is goodwill.

**replacement non-goodwill asset** means a replacement asset that is not goodwill.

**roll-over asset** has the meaning given by subsection 160ZZPL(7).

**roll-over goodwill asset** means a roll-over asset that is goodwill.

**roll-over non-goodwill asset** means a roll-over asset that is not goodwill.

**total goodwill cost base**, in relation to a taxpayer in relation to a disposal year of income, means the amount that, apart from this

---

Division, would be the cost base of a replacement goodwill asset, or the sum of the amounts that, apart from this Division, would be the cost bases of replacement goodwill assets, nominated by the taxpayer in respect of a net goodwill roll-over amount that applies to the taxpayer in respect of that year of income.

**total net roll-over amount**, in relation to a taxpayer in relation to a disposal year of income, means the net roll-over amount, or the sum of the net roll-over amounts, applying to the taxpayer in respect of that year of income.

**total non-goodwill cost base**, in relation to a taxpayer in relation to a disposal year of income, means the amount that, apart from this Division, would be the cost base of a replacement non-goodwill asset, or the sum of the amounts that, apart from this Division, would be the cost bases of replacement non-goodwill assets, nominated by the taxpayer in respect of a net roll-over amount or net roll-over amounts that apply to the taxpayer in respect of that year of income.

*Application of Division to trusts*

- (2) This Division applies to a trust as if the trust were a taxpayer. However, a trust is not a legal person and any thing to be done by the trust has to be done by the trustee of the trust. Accordingly, any provision of this Division that refers to a taxpayer or entity having been, or not having been, required to do any thing or having done, or not having done, any thing is taken, if the taxpayer or entity is a trust, to refer to the trustee of the trust having been, or not having been, required to do that thing or having done, or not having done, that thing, as the case may be.

**160ZZPL Assets, active assets and roll-over assets**

*Meaning of asset*

- (1) In this Division:

**asset** has the meaning given by section 160A except that it includes any motor vehicle, and includes a part of an asset, but, where the expression is used in relation to an individual who is not acting as a trustee, it does not include:

**Schedule 5** Amendment of the Income Tax Assessment Act 1936: disposals of small business assets for CGT purposes

---

- (a) an asset that is being used solely for the personal use and enjoyment of the individual or an associate of the individual; or
- (b) a right to, or to any part of, any allowance, annuity or capital amount payable out of a superannuation fund or an approved deposit fund, as referred to in paragraph 160ZZJ(1)(a); or
- (c) a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund, as referred to in paragraph 160ZZJ(1)(b); or
- (d) a policy of life assurance as defined by subsection 160ZZI(1).

*Assets in connected entity excluded*

- (2) The assets of an entity for the purposes of this Division do not include shares, units or other interests (excluding an interest that is a **security** as defined by subsection 159GP(1)) in another entity that is connected with the first-mentioned entity.

*Meaning of active asset*

- (3) Subject to subsections (4), (5) and (6), an asset owned by a taxpayer is an active asset at a particular time if at that time:
  - (a) it is used, or held ready for use, by the taxpayer in the course of carrying on a business; or
  - (b) it is an intangible asset that is inherently connected with a business carried on by a taxpayer (for example, goodwill or the benefit of a restrictive covenant).

*Certain assets not to be regarded as active assets*

- (4) The following assets are not active assets:
    - (a) shares in companies;
    - (b) interests in trusts;
    - (c) subject to subsections (5) and (5A), an asset whose predominant use is to derive interest, an annuity, rent, royalties or foreign exchange gains;
    - (d) financial instruments (such as loans, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract).
-

*Exception for roll-over assets whose value has been enhanced by taxpayer*

- (5) A roll-over asset whose predominant use is a use mentioned in paragraph (4)(c) is not precluded by that paragraph from being an active asset if it has been substantially developed, altered or improved by the taxpayer to such an extent that its market value has been substantially enhanced.

*Exception for replacement asset temporarily used to derive rent*

- (5A) A replacement asset is not precluded by paragraph (4)(c) from being an active asset merely because its predominant use is to derive rent if its use for that purpose is only temporary.

*Asset deemed to be active asset for 2 years in certain circumstances*

- (6) If:
- (a) a taxpayer acquires an asset in a year of income for the purpose of having the asset as an active asset; and
  - (b) the taxpayer wishes to nominate the asset as a replacement asset for the purposes of the application of this Division in respect of a net roll-over amount; and
  - (c) a gross roll-over amount that applies to the taxpayer in respect of the year of income in which a roll-over asset was disposed of is taken into account in calculating the net roll-over amount; and
  - (d) the first-mentioned asset is an active asset at the end of 2 years after the last occasion in the year of income referred to in paragraph (c) on which the taxpayer disposed of any roll-over asset;

the first-mentioned asset is taken to have been an active asset at all times during that period of 2 years.

*Meaning of roll-over asset*

- (7) An asset of a business carried on by a taxpayer is a roll-over asset in respect of the taxpayer in respect of a year of income if:
- (a) the asset is disposed of by the taxpayer in the year of income; and

- (b) the threshold criteria set out in section 160ZZPP are complied with at the disposal test time.

