



# **Taxation Laws Amendment Act (No. 1) 1998**

## **Act No. 16 of 1998 as amended**

This compilation was prepared on 23 September 2010  
taking into account amendments up to Act No. 75 of 2010

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

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

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

## **1 Short title** [see Note 1]

This Act may be cited as the *Taxation Laws Amendment Act (No. 1) 1998*.

## **2 Commencement** [see Note 1]

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 35, 46, 47, 50, 51 and 54 of Schedule 1 commence immediately after the commencement of item 17 of that Schedule.
- (3) Schedule 8 is taken to have commenced immediately before 1 July 1997.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Capital gains tax roll-over relief for small businesses**

### **Part 1—Amendments relating to disposals of shares or units in unit trusts**

#### *Income Tax Assessment Act 1936*

##### **1 Division 17A of Part IIIA (heading)**

Repeal the heading, substitute:

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

##### **2 Subsection 160ZZPK(1)**

Insert:

*approved asset* has the meaning given by subsections  
160ZZPT(1AA) to (1AC).

##### **3 Subsection 160ZZPK(1)**

Insert:

*controlling individual* has the meaning given by section  
160ZZPNA.

##### **4 Subsection 160ZZPK(1) (at the end of the definition of *gross non-goodwill roll-over amount*)**

Add “or (3A)”.

##### **5 Subsection 160ZZPK(1)**

Insert:

*resident unit trust* has the same meaning as in section 102Q.

##### **6 Subsection 160ZZPK(1) (at the end of the definition of *roll-over asset*)**

Add “, (8) or (9)”.

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**7 Before paragraph 160ZZPL(7)(a)**

Insert:

- (aa) the asset is not a share in a company or a unit in a unit trust;  
and

**8 At the end of section 160ZZPL**

Add:

- (8) A share in a company is a roll-over asset in respect of a taxpayer who is an individual (other than an individual acting as a trustee) in respect of a year of income if:
  - (a) the company is, in respect of the year of income, a private company that is a resident; and
  - (b) the share is disposed of by the taxpayer in the year of income; and
  - (c) the taxpayer is the controlling individual of the company at the disposal test time; and
  - (d) the threshold criteria set out in section 160ZZPP are complied with at the disposal test time.
- (9) A unit in a unit trust is a roll-over asset in respect of a taxpayer who is an individual (other than an individual acting as a trustee) in respect of a year of income if:
  - (a) the unit trust is a resident unit trust, but is not a publicly traded unit trust, in respect of the year of income; and
  - (b) the unit is disposed of by the taxpayer in the year of income; and
  - (c) the taxpayer is the controlling individual of the trust at the disposal test time; and
  - (d) the threshold criteria set out in section 160ZZPP are complied with at the disposal test time.

**9 At the end of Subdivision A of Division 17A of Part IIIA**

Add:

## 160ZZPNA Controlling individual

### *Explanation of section*

- (1) This section sets out the meaning of **controlling individual** of a company and of a unit trust.

### *Control of companies*

- (2) An individual is the **controlling individual** of a company at a particular time if, at that time, the individual:
- (a) is a director and an employee (see subsection (4)) of the company; and
  - (b) holds all of the legal and equitable interests in shares that carry (between them) the right to exercise at least 50% of the voting power in the company; and
  - (c) holds all of the legal and equitable interests in shares that carry (between them) the right to receive at least 50% of any dividends that the company may pay; and
  - (d) holds all of the legal and equitable interests in shares that carry (between them) the right to receive at least 50% of any distribution of capital of the company.

### *Control of unit trusts*

- (3) An individual is the **controlling individual** of a unit trust at a particular time if, at that time, the individual:
- (a) is an employee (see subsection (4)) of the trust; and
  - (b) has, for his or her benefit, entitlements to at least a 50% share of the income of the trust; and
  - (c) has, for his or her benefit, entitlements to at least a 50% share of the capital of the trust.

### *Employee*

- (4) In this section:

**employee** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*, except that subsection 12(11) of that Act is to be disregarded.



*Redeemable shares to be disregarded*

- (5) For the purposes of subsection (2), a person who, at a particular time, holds a legal or equitable interest in a share:
- (a) that is liable to be redeemed; or
  - (b) that, at the option of the company that issued it, is liable to be redeemed;
- is taken not to hold the interest at that time.

*Individual becoming director or employee within 3 months*

- (6) If an individual:
- (a) nominates a replacement asset that is a share in a private company or a unit in a unit trust; and
  - (b) becomes a director and employee of the company, or an employee of the trust, as the case may be, within 3 months after he or she acquires the share or unit;
- the individual is taken, for the purposes of this Division, to have been such a director and employee, or such an employee, as the case may be, at all times during that period.

**10 Subdivision B of Division 17A of Part IIIA (heading)**

Repeal the heading, substitute:

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

**11 Section 160ZZPO**

Repeal the section, substitute:

**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 certain assets (roll-over assets) are disposed of by the taxpayer.

If certain threshold criteria and other conditions are satisfied, capital gains do not accrue in respect of the disposals and net roll-over amounts are worked out for the roll-over assets.

The taxpayer may then nominate certain replacement assets in respect of the net roll-over amounts and is to apportion the net roll-over amounts to replacement assets in accordance with various rules.

The amounts apportioned are taken to reduce the cost base of the replacement assets.

## **12 Subsection 160ZZPP (note)**

Omit “paragraph 160ZZPL(7)(b)”, substitute “paragraphs 160ZZPL(7)(b), (8)(d) and (9)(d)”.

## **13 Paragraphs 160ZZPQ(1)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) where the roll-over asset is neither a share in a company nor a unit in a unit trust:
  - (i) the roll-over asset was an active asset at the disposal test time or, if it was not an active asset at that time because the relevant business had ceased to be carried on, the cessation occurred not earlier than 12 months before that time; and
  - (ii) 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

## **14 Subsection 160ZZPQ(3)**

Repeal the subsection, substitute:

*Calculation of gross non-goodwill roll-over amount for assets other than shares or units*

- (3) If the roll-over asset is none of the following:

- (a) goodwill;
- (b) a share in a company;
- (c) a unit in a unit trust;

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 non-goodwill roll-over amount for shares or units*

(3A) If the roll-over asset is a share in a company or a unit in a unit trust, an amount (the **gross non-goodwill roll-over amount**) equal to the lesser of the following amounts 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:

- (a) an amount equal to the notional capital gain;
- (b) the amount worked out using the formula:

$$\text{Unrealised net capital gain} \times \frac{\text{Market value of share or unit}}{\text{Total of market values of shares in the company or units in the unit trust}}$$

*Amount taken to be capital gain*

(3B) If the gross non-goodwill roll-over amount is the amount worked out under paragraph (3A)(b), an amount equal to the difference between the notional capital gain and the amount worked out under that paragraph is taken to be a capital gain that accrued to the taxpayer in the year of income in which the disposal occurred.

*Unrealised net capital gain from active assets*

(3C) Subject to subsection (3D), for the purposes of paragraph (3A)(b), the **unrealised net capital gain** is the total of the capital gains (after deducting any capital losses) that would accrue to the company or trust at the time of the disposal, as the case may be, if all assets of the company or trust that:

- (a) either:
  - (i) were active assets at that time; or
  - (ii) had ceased to be active assets because of the cessation of the relevant business of the company or trust not earlier than 12 months before that time; and
- (b) had been active assets during more than one-half of the period in which they were owned by the company or were assets of the trust, as the case may be;

were disposed of at that time and the consideration for the disposal of each asset was an amount equal to the market value of the asset.

*Certain assets to be disregarded in calculating unrealised net capital gain*

- (3D) In calculating the unrealised net capital gain referred to in subsection (3C), no regard is to be had to any asset that had been nominated by the company or trust as a replacement asset for the purposes of this Division and was acquired by the company or trust less than 5 years before the time of the disposal of the roll-over asset.

**15 Subsection 160ZZPT(1)**

Omit all the words after “one or more”, substitute “approved assets (a *replacement asset* or *replacement assets*) that were acquired by the taxpayer within the period beginning one year before, and ending 2 years after, the last disposal by the taxpayer of any roll-over asset in that year of income”.

**16 After subsection 160ZZPT(1)**

Insert:

*Active asset may be nominated*

- (1AA) An active asset is an approved asset.

*Certain shares may be nominated*

- (1AB) A share in a company is an approved asset in respect of a taxpayer if:
- (a) the taxpayer is an individual (other than an individual who is acting as a trustee); and
  - (b) the company is, in respect of a year of income in which the share is acquired by the taxpayer, a private company that is a resident; and
  - (c) the taxpayer is the controlling individual of the company immediately after the share is acquired by the taxpayer; and
  - (d) the total of the market values of all the active assets of the company at the time of the acquisition of the share by the taxpayer is not less than 80% of the total of the market values of all the company’s assets at that time.

*Certain units in unit trusts may be nominated*

- (1AC) A unit in a unit trust is an approved asset in respect of a taxpayer if:
- (a) the taxpayer is an individual (other than an individual who is acting as a trustee); and
  - (b) the trust is, in respect of a year of income in which the unit is acquired by the taxpayer, a resident unit trust that is not a publicly traded unit trust; and
  - (c) the taxpayer is the controlling individual of the trust immediately after the unit is acquired by the taxpayer; and
  - (d) the total of the market values of all the active assets of the trust at the time of the acquisition of the unit by the taxpayer is not less than 80% of the total of the market values of all the assets of the trust at that time.

**17 Subsections 160ZZPV(2) and (3)**

Repeal the subsections, substitute:

- (2) If this section applies, the following provisions have effect:
- (a) the taxpayer must apportion 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 lesser of:
    - (i) the cost base of the asset; and
    - (ii) if the asset is a share in a company or a unit in a unit trust—the maximum apportionment amount for the share or unit worked out under subsection (3);
  - (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;
  - (d) if the amount apportioned to assets under paragraph (a) is less than the total net roll-over amount—an amount equal to the difference is taken to be a capital gain that accrued to the taxpayer during the disposal year of income.

- (3) The *maximum apportionment amount* for a share in a particular company or a unit in a particular unit trust is:

$$\frac{\text{Total market value of active assets}}{\text{Total of market values of shares in the company or units in the unit trust}} \times \frac{\text{Market value of share or unit}}{\text{Total of market values of shares in the company or units in the unit trust}}$$

where:

*active assets* are those assets of the company or trust that were active assets of the company or trust, as the case may be, at the time of the acquisition of the shares or units.

*market value* means the market value at that time.

## 18 Subsections 160ZZPW(5) and (6)

Repeal the subsections, substitute:

- (5) If this section applies, the following provisions also have effect:
- (a) the taxpayer must apportion the residual net roll-over amount among the nominated non-goodwill replacement assets in such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the lesser of:
    - (i) the cost base of the asset; and
    - (ii) if the asset is a share in a company or a unit in a unit trust—the maximum apportionment amount for the share or unit worked out under subsection (6);
  - (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;
  - (d) if the amount apportioned to assets under paragraph (a) is less than the residual net roll-over amount—an amount equal to the difference is taken to be a capital gain that accrued to the taxpayer during the disposal year of income.
-

- (6) The **maximum apportionment amount** for a share in a particular company or a unit in a particular unit trust is:

$$\frac{\text{Total market value of active assets}}{\text{Total market value of active assets}} \times \frac{\text{Market value of share or unit}}{\text{Total of market values of shares in the company or units in the unit trust}}$$

where:

**active assets** are those assets of the company or trust that were active assets of the company or trust, as the case may be, at the time of the acquisition of the shares or units.

**market value** means the market value at that time.

## 19 After section 160ZZPX

Insert:

### 160ZZPXA Change of circumstances of company or unit trust

*Change of circumstances 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) the replacement asset is a share in a company or a unit in a unit trust; and
  - (e) at a time (the **change time**) after the taxpayer nominated the replacement asset:
    - (i) the taxpayer ceases to be the controlling individual of the company or trust; or
    - (ii) the total of the market values of the active assets of the company or trust falls below 80% of the total of the market values of all the assets owned by the company or the assets of the trust, as the case may be; or
    - (iii) the company ceases to be a private company that is a resident, the trust ceases to be a resident unit trust or the

trust becomes a publicly traded unit trust, as the case may be; and

- (f) the replacement asset is owned by the taxpayer immediately after the change time.

*Exception*

- (2) Subparagraph (1)(e)(ii) does not apply if the total of the market values of the active assets referred to in that subparagraph fell below the percentage so referred to only because of changes in the market values of assets owned by the company or trust at the time of the nomination.

*Capital gain accrues when change of circumstances occurs*

- (3) An amount (the *adjustment amount*) equal to the amount that was apportioned to the asset by the taxpayer under section 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.

*Consideration to be increased*

- (4) The cost base of the asset is increased, at the change time, by the adjustment amount.

**20 Paragraph 160ZZPZD(1)(a)**

Omit “to (d)”, substitute “to (c)”.

**21 After paragraph 160ZZPZD(1)(a)**

Insert:

- (aa) the asset is a roll-over asset within the meaning of subsection 160ZZPL(7); and

**22 Paragraph 160ZZPZH(2)(a)**

Omit “to (d)”, substitute “to (c)”.

**23 After paragraph 160ZZPZH(2)(a)**

Insert:

- (aa) the asset is a roll-over asset within the meaning of subsection 160ZZPL(7); and
-



**24 Paragraph 160ZZPZI(2)(a)**

Omit “to (d)”, substitute “to (c)”.

**25 After paragraph 160ZZPZI(2)(a)**

Insert:

(aa) the asset is a roll-over asset within the meaning of subsection 160ZZPL(7); and

**26 Application of amendments**

The amendments made by this Part apply to disposals of assets on or after 1 July 1997.

## Part 2—Technical amendments

### *Income Tax Assessment Act 1936*

#### **27 Subsection 160ZZPK(1)**

Insert:

*consideration*, in respect of the acquisition of an asset, means the amount that is that consideration within the meaning of section 160ZH.

#### **28 Subsection 160ZZPK(1)**

Insert:

*incidental costs* to a taxpayer of the acquisition of an asset means the amount constituting those costs within the meaning of section 160ZH.

#### **29 Subsection 160ZZPK(1) (definition of *total goodwill cost base*)**

Repeal the definition, substitute:

*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:

- (a) the sum (worked out at the time of acquisition) of the consideration in respect of, and the incidental costs to the taxpayer of, the acquisition of the replacement goodwill asset 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; or
- (b) if the taxpayer nominated 2 or more replacement goodwill assets in respect of such a net goodwill roll-over amount—the sum (worked out at the time of the relevant acquisition) of the considerations in respect of, and the incidental costs to the taxpayer of, the acquisition of those replacement goodwill assets.

**30 Subsection 160ZZPK(1) (definition of *total non-goodwill cost base*)**

Repeal the definition.

**31 After subsection 160ZZPL(3)**

Insert:

*Subsection 157(3) to be disregarded*

(3A) In determining for the purposes of this section whether a taxpayer is carrying on a business, subsection 157(3) is to be disregarded.

**32 Subsection 160ZZPL(5)**

After “roll-over asset”, insert “that is an intangible asset and”.

Note: The heading to subsection 160ZZPL(5) is replaced by “*Exception for intangible roll-over asset whose value has been enhanced by the taxpayer*”.

**33 After subsection 160ZZPN(2)**

Insert:

*Where Public Trustee is trustee of discretionary trust*

(2A) Subparagraph (2)(c)(i) does not apply to the first entity if the trustee of the trust referred to in that subparagraph is the Public Trustee of a State or Territory acting in that capacity.

**34 Paragraph 160ZZPN(3)(c)**

After “is”, insert “not”.

**35 Section 160ZZPO**

Omit “base”, substitute “of the acquisition”.

**36 Subsection 160ZZPP(2)**

Repeal the subsection.

**37 Subsection 160ZZPP(3)**

Omit “or an associate of the taxpayer”.

**38 After paragraph 160ZZPP(4)(a)**

Insert:

Note: The assets of a taxpayer do not include shares, units or other interests in entities connected with the taxpayer (see subsection 160ZZPL(2)).

**39 Paragraph 160ZZPP(4)(c)**

Repeal the paragraph.

**40 Paragraph 160ZZPQ(1)(e)**

Repeal the paragraph, substitute:

- (e) if the roll-over asset was nominated as a replacement asset 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

**41 Paragraph 160ZZPR(2)(b)**

Repeal the paragraph, substitute:

- (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) would, apart from this Division, be applied in determining whether a net capital gain accrues to the taxpayer in respect of the disposal year of income (if sufficient capital gains were to accrue in the disposal year of income).

**42 At the end of paragraph 160ZZPS(2)(b)**

Add:

- ; and (iii) would, apart from this Division, be applied in determining whether a net capital gain accrues to the taxpayer in respect of the disposal year of income (if sufficient capital gains were to accrue in the disposal year of income).

**43 Before subsection 160ZZPT(2)**

Insert:

*When nomination to be made*

- (1A) A nomination of a replacement asset must be made before the end of 2 years after the last disposal by the taxpayer of any roll-over asset in the year of income to which the net roll-over amount relates.

**44 Paragraphs 160ZZPU(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (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 sum of:
- (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and
  - (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset; and
- (b) if an amount is apportioned to an asset—the amount is to be applied, at the time of the acquisition of the asset by the taxpayer, in reduction of the following amounts in such proportions as the taxpayer determines:
- (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset;
  - (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset.

**45 Paragraphs 160ZZPU(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (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 so that the amount apportioned to a particular asset does not exceed the sum of:
- (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and

- (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset;
- (b) if an amount is apportioned to an asset—the consideration in respect of the acquisition of the asset and the incidental costs to the taxpayer of the acquisition of the asset are each taken, at the time of the acquisition of the asset by the taxpayer, to be nil;

#### **46 Paragraphs 160ZZPV(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the taxpayer must apportion 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 lesser of:
  - (i) the sum of the acquisition amounts set out in subsection (2B); and
  - (ii) if the asset is a share in a company or a unit in a unit trust—the maximum apportionment amount for the share or unit worked out under subsection (3);
- (b) if an amount is apportioned to an asset that is not a depreciable asset—the amount is to be applied in reduction of the acquisition amounts for the asset in such proportions as the taxpayer determines;

#### **47 After subsection 160ZZPV(2)**

Insert:

- (2A) The reductions set out in paragraph (2)(b) are taken to have been made at the time of the acquisition of the asset by the taxpayer.
- (2B) The *acquisition amounts* for an asset are:
  - (a) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and
  - (b) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset.