### **160ZZPM Associates**

- (1) A person is an associate of a taxpayer for the purposes of this Division if the person is:
  - (a) if the taxpayer is an individual who is not acting as a trustee:
    - (i) the spouse of the taxpayer; or
    - (ii) a child under 18 years of age of the taxpayer; or
  - (b) an entity that acts, or could reasonably be expected to act, in accordance with the directions or wishes of the taxpayer; or
  - (c) an entity that acts, or could reasonably be expected to act, in concert with the taxpayer.
- (2) If a taxpayer is a partner in a partnership, no other partner in the partnership is taken to be an associate of the taxpayer merely because of paragraph (1)(c).

### **160ZZPN Entity connected with taxpayer**

#### *Connection to be based on control*

- (1) Subject to this section, an entity is connected with a taxpayer for the purposes of this Division if:
  - (a) the taxpayer controls the entity; or
  - (b) the taxpayer is controlled by the entity; or
  - (c) the taxpayer and the entity are each controlled by the same entity.

#### *Control of entity: 50% or more of rights*

- (2) Subject to subsection (3), an entity (the **first entity**) is taken for the purposes of subsection (1) to control another entity if the first entity, or an associate or associates of the first entity, or the first entity and an associate or associates of the first entity:
  - (a) own beneficially, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right to receive at least 50% of any distribution of income or capital that the other entity may make; or

- (b) if the other entity is a company—own beneficially, or have the right to acquire beneficial ownership of, shares in the company that carry between them the right to exercise, or control the exercise of, at least 50% of the voting power in the company; or
- (c) if the other entity is a discretionary trust:
  - (i) are the trustee or trustees of the trust; or
  - (ii) have the power to determine the manner in which the trustee or trustees of the trust exercise the power to make any payment of income or capital to or for the benefit of beneficiaries of the trust.

*Exception*

- (3) Paragraph (2)(c) does not apply if:
  - (a) the trust referred to in that paragraph is the taxpayer referred to in subsection (1); and
  - (b) a beneficiary of that trust is taken to control the trust because of the operation of a provision of this section; and
  - (c) that beneficiary is an associate of that trust or of any person who has the power of determination referred to in subparagraph (2)(c)(ii).

*Control of entity: at least 40% but less than 50% of rights*

- (4) An entity (the **first entity**) is also taken for the purposes of subsection (1) to control another entity if the first entity, or an associate or associates of the first entity, or the first entity and an associate or associates of the first entity:
  - (a) own beneficially, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right to receive at least 40%, but less than 50%, of any distribution of income or capital that the other entity may make; or
  - (b) if the other entity is a company—own beneficially, or have the right to acquire beneficial ownership of, shares in the company that carry between them the right to exercise, or control the exercise of, at least 40%, but less than 50%, of the voting power in the company;

unless the first entity satisfies the Commissioner that the other entity is controlled by a person other than, or by persons that do not include, the first entity or an associate of the first entity.

*Control of discretionary trust*

- (5) If the trustee or trustees of a discretionary trust have the power to pay to, or apply for the benefit of, an entity any income or capital of the trust, the entity is taken for the purposes of this section to own beneficially interests in any distribution of any income or capital, as the case may be, of the trust that is equal to the maximum percentage of the income or capital that the trustee is empowered to pay to, or apply for the benefit of, the entity.

*Indirect control of entity*

- (6) Subject to subsection (7), an entity that directly controls a second entity is taken for the purposes of this section also to control any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.

*No tracing through public entity*

- (7) If an entity (the **first entity**) controls a public entity, the first entity is not taken merely because of the operation of subsection (6) to control any other entity that is controlled by the public entity.

**Subdivision B—How roll-over relief is available on the disposal of an asset of a business**

**160ZZPO What this Subdivision is about**

This Subdivision sets out the way in which roll-over relief is given to a taxpayer in respect of a year of income in which assets of a business (the **relevant assets**) are disposed of by the taxpayer.

- The **threshold criteria** must be satisfied at the time immediately before the disposal of the relevant assets (paragraph 160ZZPL(7)(b)).



- Certain conditions must be satisfied in respect of the relevant assets, and any **gross non-goodwill roll-over amounts** and **gross goodwill roll-over amounts** in respect of those assets must be worked out: these are equivalent to the amounts of the capital gains that would have accrued if there had been no roll-over relief (sections 160ZZPQ and 160ZZR).
- The **net non-goodwill roll-over amount** in respect of the year of income is to be worked out by applying all the gross non-goodwill roll-over amounts in reduction of capital losses (section 160ZZPR).
- The **net goodwill roll-over amount** in respect of the year of income is to be worked out by applying all the gross goodwill roll-over amounts in reduction of capital losses to the extent that those losses have not been reduced by gross non-goodwill roll-over amounts (section 160ZZPS).
- The taxpayer may then nominate certain replacement assets in respect of the net roll-over amounts. If the taxpayer does not do so, a capital gain equal to the net roll-over amount concerned accrues during the year of income in which the relevant assets were disposed of (section 160ZZPT).
- The taxpayer is to apportion net roll-over amounts to replacement assets.
- If the only replacement assets are goodwill, the net goodwill roll-over amount is to be apportioned to the maximum extent among those assets.

The amount apportioned to an asset is applied to reduce the cost base of the asset.

Any part of the net goodwill roll-over amount that cannot be apportioned to replacement goodwill assets is taken to be a capital gain accruing during the year of income in which the relevant assets were disposed of (section 160ZZPU).

**Schedule 5** Amendment of the Income Tax Assessment Act 1936: disposals of small business assets for CGT purposes

	<ul style="list-style-type: none"><li>• If the only replacement assets are not goodwill, both the net non-goodwill roll-over amount and the net goodwill roll-over amount are to be apportioned to the maximum extent among those assets.  The amount apportioned to a non-depreciable asset is applied to reduce the cost base of the asset.  The amount that is apportioned to a depreciable asset is taken (unless a change in the status of the asset has previously occurred as mentioned in section 160ZZPX) to be a capital gain that accrues when the asset is disposed of.  Any part of the roll-over amounts that cannot be apportioned to replacement assets is taken to be a capital gain accruing during the year of income in which the relevant assets were disposed of (section 160ZZPV).</li><li>• If the replacement assets include both goodwill and assets other than goodwill, the net goodwill roll-over amount is apportioned among the replacement assets that are goodwill.  The amount apportioned to particular goodwill is applied to reduce the cost base of the goodwill.  Any part of the net goodwill roll-over amount that is not applied in this way, and any net non-goodwill roll-over amount, are to be apportioned among replacement assets that are not goodwill.  Any amount apportioned to a non-depreciable asset is applied to reduce the cost base of the asset.</li></ul>
	<p>Any amount that is apportioned to a depreciable asset is taken (unless a change in the status of the asset has previously occurred as mentioned in section 160ZZPX) to be a capital gain that accrues when the asset is disposed of.</p>

Any amount remaining is taken to be a capital gain accruing during the year of income in which the relevant assets were disposed of (section 160ZZPW).

- If a change in the status of a replacement asset occurs as mentioned in section 160ZZPX, any amount apportioned to the asset is taken to be a capital gain and, if it is a non-depreciable asset, the reduction in its cost base is cancelled.

### **160ZZPP Threshold criteria in respect of maximum net value of assets of taxpayer and related persons**

- (1) This section sets out the threshold criteria all of which must be satisfied before this Division applies in relation to the disposal by a taxpayer of an asset.

Note: The criteria must be satisfied at the disposal test time (see paragraph 160ZZPL(7)(b)).

- (2) The net value of the taxpayer's assets must not exceed \$5,000,000.

- (3) If the taxpayer or an associate of the taxpayer is a partner in a partnership and the asset disposed of is an asset of the partnership, the net value of the partnership's assets must not exceed \$5,000,000.

- (4) The sum of:

- (a) the total of the net values of the assets of the taxpayer; and
- (b) the net values of the assets of any entities that are connected with the taxpayer; and
- (c) if the taxpayer is a partner in a partnership (other than a partnership that is connected with the taxpayer)—the share of the taxpayer in the net value of the assets of the partnership; and
- (d) if an associate of the taxpayer is a partner in a partnership (other than a partnership that is connected with the taxpayer)—the share of the associate in the net value of the assets of the partnership;

must not exceed \$5,000,000.

- (5) The net value of the assets of an entity at a particular time for the purposes of this Subdivision is the amount (if any) by which at that time the sum of the market values of the assets of the entity exceeded the sum of the liabilities of the entity that related to those assets (other than a liability that related to an asset that is not an asset for the purposes of this Part because of paragraph (a), (b), (c) or (d) of the definition of *asset* in subsection 160ZZPL(1)).

### **160ZZPQ When roll-over relief is available**

*Assets in respect of which roll-over relief may apply*

- (1) If:
- (a) there is a roll-over asset in respect of a taxpayer in respect of a year of income; and
  - (b) apart from this Division, a capital gain (the *notional capital gain*) would be taken to have accrued to the taxpayer as a result of the disposal of the roll-over asset; and
  - (c) either:
    - (i) the roll-over asset was an active asset at the disposal test time; or
    - (ii) if the roll-over asset was not an active asset at the disposal test time and the relevant business had ceased to be carried on not earlier than 12 months before the disposal test time—the roll-over asset was an active asset immediately before the cessation occurred; and
  - (d) the roll-over asset was an active asset during more than one-half of the period in which it was owned by the taxpayer; and
  - (e) where the cost base of the roll-over asset was reduced under a previous application of this Division—the roll-over asset was acquired by the taxpayer more than 5 years before the disposal test time; and
  - (f) the taxpayer elects in writing, on or before the date of lodgment of the taxpayer's return of income for the disposal year of income, that this Division is to apply to the taxpayer in respect of the disposal of the roll-over asset;
- the following provisions of this section have effect.