#### **48 Paragraphs 160ZZPW(3)(a) and (b)**

Repeal the paragraphs, substitute:

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- (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 sum of:
  - (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and
  - (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset;
- (b) if an amount is apportioned to an asset—the amount is to be applied, at the time of the acquisition of the asset by the taxpayer, in reduction of the following amounts in such proportions as the taxpayer determines:
  - (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset;
  - (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset.

#### **49 Paragraphs 160ZZPW(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (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 so that the amount apportioned to a particular asset does not exceed the sum of:
  - (i) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and
  - (ii) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset; and
- (b) if an amount is apportioned to an asset—the consideration in respect of the acquisition of the asset and the incidental costs to the taxpayer of the acquisition of the asset are each taken,

at the time of the acquisition of the asset by the taxpayer, to be nil; and

### **50 Paragraphs 160ZZPW(5)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the taxpayer must apportion the residual net roll-over amount among the nominated non-goodwill replacement assets in such manner as the taxpayer determines but so that the amount apportioned to a particular asset does not exceed the lesser of:
  - (i) the sum of the acquisition amounts set out in subsection (5B); and
  - (ii) if the asset is a share in a company or a unit in a unit trust—the maximum apportionment amount for the share or unit worked out under subsection (6);
- (b) if an amount is apportioned to an asset that is not a depreciable asset—the amount is to be applied in reduction of the acquisition amounts for the asset in such proportions as the taxpayer determines;

### **51 After subsection 160ZZPW(5)**

Insert:

- (5A) The reductions set out in paragraph (5)(b) are taken to have been made at the time of the acquisition of the asset by the taxpayer.
- (5B) The *acquisition amounts* for an asset are:
  - (a) the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset; and
  - (b) the amount that, at that time, was the total of the incidental costs to the taxpayer of the acquisition of the asset; and

### **52 Subparagraph 160ZZPX(1)(d)(i)**

Before “ceases”, insert “if the replacement asset is not a share in a company or a unit in a unit trust—”.

### **53 Subsection 160ZZPX(3)**

Repeal the subsection, substitute:

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*Consideration to be increased*

- (3) If the replacement asset is not a depreciable asset, the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition of the asset is to be increased, at the change time, by the adjustment amount.

**54 Subsection 160ZZPXA(4)**

Omit “cost base”, substitute “amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition”.

**55 Subsection 160ZZPY(3)**

Repeal the subsection, substitute:

*Consideration to be increased*

- (3) If the replacement asset is not a depreciable asset, the amount that, at the time of the acquisition of the asset, was the consideration in respect of the acquisition 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.

**56 Paragraph 160ZZPZ(1)(b)**

Omit “section 160ZZPX”, substitute “sections 160ZZPX and 160ZZPXA”.

**57 Paragraph 160ZZPZ(2)(b)**

Omit “section 160ZZPX”, substitute “sections 160ZZPX and 160ZZPXA”.

**58 Application of amendments**

- (1) The amendments made by items 32, 35 and 44 to 51 and 53 to 55 apply to disposals of assets after 23 October 1997.
- (2) The amendment made by item 40 applies in respect of roll-over assets acquired after 23 October 1997.
- (3) The amendments made by items 31, 33, 34, 36 to 39, 41 to 43, 52, 56 and 57 apply to disposals of assets on or after 1 July 1997.

## Schedule 2—Amendment of the Sales Tax Assessment Act 1992

### 1 Section 5

Insert:

*accredited* has the meaning given by Division 2 of Part 7A.

### 2 Section 5

Insert:

*authorisation* has the meaning given by Division 3 of Part 7A.

### 3 Section 5

Insert:

*Part 7A goods* has the meaning given by section 91C.

### 4 Section 5

Insert:

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

### 5 At the end of section 21

Add:

- (4) Part 7A goods that have been the subject of a taxable dealing are taken not to have passed through a taxing point if the Commissioner believes that:
- (a) tax has not been paid, and is unlikely to be paid, in respect of the dealing; and
  - (b) the person who is liable to pay that tax does not intend to pay the tax; and
  - (c) at the time of the dealing the taxpayer referred to in subsection (1) or (2) was aware, or could reasonably have been expected to be aware, that the tax had not been paid and was unlikely to be paid.

**6 At the end of section 27**

Add:

- (3) Subsections (1) and (2) do not apply if the quote is not effective because of section 91S.

**7 At the end of section 28**

Add:

- (2) Subsection (1) does not apply if the quote is not effective because of section 91S.

**8 At the end of subsection 29(4)**

Add:

- ; or (e) the current goods are Part 7A goods.

**9 Subsection 29(7) (at the end of the definition of *countable dealing*)**

Add:

- ; (c) a dealing with Part 7A goods.

**10 After section 56**

Insert:

**56A No credits for certain dealings with Part 7A goods**

- (1) A claimant is not entitled to a credit in respect of a dealing with Part 7A goods if the Commissioner believes that:
  - (a) tax has not been paid, and is unlikely to be paid, in respect of the dealing; and
  - (b) the taxpayer who is liable to pay that tax does not intend to pay the tax; and
  - (c) the claimant is aware, or could reasonably be expected to be aware, that the tax has not been paid and is unlikely to be paid.
- (2) A claimant is not entitled to a CR26 credit in respect of a dealing with Part 7A goods if the Commissioner believes that:
  - (a) the amount withheld under section 91X has not been paid, and is unlikely to be paid, in respect of the dealing; and

- (b) the taxpayer who is liable to pay that amount does not intend to pay the amount; and
- (c) the claimant is aware, or could reasonably be expected to be aware, that the amount has not been paid and is unlikely to be paid.

**11 After subsection 61(2)**

Insert:

- (2A) In addition to the returns required under subsections (1) and (2), a person who becomes liable to tax in respect of a dealing with Part 7A goods during a month must lodge a return within 21 days after the end of the month, or such further time as the Commissioner allows.

**12 Subsection 61(3)**

Omit “and (2)”, substitute “, (2) and (2A)”.

**13 At the end of subsection 63(3)**

Add “or a dealing with Part 7A goods”.

Note: The heading to section 63 is altered by inserting “**or a dealing with Part 7A goods**” after “**dealing**”

**14 After section 64**

Insert:

**64A Normal due date for payment of tax (other than tax on a customs dealing)**

Tax that is payable by a person in respect of dealings (other than customs dealings) with Part 7A goods during a month becomes due for payment at the end of the 21st day after the end of that month, or at such later time as the Commissioner determines.

**15 Subsection 69(2) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**16 Subsection 70(2) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**17 Subsection 71(3) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**18 Subsection 72(8) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**19 Subsection 73(7) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**20 Subsection 74(10) (after paragraph (a) of the definition of *sales tax debt*)**

Insert:

(aa) an amount payable under Part 7A;

**21 Subsection 76(3) (definition of *tax*)**

After “includes”, insert “amounts payable under Part 7A,”.

**22 Section 91 (penalty)**

Omit “\$2,000”, substitute “20 penalty units”.

**23 After Part 7**

Insert:

**Part 7A—Additional requirements for dealings  
with certain goods**

**Division 1—Purpose, overview and interpretation**

**91A Purpose of Part**

<p>This Part establishes a system of additional requirements for dealings with certain goods for the purpose of overcoming problems of sales tax evasion.</p>
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**91B Overview of Part**

This Part establishes a system of additional requirements for dealings with certain goods. These goods are called Part 7A goods.

This Part establishes a system of accrediting persons (see Division 2).

Most quotes in relation to dealings with Part 7A goods must be authorised by the Commissioner. An authorisation will only be given where the person quoting is accredited (see Division 3).

In addition, sales tax must be withheld by the purchaser of goods in certain transactions (see Division 4).

**91C Meaning of *Part 7A goods***

- (1) ***Part 7A goods*** are goods that, if imported, would be covered by a description and corresponding tariff classification specified in the following table:

<b>Part 7A goods</b>		
<b>Item</b>	<b>Description of goods</b>	<b>Tariff classification</b>
1	Personal computers	8471.41.00
2	Laptops, Notebooks, Palmtops	8471.30.00
3	Monitors	8471.60.00
4	Keyboards	8471.60.00
5	Printers (dot matrix, ink-jet or laser)	8471.60.00
6	CD-ROM drives	8471.90.00
7	Modems	8517.50.10
8	Computer components (Motherboards, CPUs, memory, disk drives (hard and floppy), controller cards)	8473.30.00

- (2) Goods are also ***Part 7A goods*** if they are prescribed for the purposes of this subsection.
- (3) However, goods are not ***Part 7A goods*** if they are prescribed for the purposes of this subsection.

(4) In subsection (1):

*tariff classification* means the tariff classification under which the goods are classified for the purposes of the *Customs Tariff Act 1995*.