*Exclusion of Part in respect of disposal of roll-over asset*

- (2) This Part (other than this Division) does not apply in respect of the disposal of the roll-over asset.

*Calculation of gross non-goodwill roll-over amount*

- (3) If the roll-over asset is not goodwill, an amount (the **gross non-goodwill roll-over amount**) equal to the notional capital gain is taken for the purposes of this Division to apply to the taxpayer in respect of the year of income in which the disposal occurred.

*Calculation of gross goodwill roll-over amount*

- (4) If the roll-over asset is goodwill, an amount (the **gross goodwill roll-over amount**) equal to the notional capital gain is taken for the purposes of this Division to apply to the taxpayer in respect of the year of income in which the disposal occurred.

**160ZZPR How net non-goodwill roll-over amount is worked out**

*Application of section*

- (1) This section applies to a taxpayer in respect of a disposal year of income if:
- (a) there is a roll-over asset, or there are roll-over assets, in respect of the taxpayer in respect of that year of income; and
  - (b) there is a gross non-goodwill roll-over amount, or there are gross non-goodwill roll-over amounts, that apply to the taxpayer in respect of the disposal year of income.

*Gross non-goodwill amount to reduce capital losses*

- (2) The gross non-goodwill roll-over amount, or the sum of the gross non-goodwill roll-over amounts, is to be applied, to the maximum extent possible:
- (a) first, in reduction of any capital losses that the taxpayer is taken to have incurred in the disposal year of income; and
  - (b) then, in reduction of any net capital losses that the taxpayer is taken to have incurred in respect of years of income (**applicable years of income**) earlier than the disposal year of income but not earlier than the 1995-96 year of income.

*Order in which net capital losses to be reduced*

- (3) In making reductions under paragraph (2)(b) of net capital losses incurred in respect of 2 or more applicable years of income, reductions are not to be made in respect of net capital losses incurred in respect of a particular applicable year of income until reductions are made, to the maximum extent possible, of net capital losses incurred in respect of any earlier applicable year of income or earlier applicable years of income.

*If capital losses wholly absorb gross non-goodwill roll-over amount*

- (4) If no part of the gross non-goodwill roll-over amount, or of the sum of the gross non-goodwill roll-over amounts, remains after the application of that amount or sum under subsection (2), there is no net non-goodwill roll-over amount applying to the taxpayer in respect of the disposal year of income.

*Net non-goodwill roll-over amount*

- (5) If any part of the gross non-goodwill roll-over amount, or of the sum of the gross non-goodwill roll-over amounts, remains after the application of that amount or sum under subsection (2), the amount remaining is taken to be the **net non-goodwill roll-over amount** applying to the taxpayer in respect of the disposal year of income.

## **160ZZPS How net goodwill roll-over amount is worked out**

*Application of section*

- (1) This section applies to a taxpayer in respect of a disposal year of income if:
- (a) there is a roll-over asset, or there are roll-over assets, in respect of the taxpayer in respect of that year of income; and
  - (b) there is a gross goodwill roll-over amount, or there are gross goodwill roll-over amounts, that apply to the taxpayer in respect of the disposal year of income.

*Gross goodwill roll-over amounts to reduce capital losses*

- (2) The gross goodwill roll-over amount, or the sum of the gross goodwill roll-over amounts, is to be applied, to the maximum extent possible:
- (a) first, in reduction of any capital losses that:
    - (i) the taxpayer is taken to have incurred in respect of the disposal year of income; and
    - (ii) remain after the application (if any) of section 160ZZPR; and
  - (b) then, in reduction of any net capital losses that:
    - (i) the taxpayer is taken to have incurred in respect of years of income (*applicable years of income*) earlier than the disposal year of income but not earlier than the 1995-96 year of income; and
    - (ii) remain after the application (if any) of section 160ZZPR.

*Order in which net capital losses to be reduced*

- (3) In making reductions under paragraph (2)(b) of net capital losses incurred in respect of 2 or more applicable years of income, reductions are not to be made in respect of net capital losses incurred in respect of a particular applicable year of income until reductions are made, to the maximum extent possible, of net capital losses incurred in respect of any earlier applicable year of income or earlier applicable years of income.

*If capital losses wholly absorb gross goodwill roll-over amount*

- (4) If no part of the gross goodwill roll-over amount, or of the sum of the gross goodwill roll-over amounts, remains after the application of that amount or sum under subsection (2), there is no net goodwill roll-over amount applying to the taxpayer in respect of the disposal year of income.

*Net goodwill roll-over amount*

- (5) If any part of the gross goodwill roll-over amount, or of the sum of the gross goodwill roll-over amounts, remains after the application of that amount or sum under subsection (2), the amount remaining

is taken to be the *net goodwill roll-over amount* applying to the taxpayer in respect of the disposal year of income.

### **160ZZPT Nomination of replacement assets**

*Taxpayer may nominate replacement assets*

- (1) Subject to subsections (2) and (3), if:
  - (a) there is a roll-over asset or there are roll-over assets in respect of a taxpayer in respect of a year of income; and
  - (b) there is a net roll-over amount that applies to the taxpayer in respect of the year of income;

the taxpayer may nominate, for the purposes of the application of this Division in respect of the net roll-over amount, one or more assets (a *replacement asset* or *replacement assets*):

- (c) that are active assets; and
- (d) that were acquired by the taxpayer within the period beginning 1 year before, and ending 2 years after, the last disposal by the taxpayer of any roll-over asset in that year of income.

*Replacement goodwill asset cannot be nominated in respect of net non-goodwill roll-over amount*

- (2) If the taxpayer disposes of, and immediately re-acquires, a roll-over asset, the taxpayer cannot nominate that asset as a replacement asset.
- (3) A taxpayer cannot nominate a replacement goodwill asset for the purposes of the application of this Division in respect of a net non-goodwill roll-over amount.

*Consequences of nomination of replacement assets*

- (4) If the taxpayer duly nominates a replacement asset or replacement assets for the purposes of the application of this Division in respect of a net roll-over amount, whichever of sections 160ZZPU, 160ZZPV and 160ZZPW is relevant applies to the taxpayer in respect of the disposal year of income.



*Capital gain to accrue if no nomination of replacement assets*

- (5) If the taxpayer does not duly nominate a replacement asset or replacement assets for the purposes of the application of this Division in respect of a net roll-over amount, a capital gain equal to the net roll-over amount is taken to have accrued to the taxpayer in the disposal year of income.

**160ZZPU Application of net goodwill roll-over amount if the only replacement assets are goodwill**

*Application of section*

- (1) This section applies to a taxpayer in relation to a disposal year of income if the taxpayer nominates only a replacement goodwill asset or replacement goodwill assets for the purposes of the application of this Division in respect of the net roll-over amount or the net roll-over amounts applying to the taxpayer in respect of that year of income.

Note: Replacement goodwill assets can only be nominated in respect of a net goodwill roll-over amount (see subsection 160ZZPT(3)).

*If total goodwill cost base is not less than net goodwill roll-over amount*

- (2) If the total goodwill cost base in relation to the taxpayer in respect of the disposal year of income is equal to or greater than the net goodwill roll-over amount applying to the taxpayer in respect of that year of income:
- (a) the taxpayer must apportion the whole of the net goodwill roll-over amount among the nominated replacement assets in such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the cost base of the asset; and
  - (b) if an amount is apportioned to an asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been reduced by that amount.

*If total goodwill cost base is less than net goodwill roll-over amount*

- (3) If the total goodwill cost base in relation to the taxpayer in respect of the disposal year of income is less than the net goodwill roll-over amount applying to the taxpayer in respect of that year of income, the following provisions have effect:
- (a) the taxpayer must apportion so much of the net goodwill roll-over amount as is equal to the total goodwill cost base among the nominated replacement assets but so that the amount apportioned to a particular asset does not exceed the cost base of the asset;
  - (b) if an amount is apportioned to an asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been nil;
  - (c) an amount equal to the difference between the total goodwill cost base and the net goodwill roll-over amount is taken to be a capital gain that accrued to the taxpayer during the disposal year of income.

**160ZZPV Application of net roll-over amounts if the only replacement assets are assets other than goodwill**

*Application of section*

- (1) This section applies to a taxpayer in relation to a disposal year of income if the taxpayer nominates only a replacement non-goodwill asset or replacement non-goodwill assets for the purposes of the application of this Division in respect of the net roll-over amount or net roll-over amounts applying to the taxpayer in respect of that year of income.

*If total non-goodwill cost base is not less than total net roll-over amount*

- (2) If the total non-goodwill cost base in relation to the taxpayer in respect of the disposal year of income is equal to or greater than the total net roll-over amount applying to the taxpayer in respect of that year of income, the following provisions have effect:
- (a) the taxpayer must apportion the whole of the total net roll-over amount among the nominated replacement assets in

such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the cost base of the asset;

- (b) if an amount is apportioned to an asset that is not a depreciable asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been reduced by the amount;
- (c) if an amount is apportioned to an asset that is a depreciable asset and section 160ZZPX does not apply in relation to the asset before it is disposed of—the amount is taken to be a capital gain that accrues to the taxpayer during the year of income in which the asset is disposed of.

*If total non-goodwill cost base is less than the total net roll-over amount*

- (3) If the total non-goodwill cost base in relation to the taxpayer in respect of the disposal year of income is less than the total net roll-over amount applying to the taxpayer in respect of that year of income, the following provisions have effect:
  - (a) the taxpayer must apportion so much of the total net roll-over amount as is equal to the total non-goodwill cost base among the nominated replacement assets but so that the amount apportioned to a particular asset does not exceed the cost base of the asset;
  - (b) if an amount is apportioned to an asset that is not a depreciable asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been nil;
  - (c) if an amount is apportioned to an asset that is a depreciable asset and section 160ZZPX does not apply in relation to the asset before it is disposed of—the amount is taken to be a capital gain that accrues to the taxpayer during the year of income in which the asset is disposed of;
  - (d) an amount equal to the difference between the total non-goodwill cost base and the total net roll-over amount is taken to be a capital gain that accrued to the taxpayer during the disposal year of income.