### **91D When a person is *relevant to an application***

A person (the *relevant person*) is *relevant to an application* made by another person (the *applicant*) if:

- (a) the applicant is accustomed or under an obligation, or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the relevant person; or
  - (b) the applicant is a company and the directors of the applicant are accustomed or under an obligation, or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the relevant person; or
  - (c) the applicant is a company and the relevant person is a director of the company; or
  - (d) the applicant is a trust and the relevant person is a trustee of the trust; or
  - (e) the applicant is a partnership and the relevant person is a partner in the partnership.
- (2) Paragraphs (1)(a) and (b) apply:
- (a) whether the obligation is formal or informal; and
  - (b) whether the directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts.

## **Division 2—Accreditation**

### **91E Overview of Division**

Only certain registered persons or other persons may be accredited (section 91F).

To be accredited, people must also meet a number of conditions or be exempted from meeting particular conditions by the Commissioner (section 91G).

Even if people meet the conditions, the Commissioner has a discretion to refuse to accredit persons (section 91K).

Accreditation may be withdrawn by the Commissioner (section 91J).

A person who is accredited must comply with requirements about record-keeping and advising the Commissioner of certain matters (sections 91N and 91P).

### **91F Who may apply for accreditation**

#### *Registered persons*

- (1) A registered person may apply for accreditation.

#### *People who grant certain leases*

- (2) A person (whether or not registered) may apply for accreditation if he or she has granted, or intends to grant, leases of Part 7A goods:
  - (a) that are eligible long-term leases or eligible short-term leases;  
or
  - (b) in relation to which section 32 would apply.

#### *People who can quote under section 84*

- (3) A person (whether or not registered) who the Commissioner has allowed to quote under section 84 for a dealing with Part 7A goods may apply for accreditation.

#### *Others may apply if Commissioner allows*

- (4) Any other person may, with the agreement of the Commissioner, apply for accreditation.

### **91G Requirements for accreditation**

- (1) To be accredited, a person must satisfy all of the following requirements other than those that the Commissioner exempts the person from satisfying.



- (2) The first requirement is that the person must have conducted the business activities in respect of which accreditation has been sought at or from established premises that were advertised to the public as being premises from which the business was carried on.
- (3) The second requirement is that the person must have a tax file number and must have quoted that tax file number in relation to each account maintained by the person for business purposes with a financial institution.
- (4) The third requirement is that, if the person is an individual, the person must conduct all financial transactions relating to the business through a bank account that is, or bank accounts that are, separate from any private or domestic account maintained by the person.
- (5) The fourth requirement is that the person, and each person who is relevant to the person's application, must have satisfactorily complied with his or her obligations under Acts administered by the Commissioner for the period of 3 years before the date of the application.
- (6) The fifth requirement is that the person must have maintained records in English in relation to the period of 3 years before the date of the application including details of purchases and sales of goods, the names of suppliers and customers, details of purchases and sales in relation to which sales tax was not paid and details of credits claimed. The records must be located in Australia and may be kept and retained in written or electronic form.
- (7) The sixth requirement is that:
  - (a) if the person is an individual—the person; or
  - (b) if the person is a company—at least one director of the company; or
  - (c) if the person is a trust—the trustee of the trust; or
  - (d) if the person is a partnership—at least one partner in the partnership;is an Australian citizen or is the holder of a permanent visa (within the meaning of the *Migration Act 1958*).
- (8) The seventh requirement is that, in the period of 3 years before the date of the application:

- (a) the person has not, whether in Australia or another country, been convicted of any offence, or been subject to any penalty, in relation to taxation requirements, customs requirements, the misdescription of goods, trade practices, fair trading or the defrauding of a government; or
  - (b) if the person is not an individual—no person who is relevant to the person’s application, whether in Australia or another country, has been convicted of any offence, or been subject to any penalty, in relation to taxation requirements, customs requirements, the misdescription of goods, trade practices, fair trading or the defrauding of a government.
- (9) The eighth requirement is that:
- (a) the person has not been refused accreditation or had his or her accreditation revoked in the previous 3 years; or
  - (b) if the person is not an individual—no person who is relevant to the person’s application has been refused accreditation or had his or her accreditation revoked in the previous 3 years.
- (10) The ninth requirement is that:
- (a) the person has not, in the previous 3 years, been a person who is relevant to another person’s application at a time when the other person’s application did not satisfy the previous eight requirements; or
  - (b) if the person is not an individual—no person who is relevant to the person’s application has, in the previous 3 years, been a person who is relevant to another person’s application at a time when the other person’s application did not satisfy the previous eight requirements.

### **91H Application for accreditation**

- (1) An application for accreditation must be in a form approved in writing by the Commissioner for the purpose and must contain the information necessary for the proper completion of the form.

#### *Electronic applications*

- (2) An approval given by the Commissioner of a form of application may require or permit the application to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

### **91J Granting of accreditation**

- (1) If the Commissioner receives an application that is properly made under section 91H and the applicant satisfies all necessary tests under section 91G, the Commissioner must accredit the applicant unless the Commissioner exercises his or her discretion under section 91K.
- (2) Once granted, accreditation remains in force until the end of any period specified by the Commissioner unless it is revoked under section 91L.
- (3) The accreditation may be given in writing or by way of electronic transmission.

### **91K Commissioner's discretion to refuse accreditation**

The Commissioner may refuse to accredit a person if:

- (a) the Commissioner has reasonable grounds for believing that sales tax will not be, or is unlikely to be, paid in relation to transactions with Part 7A goods dealt with by the person; or
- (b) the person's application is false or misleading in a material particular (either because of something stated in the application or something left out);

and the Commissioner believes that the refusal would assist in achieving the purpose of this Part.

### **91L Revocation of accreditation**

- (1) The Commissioner may, by written notice given to a person, revoke the person's accreditation at a particular time if the Commissioner believes that, if the person made an application at that time:
  - (a) the person would not be covered by section 91F; or
  - (b) the person would not satisfy all of the requirements in section 91G; or
  - (c) the Commissioner would exercise his or her discretion under section 91K.
- (2) If a person requests the Commissioner to revoke his or her accreditation, the Commissioner must revoke the person's accreditation.

### **91M Review of decisions on accreditation**

A person who is affected by a decision:

- (a) under section 91J or 91K to refuse to accredit; or
- (b) under section 91L to revoke accreditation;

and is dissatisfied with the decision may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

### **91N Accredited persons to advise Commissioner of certain matters**

- (1) This section applies if, at a particular time, a person who is accredited becomes aware that, if the person made an application for accreditation at that time:
  - (a) the person would not be covered by section 91F; or
  - (b) the person would not satisfy all of the requirements in section 91G.
- (2) If this section applies, the accredited person must notify the Commissioner of that fact and provide the Commissioner with details of circumstances that cause this section to apply. The notification and the details must be given in writing within 7 days of the time mentioned in subsection (1).

*Offence of contravening subsection (2)*

- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 50 penalty units.

### **91P Additional information about transactions**

In addition to any returns required under section 61, the Commissioner may direct a person to give to the Commissioner such information as the Commissioner:

- (a) requires in respect of dealings by the person with Part 7A goods; or
- (b) if the person is accredited—considers is relevant to the person's accreditation.

### **91Q Commissioner may publicise who is accredited**

- (1) The Commissioner may publish, or otherwise publicise, the names, accreditation numbers and registration numbers of persons who are accredited or whose accreditation is revoked.
- (2) In addition, the Commissioner may, if requested:
  - (a) advise a person whether or not another person is accredited and, if so, whether the person is registered; and
  - (b) if the information is required for the purposes of section 91S, advise a person whether or not a person who is not accredited is registered.
- (3) This section operates despite anything in this Act or the *Taxation Administration Act 1953*.

## **Division 3—Authorisation of certain transactions**

### **91R Outline of Division**

This Division provides for the Commissioner to authorise quotations in respect of particular dealings with goods. Without an authorisation, the quote will not be effective.

Authorisations may be sought, and may be given, in any way that the Commissioner decides. This could be orally or by way of electronic transmission.

The authorisation may be given in relation to a particular dealing or may be a standing authorisation that applies to specified kinds of dealings.

### **91S Quote not effective without authorisation**

- (1) A quote in relation to a dealing with Part 7A goods is only effective if:
  - (a) the person quoting is accredited and the quote is authorised by the Commissioner; or
  - (b) the quote is a quote of an exemption declaration, the dealing is not a local entry and the person making the quote intends

- to use the goods so as to satisfy an exemption item (other than a prescribed exemption item); or
- (c) the dealing is not a local entry and the person making the quote:
- (i) is registered; and
  - (ii) is not acquiring the goods for resale; and
  - (iii) satisfies the low purchase value test (see subsections (2) and (3)) in relation to that dealing; or
- (d) the quote is made in prescribed circumstances; or
- (e) the person accepting the quote satisfies the Commissioner that he or she was satisfied on reasonable grounds that paragraph (a), (b), (c) or (d) applied.
- (2) For a person to satisfy the low purchase value test in relation to a dealing (the *current dealing*), the total of the value of:
- (a) the current dealing; and
  - (b) all other acquisitions of Part 7A goods for which the person quoted in the 12 months before the current dealing;
- must be less than \$6,000 or such other amount as is prescribed.
- (3) In addition, the person must have an expectation (based on reasonable grounds) that the total of the value of all acquisitions of Part 7A goods by the person in the 12 months after the current dealing for which the person will quote will be less than \$6,000 or such other amount as is prescribed.
- (4) For a person (the *seller*) to be satisfied that another person (the *purchaser*) satisfies the low purchase value test in relation to a dealing, the seller must obtain from the purchaser a signed statement, in a form approved in writing by the Commissioner, that the purchaser satisfies the low purchase value test in relation to the dealing.
- (5) A person must not, in relation to any dealing with goods, falsely represent that the person satisfies the low purchase value test in relation to that dealing.

Penalty: 50 penalty units.

### **91T Method of obtaining authorisation**

- (1) A person who wants an authorisation in relation to a quote for a dealing must seek the authorisation in a manner approved in writing by the Commissioner.
- (2) The person may seek authorisation in relation to a single quote or in relation to quotes for a class of dealings. An authorisation in relation to a class of dealings is a *standing authorisation*.
- (3) Without limiting the Commissioner's power under subsection (1), the Commissioner may approve authorisations being sought orally or by way of electronic transmission.

### **91U Giving of authorisation by Commissioner**

- (1) If a person seeks an authorisation in relation to a single dealing, the Commissioner must give the authorisation unless:
  - (a) the person making the quote is not accredited; or
  - (b) the quote would not be effective even if the Commissioner authorised it; or
  - (c) the Commissioner considers that there are reasonable grounds for believing that sales tax will not be, or is unlikely to be, paid in relation to the dealing or in relation to other dealings with those Part 7A goods.

Example: The Commissioner may believe that sales tax will not be paid in relation to a later sale to a retailer that is made by the person who buys the goods from the person making the application.
- (2) If a person seeks a standing authorisation, the Commissioner may give the standing authorisation if the Commissioner considers that there are reasonable grounds for believing that sales tax will be paid in relation to all dealings that would be covered by the standing authorisation and in relation to other dealings with the goods covered by those dealings.
- (3) The Commissioner may also, on his or her own initiative, give a person a standing authorisation covering such dealings as the Commissioner determines if the Commissioner considers that there are reasonable grounds for believing that sales tax will be paid in relation to all dealings that would be covered by the standing authorisation.

- (4) A standing authorisation does not cover a quote if:
  - (a) the person making the quote is not accredited; or
  - (b) the quote would not be effective even if the Commissioner authorised it.
- (5) The Commissioner may, by written notice, revoke a standing authorisation.
- (6) A person who is affected by a decision:
  - (a) to refuse to authorise a transaction; or
  - (b) to refuse to give a standing authorisation; or
  - (c) to revoke a standing authorisation;and is dissatisfied with the decision may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (7) In determining that there are reasonable grounds for believing that sales tax will not be, or is unlikely to be, paid in relation to transactions with Part 7A goods dealt with by the person, the Commissioner is not limited to considering dealings to which the person is a party.

#### **91V Form of authorisations**

An authorisation may be given in such form, including orally or by way of electronic transmission, as the Commissioner considers appropriate.

### **Division 4—Withholding of sales tax on dealings with Part 7A goods**

#### **91W Outline of Division**

This Division provides for the withholding of sales tax from payments in respect of certain dealings with Part 7A goods. The dealings are those where an accredited person or a retailer purchases goods from an unaccredited person.

It also sets out the way in which the tax, and associated forms, must be sent to the Commissioner.



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**91X Withholding of sales tax**

- (1) If an accredited person makes a payment to a person in respect of a taxable dealing that is the purchase of Part 7A goods for the purpose of resale from a person who is not accredited, the accredited person must deduct the withholding amount from the payment.
- (2) If, after the day prescribed for the purposes of this subsection, a person who is a retailer in relation to particular Part 7A goods makes a payment to a person in respect of a taxable dealing that is the purchase of those Part 7A goods from a person who is not accredited, the retailer must deduct the withholding amount from the payment.
- (3) Subsections (1) and (2) do not apply if the accredited person, or the retailer (as the case requires):
  - (a) took reasonable steps to determine whether the other person was accredited; and
  - (b) as a result, reasonably believed that the other person was accredited.
- (4) A person, other than a government body, who contravenes this section is guilty of an offence punishable on conviction by a maximum fine of 20 penalty units.

**91Y Working out the *withholding amount***

- (1) The ***withholding amount*** for a payment that is made in respect of the purchase of Part 7A goods where the purchase involves only Part 7A goods and an invoice is given for the purchase is:

$$\left( \begin{array}{c} \text{Schedule 4} \\ \text{rate} \end{array} \times \text{Taxable value of the Part 7A goods} \right) - \begin{array}{c} \text{Amounts previously} \\ \text{withheld in respect} \\ \text{of those goods} \end{array}$$

- (2) In any other case, the ***withholding amount*** for a payment that is made in respect of the purchase of Part 7A goods is:

$$\left( \begin{array}{c} \text{Schedule 4} \\ \text{rate} \end{array} \times \begin{array}{c} \text{Notional wholesale} \\ \text{selling price of} \\ \text{the Part 7A goods} \end{array} \right) - \begin{array}{c} \text{Amounts previously} \\ \text{withheld in respect} \\ \text{of those goods} \end{array}$$

- (3) In this section:

*notional wholesale selling price* has the same meaning as in Table 1 in Schedule 1.

*Schedule 4 rate* is the rate of tax that applies to taxable dealings with goods covered by Schedule 4 to the Exemptions and Classifications Act.

### **91Z Reporting and remitting amounts**

- (1) A person who makes one or more payments covered by section 91X in a month must send all amounts deducted under section 91X from the payments to the Commissioner within 21 days after the end of the month (or such longer period as the Commissioner allows).
- (2) The person must also:
  - (a) complete and sign a withholding advice form in respect of the amounts; and
  - (b) make 2 copies of the form; and
  - (c) give a copy of the form to the seller; and
  - (d) send the form to the Commissioner within 21 days after the end of the month (or such longer period as the Commissioner allows).
- (3) The person must keep the copies of all of the forms that the person is required to make under this section (other than those copies required to be given to the seller or sent to the Commissioner) for at least 5 years after the end of the financial year in which the payments to which the copies relate were made. The copies must be kept in Australia.
- (4) A person, other than a government body, who contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for 12 months. In addition, the court may order the person to pay to the Commissioner as a penalty an amount not greater than the amount required to be deducted under section 91X from any payment to which the contravention relates.
- (5) A person, other than a government body, who contravenes subsection (2) or (3) is guilty of an offence punishable on conviction by a fine of 20 penalty units.

**91ZA Refund of deductions in certain cases**

- (1) If a person has applied for a refund and the Commissioner is satisfied that:
  - (a) a deduction was made from a payment to the applicant; and
  - (b) the whole or a part of the amount of the deduction (the **relevant amount**) was made due to an act or omission of the applicant or another person; and
  - (c) having regard to:
    - (i) the purposes of this Division; and
    - (ii) the nature of the act or omission referred to in paragraph (b); and
    - (iii) such other matters (if any) as the Commissioner thinks fit;

it would be fair and reasonable to refund the relevant amount to the applicant, the Commissioner must refund the relevant amount to the applicant.
- (2) No person is entitled to a credit in respect of an amount refunded under subsection (1).
- (3) A person who is affected by a decision to refuse to refund an amount under subsection (1) and is dissatisfied with the decision may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

**91ZB Failure to make deductions from payments**

- (1) A person, other than a government body, who refuses or fails, at the time of making a payment, to deduct from the payment the amount required to be deducted under this Division, is liable to pay to the Commissioner, by way of penalty:
    - (a) an amount (the **undeducted amount**) equal to the amount that the person failed to deduct; and
    - (b) an amount equal to 16% per annum of so much of the undeducted amount as remains unpaid, worked out from the end of the period within which the person, had the person deducted the required amount, would have been required to pay the amount to the Commissioner.
  - (2) A government body, other than the Commonwealth, that refuses or fails, at the time of making a payment, to deduct from the payment
-

the amount required to be deducted under this Division, is liable to pay to the Commissioner, by way of penalty, an amount equal to 16% per annum of the amount that the body refused or failed to deduct in respect of the period:

- (a) starting at the end of the period within which the body, had it deducted the required amount, would have been required to pay the amount to the Commissioner; and
- (b) ending on the day on which the whole of the amount payable by the body under this subsection in respect of the undeducted amount is paid.

### **91ZC Failure to pay amounts deducted to Commissioner**

- (1) Where an amount (the *principal amount*) payable to the Commissioner by a person other than the Commonwealth under subsection 91Z(1) remains unpaid at the end of the period within which it is required to be paid:
  - (a) the principal amount continues to be payable by the person to the Commissioner; and
  - (b) the person is liable to pay to the Commissioner, by way of penalty, the amount worked out under subsection (2) or (3).
- (2) If the person is not a government body, the amount is the sum of:
  - (a) an amount (the *relevant penalty amount*) equal to 20% of the principal amount; and
  - (b) an amount at the rate of 16% per annum of the sum of so much of the principal amount as remains unpaid and so much of the relevant penalty amount as remains unpaid, worked out from the end of that period.
- (3) If the person is a government body, the amount is 16% per annum of so much of the principal amount as remains unpaid, worked out from the end of that period.