---

**160ZZPW Application of net roll-over amounts if the replacement assets include both goodwill and assets other than goodwill**

*Definition*

- (1) In this section:

**residual net roll-over amount**, in relation to a taxpayer in relation to a disposal year of income, means the sum of:

- (a) the net goodwill roll-over amount applying to the taxpayer in respect of that year of income as reduced under paragraph (4)(c); and
- (b) the net non-goodwill roll-over amount applying to the taxpayer in respect of that year of income.

*Application of section*

- (2) This section applies to a taxpayer in relation to a disposal year of income if the taxpayer nominates both one or more replacement goodwill assets and one or more replacement non-goodwill assets for the purposes of the application of this Division in respect of a net roll-over amount or net roll-over amounts applying to the taxpayer in respect of that year of income.

Note: Replacement goodwill assets can only be nominated in respect of a net goodwill roll-over amount (see subsection 160ZZPT(3)).

*If total goodwill cost base is not less than net goodwill roll-over amount*

- (3) If the total goodwill cost base in relation to the taxpayer in respect of the disposal year of income is equal to or greater than the net goodwill roll-over amount applying to the taxpayer in respect of that year of income:
- (a) the taxpayer must apportion the whole of the net goodwill roll-over amount among the replacement assets that are nominated in respect of the net goodwill roll-over amount in such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the cost base of the asset; and

- (b) if an amount is apportioned to an asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been reduced by the amount.

*If total goodwill cost base is less than net goodwill roll-over amount*

- (4) If the total goodwill cost base in relation to the taxpayer in respect of the disposal year of income is less than the net goodwill roll-over amount applying to the taxpayer in respect of that year of income:
  - (a) the taxpayer must apportion so much of the net goodwill roll-over amount as is equal to the total goodwill cost base among the replacement assets that are nominated in respect of the net goodwill roll-over amount but so that the amount apportioned to a particular asset does not exceed the cost base of the asset; and
  - (b) if an amount is apportioned to an asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been nil; and
  - (c) the net goodwill roll-over amount is taken to be reduced by an amount equal to the total goodwill cost base.

*If total non-goodwill cost base is not less than residual net roll-over amount*

- (5) If the total non-goodwill cost base in relation to the taxpayer in respect of the disposal year of income is equal to or greater than the residual net roll-over amount applying to the taxpayer in respect of that year of income, the following provisions have effect:
  - (a) the taxpayer must apportion the residual net roll-over amount among the non-goodwill replacement assets that are nominated in respect of a net roll-over amount in such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the cost base of the asset;
  - (b) if an amount is apportioned to an asset that is not a depreciable asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been reduced by the amount;

- (c) if an amount is apportioned to an asset that is a depreciable asset and section 160ZZPX does not apply in relation to the asset before it is disposed of—the amount is taken to be a capital gain that accrues to the taxpayer during the year of income in which the asset is disposed of.

*If total non-goodwill cost base is less than residual net roll-over amount*

- (6) If the total non-goodwill cost base in relation to the taxpayer in respect of the disposal year of income is less than the residual net roll-over amount applying to the taxpayer in respect of that year of income, the following provisions have effect:
  - (a) the taxpayer must apportion the residual net roll-over amount among the non-goodwill replacement assets that are nominated in respect of a net roll-over amount but so that the amount apportioned to a particular asset does not exceed the cost base of the asset;
  - (b) if an amount is apportioned to an asset that is not a depreciable asset—the cost base of the asset is taken, from the time of its acquisition by the taxpayer, to have been nil;
  - (c) if an amount is apportioned to an asset that is a depreciable asset and section 160ZZPX does not apply in relation to the asset before it is disposed of—the amount is taken to be a capital gain that accrues to the taxpayer during the year of income in which the asset is disposed of;
  - (d) an amount equal to the difference between the total non-goodwill cost base and the residual net roll-over amount is taken to be a capital gain that accrued to the taxpayer during the disposal year of income.

### **160ZZPX Change of status of replacement asset**

*Change of status to which section applies*

- (1) This section applies if:
  - (a) there is a roll-over asset in respect of a taxpayer in respect of a year of income; and
  - (b) there is a net roll-over amount that applies to the taxpayer in respect of the year of income; and

- (c) a replacement asset is nominated by the taxpayer under section 160ZZPT in respect of the net roll-over amount; and
- (d) at a time (the *change time*) after the taxpayer nominated the replacement asset, the asset:
  - (i) ceases to be an active asset; or
  - (ii) becomes an asset in respect of whose disposal this Part would not apply because of a provision of section 160L; or
  - (iii) becomes an asset in respect of whose disposal a capital gain would not be taken to have been incurred because of subsection 160Z(6).