### **91ZD Interpretation**

- (1) In this Division:

*government body* means the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory.

- (2) For the purposes of this Division, a person is a **retailer** of particular Part 7A goods if:
- (a) the person is mainly a retailer in relation to the Part 7A goods; and
  - (b) the person did not manufacture the Part 7A goods; and
  - (c) the person will not use the Part 7A goods as raw materials in manufacturing.
- (3) A person is **mainly a retailer** in relation to particular Part 7A goods if the person sells Part 7A goods and:
- (a) wholesale sales and indirect marketing sales of Part 7A goods do not account for more than half of the total value of all sales of Part 7A goods by the person during the 12 months ending at the time of the relevant dealing with the particular Part 7A goods; or
  - (b) the person has an expectation (based on reasonable grounds) that wholesale sales and indirect marketing sales of Part 7A goods will not account for more than half of the total value of all sales of Part 7A goods by the person during the 12 months starting at the time of the relevant dealing with the particular Part 7A goods.

For this purpose, the value of a sale of goods is the price for which the goods are sold.

## **Division 5—General provisions about offences**

### **91ZE False representations**

- (1) A person must not, in relation to any dealings with goods:
- (a) falsely represent that the person is an accredited person; or
  - (b) falsely represent that a quote is authorised under section 91U.

Penalty: 20 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

### **91ZF Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Part.

## 24 Schedule 1 (at the end of Table 3)

Add:

<b>CR26</b>	Credit for amounts withheld on Part 7A goods	Claimant has become liable to tax on an assessable dealing with Part 7A goods and another person has withheld an amount in respect of that dealing under section 91X.	the amount withheld	the later of the time when the claimant pays the tax on the assessable dealing and the time when the Commissioner receives the form under subsection 91Z(2) in respect of the amount withheld
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## 25 Application

- (1) The amendment made by item 5 applies in relation to dealings after 23 October 1997.
- (2) The amendment made by item 10 applies in relation to credits applied for after 23 October 1997.
- (3) Divisions 3 and 4 of Part 7A of the *Sales Tax Assessment Act 1992* apply to dealings on or after a date to be prescribed.

## 26 Transitional—record keeping requirements

For the purposes of applications made within 3 years after the commencement of this item, subsection 91G(6) applies as if the requirement for the records to have been kept in English was limited to records that are kept after the commencement of this item.

## **Schedule 3—Land transport facilities**

### **Part 1—Insertion of new Division 396**

#### *Income Tax Assessment Act 1997*

#### **1 After Division 387**

Insert:

*[The next Division is Division 396]*

### **Division 396—Land transport facilities borrowings**

#### **Table of Subdivisions**

- Guide to Division 396
- 396-A Key operative provisions
- 396-B What LTF interest is covered?
- 396-C Projects, borrowers and lenders
- 396-D Application, approval and agreement process
- 396-E Miscellaneous

#### **Guide to Division 396**

##### **396-5 What this Division is about**

A lender can get a tax offset for certain interest it derives on an approved borrowing by another entity for the construction of land transport facilities.

For a borrowing to be approved:

- (a) the borrower must apply to the Commissioner; and
- (b) the Minister for Transport and Regional Development must approve the application; and

- (c) that Minister, the borrower and each of the lenders must enter into an agreement.

The total of tax offsets available under this Division for an income year is subject to a limit.

Where a tax offset is given for interest, the borrower cannot deduct the interest.

### **Subdivision 396-A—Key operative provisions**

#### **Guide to Subdivision 396-A**

##### **396-10 What this Subdivision is about**

This Subdivision provides for:

- (a) the tax offset for the lender; and
- (b) deductions not to be allowed to the borrower.

It also provides for a cap to be set on the amount of tax offsets approved for each income year.

#### **Table of sections**

##### **Operative provisions**

396-15	Tax offset for LTF interest on land transport facilities borrowings
396-20	Maximum amount of tax offsets
396-25	Borrower cannot deduct LTF interest for which lender has tax offset

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



## Operative provisions

### 396-15 Tax offset for LTF interest on land transport facilities borrowings

- (1) An entity that is a lender under a \*land transport facilities borrowings agreement is entitled to a \*tax offset for \*LTF interest covered by the agreement.

*Amount of tax offset*

- (2) The amount of the tax offset is worked out using the formula:  
\*General company tax rate × LTF interest covered by agreement

However, the amount cannot exceed any amount specified in the \*land transport facilities borrowings agreement as the maximum \*tax offset for that lender for the income year for that agreement.

- (3) In subsection (2):

***LTF interest covered by agreement*** means the amount of \*LTF interest that is covered by the \*land transport facilities borrowings agreement and that is derived by the entity in the income year.

### 396-20 Maximum cost to Commonwealth

The maximum net cost to the Commonwealth of \*tax offsets to be approved under this Division for an income year (after taking into account deductions that are reduced) is the amount determined, by written notice, by the Treasurer.

Note: The maximum amount is taken into account under subsection 396-70(5) in approving projects.

### 396-25 Borrower cannot deduct LTF interest for which lender has tax offset

- (1) The total of amounts that an entity that is a borrower under a \*land transport facilities borrowings agreement can deduct for an income year for \*LTF interest covered by the agreement is reduced by:

$$\frac{1}{\text{*General company tax rate}} \times \text{Tax offset entitlement}$$

(2) In subsection (1):

*tax offset entitlement* is the total of the amounts of \*tax offset worked out under subsection 396-15(2) for LTF interest that is covered by the agreement and that is derived by a lender in the income year.

(3) If the amount by which deductions for an income year are to be reduced by subsection (1) (or by a previous operation of this subsection) exceeds the total of those deductions:

- (a) the deductions are reduced to nil; and
- (b) the total amount that the borrower can deduct for the *next* income year for \*LTF interest covered by the agreement is reduced by the total of:
  - (i) that excess; and
  - (ii) the amount worked out for that next income year using the formula in subsection (1).

Note: This can happen where interest is incurred by the borrower in an income year after the income year in which it is derived by the lender.

## Subdivision 396-B—What LTF interest is covered?

### Guide to Subdivision 396-B

This Subdivision sets out the interest for which a tax offset can be obtained.

### Table of sections

#### Operative provisions

396-30	What is <i>LTF interest</i> ?
396-35	Interest covered by land transport facilities borrowings agreement
396-40	Interest ceasing to be covered by a land transport facilities borrowings agreement

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

## **Operative provisions**

### **396-30 What is *LTF interest*?**

- (1) *LTF interest*, in relation to a borrower, is:
- (a) a payment of interest, or in the nature of interest, made or liable to be made by the borrower, for which the borrower is, apart from this Division, entitled to a deduction; or
  - (b) an amount allowable as a deduction to the borrower under section 159GT of the *Income Tax Assessment Act 1936* in relation to a \*borrowing that is covered by a \*land transport facilities borrowings agreement.

Note: Section 159GT deals with certain securities.

- (2) *LTF interest*, in relation to a lender, is:
- (a) a payment of interest, or in the nature of interest, made or liable to be made to the lender, that is included in the lender's assessable income for an income year; or
  - (b) an amount included in the assessable income of the lender under section 159GQ of the *Income Tax Assessment Act 1936* in relation to a \*borrowing that is covered by a \*land transport facilities borrowings agreement.

Note: Section 159GQ deals with certain securities.

### **396-35 Interest covered by land transport facilities borrowings agreement**

- (1) \*LTF interest that is derived by an entity is covered by a \*land transport facilities borrowings agreement if:
- (a) the entity is a lender under the agreement; and
  - (b) the LTF interest arises under a \*borrowing that is covered by the agreement when the interest is derived.
- (2) \*LTF interest that is incurred by an entity is covered by a \*land transport facilities borrowings agreement if:
- (a) the entity is the borrower under the agreement; and
  - (b) the LTF interest arises under a \*borrowing that is covered by the agreement at the time that the LTF interest is incurred.

**396-40 Interest ceasing to be covered by a land transport facilities borrowings agreement**

\*LTF interest ceases to be covered by a \*land transport facilities borrowing agreement if the borrower or a lender breaches the agreement and the Minister for Transport and Regional Development decides:

- (a) that the breach is a material breach of the agreement; and
- (b) not to agree to vary the agreement in a way that would cause the breach to no longer be a breach.

**Subdivision 396-C—Projects, borrowers and lenders**

**Guide to Subdivision 396-C**

This Subdivision explains the projects that can be approved and who can be approved as borrowers or lenders.

Where a project and a borrower are approved, a land transport facilities borrowings agreement is entered into under Subdivision 396-D.

**Table of sections**

**Operative provisions**

- 396-45 What projects can be approved?
- 396-50 Who can be approved as a borrower?
- 396-55 Who can be a lender?

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

**Operative provisions**

**396-45 What projects can be approved?**

- (1) To be approved, a project must be the construction of a \*land transport facility or the construction or acquisition of one or more \*related facilities.

- (2) A **land transport facility** is a road, tunnel, bridge, or railway line, in Australia, that is to be used for the transport of the public or their goods at a charge to them (whether the transport is by the member of the public concerned or by another entity).
- (3) **Related facilities** are facilities in Australia that are reasonably necessary for a \*land transport facility to be able to operate for the purpose for which it was constructed.
- (4) The following are examples of \*related facilities:
- (a) \*plant and other equipment (for example, rolling stock in the case of a railway) for use in operating the \*land transport facility;
  - (b) buildings or other structures from which staff are to operate the land transport facility;
  - (c) buildings or other structures for storing freight, cargo, plant, fuel, stores or equipment;
  - (d) stations or passenger or freight terminals;
  - (e) maintenance facilities.
- (5) A road, road bridge or road tunnel to provide access to a \*land transport facility that is a railway is not a **related facility** (or part of the land transport facility itself).
- (6) A railway, railway bridge or railway tunnel to provide access to a \*land transport facility that is a road is not a **related facility** (or part of the land transport facility itself).

Note: Items 20 and 21 of Schedule 3 to the *Taxation Laws Amendment Act (No. 1) 1998* treat certain facilities as if they were land transport facilities or related facilities.

### **396-50 Who can be approved as a borrower?**

- (1) An entity can only be approved as a borrower in relation to a particular project if the entity is:
- (a) an incorporated body; or
  - (b) a \*corporate limited partnership; or
  - (c) a \*corporate unit trust; or
  - (d) a \*public trading trust;
- and intends to continue to be that type of entity for the period covered by the agreement.

- (2) An entity cannot be approved as a borrower if the entity is making the \*borrowing in partnership with another entity.
- (3) An entity cannot be approved as a borrower if the entity:
- (a) is a government body (within the meaning of subsection 93D(1) of the *Development Allowance Authority Act 1992*);  
or
  - (b) is government owned (within the meaning of subsection 93I(3) of that Act);
- unless the entity is covered by subsection 93I(4) of that Act.

### **396-55 Who can be a lender?**

A lender must be an Australian resident for the whole of an income year to be entitled to a \*tax offset under this Division for that income year.

## **Subdivision 396-D—Application, approval and agreement process**

### **Guide to Subdivision 396-D**

This Subdivision sets out the process for applications to be made and approved and agreements to be entered into.

### **Table of sections**

#### **Operative provisions**

396-60	Applications
396-65	Minister or Commissioner may seek more information
396-70	Minister for Transport and Regional Development to consider applications
396-75	Selection criteria
396-80	Land transport facilities borrowings agreements
396-85	Conditions to be in all agreements
396-90	Variation of agreements

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

## **Operative provisions**

### **396-60 Applications**

- (1) An entity that wants to be approved as a borrower in relation to a particular project must give a written application to the Commissioner.
- (2) The application must be in a form approved in writing by the Commissioner and must contain all information that is required for proper completion of the form.

#### *Electronic applications*

- (3) An approval by the Commissioner of a form of application may require or permit the application to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

### **396-65 Minister or Commissioner may seek more information**

- (1) The Minister for Transport and Regional Development or the Commissioner may, in writing, ask an applicant to provide additional information for the purpose of determining the applicant's application.
- (2) The Minister for Transport and Regional Development does not have to consider, or further consider, the application until the additional information has been provided.

### **396-70 Minister for Transport and Regional Development to consider applications**

- (1) The Minister for Transport and Regional Development is to consider applications and to decide:
  - (a) whether to approve the borrower and the project; and
  - (b) if so, whether to set a maximum amount of \*tax offsets for the project for each income year covered by the approval.
- (2) A decision to approve a borrower and a project must be in writing and must specify:
  - (a) the borrower; and
  - (b) the project; and

- (c) the income years covered by the approval; and
- (d) if a maximum amount of \*tax offsets for the project for each income year covered by the approval is set—the maximum amount for each income year.

The amount may be different for different years.

- (3) The decision may include conditions to which the approval is subject.
- (4) The approval must not cover an income year that starts more than 5 years after the first \*borrowing is made in respect of the project.
- (5) In making a decision under paragraphs (1)(a) and (1)(b), the Minister for Transport and Regional Development must attempt to ensure that the maximum net cost referred to in section 396-20 for any income year will not be exceeded.
- (6) For the purposes of subsection (5), where no maximum amount is specified in relation to a project, the Minister for Transport and Regional Development is to take account of the expected amount of tax offsets for that project.
- (7) The Minister for Transport and Regional Development does not need to make the decision within any particular time. For example, the Minister for Transport and Regional Development may decide to make decisions under subsection (1) on only 2 days in a year.

### **396-75 Selection criteria**

- (1) In making a decision, the Minister for Transport and Regional Development is to take into account the following matters:
  - (a) the commercial viability of the \*land transport facilities;
  - (b) the benefit that the borrower would receive from having the \*tax offset available to lenders;
  - (c) the estimated taxation revenue that would be forgone as a result of allowing the \*tax offsets;
  - (d) any economic or social benefits or costs associated with the project;
  - (e) the extent to which the project conforms to Commonwealth and State government policies and planning requirements;
  - (f) the extent to which persons who are likely to be affected by the project have been consulted in relation to the project;



- (g) any other matter that the Minister for Transport and Regional Development considers is relevant.
- (2) The Minister for Transport and Regional Development is also to take into account any advice from the Commissioner in relation to the application of this Act in relation to the project or any \*borrowings or proposed borrowings relating to the project.

Example: The Commissioner may advise the Minister that a lender is not an Australian resident or that section 51AD of the *Income Tax Assessment Act 1936* may apply to the project.

### **396-80 Land transport facilities borrowings agreements**

- (1) If the Minister for Transport and Regional Development has made a decision approving a project and a borrower, the Minister for Transport and Regional Development must enter into a ***land transport facilities borrowings agreement*** with the borrower that sets out the lender, or lenders, that will be entitled to a \*tax offset.
- (2) Each lender specified in the agreement must also be a party to the agreement.
- (3) The agreement must specify:
- (a) the project; and
  - (b) the borrower; and
  - (c) each of the lenders that will be entitled to a \*tax offset under the agreement; and
  - (d) the income years covered by the agreement; and
  - (e) the \*borrowings that are covered by the agreement; and
  - (f) any conditions to which the agreement is subject.
- (4) If the Minister for Transport and Regional Development has specified, in the decision under section 396-70, the maximum amount of \*tax offsets allowable for any income year for the project, the agreement must specify the maximum amount of tax offset allowable that will be available for each lender for each income year. The total of the amounts specified must not exceed the maximum specified in the decision.
- (5) The conditions specified in the agreement must include:
- (a) the conditions set out in section 396-85; and

(b) any conditions specified by the Minister for Transport and Regional Development in the decision under section 396-70; but may include such other conditions as the Minister for Transport and Regional Development considers appropriate.

**396-85 Conditions to be in all agreements**

- (1) All \*land transport facilities borrowings agreements must include the following conditions:
- (a) that the facilities covered by the agreement will be used in accordance with subsection (2);
  - (b) that the borrower and each of the lenders will do each of the things that they state in the agreement that they will do;
  - (c) that the borrower will not do anything that will cause section 51AD of the *Income Tax Assessment Act 1936* or Division 16D of Part III of that Act to apply to any of the facilities concerned;
  - (d) that the \*borrowings will only be used in the construction of the facilities or the construction or acquisition of \*related facilities;
  - (e) that the borrower will keep proper records in respect of all dealings by the borrower with the borrowed money;
  - (f) that the borrower and each of the lenders will keep proper records in respect of the doing of all other things specified in the agreement (for example, in respect of things done in constructing any facility);
  - (g) that the borrower and each of the lenders will inform the Commissioner of any breach of the agreement within 30 days of becoming aware of the breach;
  - (h) that each of the lenders will, as soon as is practicable, inform the borrower of the amount of any tax offset to which the lender is entitled for a borrowing under the agreement.
- (2) A facility is used in accordance with this subsection if the borrower:
- (a) owns the facility (or holds a \*quasi-ownership right granted by an \*exempt Australian government agency over land to which the facility is attached); and
  - (b) uses the facility principally for gaining or producing assessable income; and

(c) effectively controls the use of the facility (other than by leasing it);  
from the time that the facility is first used until the end of the last income year covered by the agreement.

### **396-90 Variation of agreements**

- (1) The parties to a \*land transport facilities borrowings agreement may revoke or vary the agreement.
- (2) In addition, the Minister for Transport and Regional Development and the borrower may enter into an agreement to replace an existing agreement where a lender is to cease to be covered or a new lender is to be covered. Each lender that is specified in the replacement agreement must also be a party to the replacement agreement.
- (3) Any varied or replacement agreement must comply with subsections 396-80(4) and (5).

### **Subdivision 396-E—Miscellaneous**

#### **Table of sections**

396-95	Provision of information
396-100	Publication of information about approvals and agreements
396-105	Delegation by Minister for Transport and Regional Development
396-110	Decision by Minister for Transport and Regional Development not reviewable by AAT

### **396-95 Provision of information**

- (1) Any information that was provided under this Division may be given to:
  - (a) a Minister or an individual or employee under the control of a Minister; or
  - (b) an employee of, or individual performing services for, the Commonwealth;if the person giving the information considers that it would assist the administration of this Division. This can be done despite any prohibition in section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.