*Capital gain accrues when change of status occurs*

- (2) An amount (the *adjustment amount*) equal to the amount that was apportioned to the asset by the taxpayer under section 160ZZPU, 160ZZPV or 160ZZPW, as the case may be, is taken to be a capital gain that accrued to the taxpayer in the year of income in which the relevant change time occurred.

*Cost base of non-depreciable asset is increased*

- (3) If the replacement asset is not a depreciable asset, the cost base of the asset is taken, from the change time, to be increased by the adjustment amount.

**160ZZPY Roll-over of replacement asset under another provision of Part IIIA other than section 160X**

*Application of section*

- (1) This section applies if:
  - (a) a replacement asset is disposed of; and
  - (b) this Part does not apply to the disposal because of a provision of this Part (other than this Division and section 160X).

*Capital gain accrues when asset disposed of*

- (2) An amount (the *adjustment amount*) equal to the amount that was apportioned to the asset by the taxpayer under section 160ZZPU,

160ZZPV or 160ZZPW, as the case may be, is taken to be a capital gain that accrued to the taxpayer in the year of income in which the disposal of the replacement asset occurs.

*Cost base of non-depreciable asset is increased*

- (3) If the replacement asset is not a depreciable asset, the cost base of the asset is taken, for the purposes of the application of this Part in relation to the person who acquired the asset, to be increased, from the time of the acquisition, by the adjustment amount.

### **160ZZPZ Roll-over of replacement asset under section 160X**

(1) If:

- (a) a replacement asset that formed part of the estate of a dead person has passed to the dead person's legal personal representative; and
- (b) section 160ZZPX had never applied to the dead person in relation to that asset;

anything done or omitted to be done by the dead person in relation to the asset is taken for the purposes of this Division to have been done or omitted to be done by the legal personal representative.

(2) If:

- (a) a replacement asset that formed part of the estate of a dead person has passed to a beneficiary in that estate; and
- (b) section 160ZZPX had never applied to the dead person, or to the dead person's legal personal representative, in relation to that asset;

anything done or omitted to be done by the dead person or the dead person's legal personal representative in relation to the asset is taken for the purposes of this Division to have been done or omitted to be done by the beneficiary.

### **2 At the end of section 160ZZR**

Add:

- (3) If a taxpayer makes an election under paragraph 160ZZPQ(1)(f) in relation to the disposal of an interest in goodwill, this section does not apply, and is taken never to have applied, in respect of the disposal.



## **Part 2—Consequential amendments**

### **3 At the end of subsection 160Z(1)**

Add:

Note: The amount of a capital loss referred to in paragraph (1)(b) may be reduced under subsection 160ZZPR(2) or 160ZZPS(2).

### **4 At the end of subsection 160ZC(4)**

Add:

Note: The amount of a net capital loss referred to in subsection (4) may be reduced under subsection 160ZZPR(2) or 160ZZPS(2).

## **Part 3—Application**

### **5 Application**

The Division inserted in the *Income Tax Assessment Act 1936* by item 1 applies to disposals of assets on or after 1 July 1997.

## **Schedule 6—Amendment of Schedule 2C to the Income Tax Assessment Act 1936: forgiveness of commercial debts**

### **1 Subsection 245-25(1)**

Omit “it falls within any of the following provisions of this section”, substitute “subsection (2), (3) or (4) provides that the debt is a commercial debt”.

### **2 Subsection 245-25(2)**

Omit “A debt”, substitute “Subject to subsection (4A), a debt”.

### **3 After subsection 245-25(4)**

Insert:

*Debt to Commonwealth not a commercial debt*

(4A) A debt owed to the Commonwealth that arose under a law relating to taxation is not a commercial debt.

### **4 Subsection 245-55(4)**

Repeal the subsection, substitute:

- (4) Paragraph (2)(a) and subparagraph (3)(a)(i) do not apply in relation to a debt if:
- (a) either:
    - (i) at the time when the debt was forgiven the creditor was a resident; or
    - (ii) the forgiveness of the debt was the disposal of a taxable Australian asset for the purposes of Part IIIA; and
  - (b) the debtor and the creditor were not dealing with each other at arm’s length in respect of the incurring of the debt; and
  - (c) the debt was not a moneylending debt.

### **5 Subsection 245-65(2)**

Omit “If”, substitute “Subject to subsection (2A), if”.

### **6 After subsection 245-65(2)**

---

Insert:

- (2A) Subsection (2) does not apply in relation to a debt unless:
- (a) at the time when the debt was forgiven the creditor was a resident; or
  - (b) the forgiveness of the debt was the disposal of a taxable Australian asset for the purposes of Part IIIA.

**7 Subsection 245-75(1)**

Omit “If”, substitute “Subject to subsection (3), if”.

**8 Subsection 245-75(2)**

Omit “If”, substitute “Subject to subsection (3), if”.

**9 At the end of section 245-75**

Add:

- (3) If 2 or more persons were liable (otherwise than as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, the *gross forgiven amount* of the debt in relation to the person, or each of the persons, in respect of whom the debt was a commercial debt is the amount worked out using the formula:

$$\frac{\text{Overall gross forgiven amount}}{\text{Number of commercial debtors}}$$

where:

*overall gross forgiven amount* means the amount that would be the gross forgiven amount of the debt if all the persons liable to pay the debt were treated as a single person and the debt was a commercial debt in respect of that person.

*number of commercial debtors* means the number of persons liable to pay the debt in respect of whom the debt was a commercial debt.

**10 Subsection 245-140(1) (table of deductible expenditure)**

After:

---

---

Expenditure on scientific research	Subsection 73A(2)
------------------------------------	-------------------

insert:

Expenditure on research and development activities	Section 73B
--	-------------

**11 Subsection 245-140(1) (at the end of the table of deductible expenditure)**

Add:

Expenditure incurred in establishing horticultural plants	Sections 124ZZF and 124ZZG and subsection 124ZZM(2)
---	---

**12 Subsection 245-190(3)**

Repeal the subsection, substitute:

- (3) The maximum amount by which each of the relevant cost bases of an asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if the asset had been disposed of:
- (a) subject to paragraph (b), on the first day of the forgiveness year of income; or
  - (b) if, after the beginning of that year of income, 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 to have been so disposed of at its market value on the day concerned.

**13 Subsection 245-225(3)**

Omit all the words after paragraph (b), substitute:

the other company is taken to be included in the group of related companies referred to in subsection (2) in respect of the relevant debt if:

- (c) a taxpayer who was a controller of the other company immediately before, and immediately after, the 2 companies ceased to be under common ownership was also:

**Schedule 6** Amendment of Schedule 2C to the Income Tax Assessment Act 1936:  
forgiveness of commercial debts

---

- (i) a controller of the other company at the time when the relevant debt was forgiven; and
- (ii) a controller of the debtor company at that time; or
- (d) immediately before, and immediately after, the 2 companies ceased to be under common ownership and at the time when the relevant debt was forgiven:
  - (i) the debtor company was a controller of the other company; or
  - (ii) the other company was a controller of the debtor company.

**14 At the end of section 245-230**

Add:

- (4) In this section:

*deductible revenue losses*, in relation to a company, does not include a loss that is taken by paragraph 80G(6)(f), to be incurred by the company in the year of income immediately preceding the loss year referred to in that paragraph.

**Schedule 7—Amendment of the  
Superannuation Industry (Supervision)  
Act 1993: tax file numbers**

**1 Subsection 299G(2)**

Omit “7th”, substitute “30th”.

## **Schedule 8—Amendment of the Income Tax Assessment Act 1936: equity investment in small-medium enterprises**

### **1 Paragraph 128TH(b)**

Omit “in the course of carrying on a business of lending money, or otherwise in connection with such a business,”.

### **2 After paragraph 128TH(b)**

Insert:

(ba) the disposal takes place:

- (i) in any case—in the course of the taxpayer carrying on a business of lending money or otherwise in connection with such a business of the taxpayer; or
- (ii) if the taxpayer is a company that is a subsidiary of another company—while the one or more members of the direct ownership group of the taxpayer (see subsection 128TL(3)) are each carrying on a business of lending money; and

### **3 Paragraphs 128TJ(a) and (b)**

Repeal the paragraphs, substitute:

- (a) ordinary shares in an SME (see section 128TK) are issued to the taxpayer; and
- (b) the shares are issued:
  - (i) in any case—in the course of the taxpayer carrying on a business of lending money or otherwise in connection with such a business of the taxpayer; or
  - (ii) if the taxpayer is a company that is a subsidiary of another company—while the one or more members of the direct ownership group of the taxpayer (see subsection 128TL(3)) are each carrying on a business of lending money; and

### **4 Paragraph 128TJ(c)**

Omit “company”, substitute “SME”.

---



---

## 5 At the end of Division 11B of Part III

Add:

### 128TL Subsidiary and direct ownership group

- (1) A company (the *first company*) is a *subsidiary* of another company (the *second company*) if all the shares in the first company are beneficially owned by:
  - (a) the second company; or
  - (b) a company that is, or 2 or more companies each of which is, a subsidiary of the second company; or
  - (c) the second company and a company that is, or 2 or more companies each of which is, a subsidiary of the second company.
- (2) For the purposes of subsection (1), if a company is a subsidiary of another company (including a company that is such a subsidiary because of a previous application or applications of this subsection), every company that is a subsidiary of the first-mentioned company is taken to be a subsidiary of that other company.
- (3) The one or more companies in whichever of paragraph (1)(a), (b) or (c) applies are the *direct ownership group* of the first company.

## 6 Application

The amendments made by this Part apply where the taxpayer acquired a threshold interest in an SME on or after 1 July 1996.

---

[*Minister's second reading speech made in—  
House of Representatives on 12 December 1996  
Senate on 17 March 1997*]

(209/96)

---

I HEREBY CERTIFY that the above is a fair print of the Taxation Laws Amendment Bill (No. 1) 1997 which originated in the House of Representatives as the Taxation Laws Amendment Bill (No. 4) 1996 and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

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

*Governor-General*  
1997