- (2) Any person who is given information under this section, and any person or employee under his or her control, is subject to the same rights, privileges, obligations and liabilities, under subsections 16(2) and (3) of the *Income Tax Assessment Act 1936* and 3C(2), (3) and (4) of the *Taxation Administration Act 1953* in relation to that information, as if he or she were an officer within the meaning of section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.

**396-100 Publication of information about approvals and agreements**

The Minister for Transport and Regional Development may publish any information that is included in an approval or an agreement under this Division. This can be done despite any prohibition in section 16 of the *Income Tax Assessment Act 1936* or section 3C of the *Taxation Administration Act 1953*.

**396-105 Delegation by Minister for Transport and Regional Development**

The Minister for Transport and Regional Development may, by written notice, delegate to the Secretary to that Minister's Department, or to a person holding or performing the duties of a \*Senior Executive Service office in that Minister's Department, all or any of that Minister's powers under this Division other than that Minister's powers under section 396-70.

**396-110 Decision by Minister for Transport and Regional Development not reviewable by AAT**

The \*AAT must not, in reviewing any decision, review a decision of the Minister for Transport and Regional Development under this Division (other than a decision under section 396-40) or any decision by any person that was preliminary to such a decision.

## **Part 2—Other amendments**

### ***Income Tax Assessment Act 1997***

#### **2 Section 9-1**

Omit “(as defined in section 94D)”

#### **3 Section 13-1 (before the entry dealing with leave payments)**

Insert:

land transport facilities borrowings                      Division 396

#### **4 Paragraph 25-5(2)(c)**

Omit “borrowing”, substitute “\*borrowing”.

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

Omit “borrowing”, substitute “\*borrowing”.

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

Omit “borrowed”, substitute “\*borrowed”.

#### **7 Subsection 25-25(3)**

Omit “borrowed”, substitute “\*borrowed”.

#### **10 Subsection 25-30(3)**

Omit “borrowed”, substitute “\*borrowed”.

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

Insert:

*borrowing* means any form of borrowing, whether secured or unsecured, and includes the raising of funds by the issue of a bond, debenture, discounted security or other document evidencing indebtedness.

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

Insert:

*corporate limited partnership* has the meaning given by section 94D of the *Income Tax Assessment Act 1936*.

**13 Subsection 995-1(1)**

Insert:

*corporate unit trust* has the meaning given by section 102J of the *Income Tax Assessment Act 1936*.

**14 Subsection 995-1(1)**

Insert:

*general company tax rate* means the rate of tax imposed on taxable incomes of companies (except companies that are registered organisations, life assurance companies and companies that are PDFs throughout the last day of the year of income).

**15 Subsection 995-1(1)**

Insert:

*land transport facilities borrowings agreement* has the meaning given by section 396-80.

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

Insert:

*land transport facility* has the meaning given by section 396-45.

**17 Subsection 995-1(1)**

Insert:

*LTF interest* has the meaning given by sections 396-30 and 396-35.

**18 Subsection 995-1(1)**

Insert:

*public trading trust* has the meaning given by section 102R of the *Income Tax Assessment Act 1936*.

**19 Subsection 995-1(1)**

Insert:

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*related facility* in relation to a \*land transport facility has the meaning given by section 396-45.

## Part 3—Transitional and application provisions

### 20 Division 396 also applies to certain other infrastructure borrowings

- (1) Division 396 of the *Income Tax Assessment Act 1997* applies to the following as if they were land transport facilities:
  - (a) an infrastructure facility (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) where an application had been made for a certificate under Part 3 of Chapter 3 of that Act on or before 14 February 1997 in respect of borrowings in connection with the facility;
  - (b) an infrastructure facility (within the meaning of section 93L of the *Development Allowance Authority Act 1992*) that is an extension of a an infrastructure facility in respect of which a certificate under Part 3 of Chapter 3 of that Act is in force.
- (2) That Division also applies to facilities that are related facilities (within the meaning of section 93M of the *Development Allowance Authority Act 1992*) in relation to facilities covered by subsection (1) as if they were related facilities to land transport facilities.

### 21 Certain projects taken to be approved

- (1) This item applies to an infrastructure facility or a related facility (within the meaning of section 93L or 93M of the *Development Allowance Authority Act 1992*) if:
  - (a) an application had been made for a certificate under Part 3 of Chapter 3 of that Act on or before 14 February 1997 in respect of borrowings in connection with the facility; and
  - (b) a certificate had been issued under that Act in respect of those borrowings but the certificate is not effective because of the operation of the *Taxation Laws Amendment (Infrastructure Borrowings) Act 1997*; and
  - (c) the Minister for Transport and Regional Development determines, by written notice, that this item applies to the facility.



- (2) A determination is to include all of the matters that would be set out if the determination were a decision to approve a borrower and a project under section 396-70 of the *Income Tax Assessment Act 1997*.
- (3) The income years specified in the determination must not include an income year that starts more than 5 years after the first borrowing is made in respect of the project.
- (4) The Minister for Transport and Regional Development must not specify in the determination a maximum amount of tax offsets for the project for an income year that would cause the maximum amount referred to in section 396-20 of the *Income Tax Assessment Act 1997* for that income year to be exceeded.
- (5) If this item applies to an infrastructure facility:
  - (a) Division 396 of the *Income Tax Assessment Act 1997* applies to the facility as if it were a land transport facility; and
  - (b) the Minister for Transport and Regional Development is taken to have made a decision under section 396-70 of the *Income Tax Assessment Act 1997* to approve the borrower and the project specified in the determination.

## **22 Provision of information by Development Allowance Authority**

Section 93ZF of the *Development Allowance Authority Act 1992* applies as if paragraph (d) of that section included a reference to this Part of this Schedule and to Division 396 of the *Income Tax Assessment Act 1997*.

## **Schedule 4—Removing exemption for CRAFT Scheme payments**

### *Income Tax Assessment Act 1997*

#### **1 Section 51-10 (table item 2.2, column headed “... subject to these exceptions and special conditions:”)**

Repeal the cell, substitute:

each payment is  
for an apprentice  
who most recently  
started work with  
you before  
1 January 1998

#### **2 Application**

The amendment made by item 1 applies for the 1997-98 income year and later income years.

## **Schedule 5—Technical amendments of the Income Tax Assessment Act 1997**

### **1 At the end of subsection 8-1(3)**

Add:

Note: If you receive an amount as insurance, indemnity or other recoupment of a loss or outgoing that you can deduct under this section, the amount may be included in your assessable income: see Subdivision 20-A.

### **2 At the end of subsection 8-5(3)**

Add:

Note: If you receive an amount as insurance, indemnity or other recoupment of a deductible expense, the amount may be included in your assessable income: see Subdivision 20-A.

### **3 Subsection 9-5(1) (before item 1 of the table)**

Insert:

- 1A An Australian resident individual with: **section 23AF or 23AG**
- eligible foreign remuneration under **section 23AF**; or
  - foreign earnings under **section 23AG**;
- (from working in a foreign country) is liable to pay income tax worked out by reference to his or her assessable income less some of his or her deductions.

### **4 Section 12-5 (after the table item headed “bad debts”)**

Insert:

#### **balancing adjustment**

*see buildings, capital allowances, depreciation, grape vines, industrial property, mining, petroleum prospecting and mining, quarrying, research & development, tax exempt entities and timber*

### **5 Section 20-10**

Repeal the section, substitute:

## 20-10 What this Subdivision is about

### *Recoupment of expenses you incurred and can deduct*

Your assessable income may include an amount that you receive by way of insurance, indemnity or other recoupment if:

- it is for a deductible expense; and
- it is *not* otherwise assessable income.

### *Recoupment of expenses you did not incur but can deduct*

Your assessable income may include an amount that another entity receives by way of insurance, indemnity or other recoupment if:

- it is for an expense that you can deduct; and
- it is *not* otherwise your assessable income.

## 6 Before subsection 20-15(1)

Insert:

*If you incurred the deductible loss or outgoing*

## 7 At the end of section 20-15

Add:

*If another entity incurred a loss or outgoing you can deduct*

(3) Sections 20-60 and 20-65 tell you how to apply this Subdivision.

## 8 Subsection 20-45(3)

Omit “20-40(3)”, substitute “20-40(2)”.

## 9 Subsection 20-45(3) (example)

Omit “20-40(3)” (wherever occurring), substitute “20-40(2)”.

## 10 At the end of Subdivision 20-A

Add:

**What if you can deduct a loss or outgoing incurred by another entity?**

**20-60 If you are the only entity that can deduct an amount for the loss or outgoing**

This Subdivision applies in a different way if:

- (a) an entity (other than you) incurs a loss or outgoing; and
- (b) you can deduct the whole of the loss or outgoing for an income year, or you can deduct amounts for the loss or outgoing over 2 or more income years; and
- (c) no other entity can deduct an amount for the loss or outgoing; and
- (d) the entity that incurred the loss or outgoing receives one or more amounts as \*recoupment of the loss or outgoing.

This Subdivision (except this section and section 20-65) applies as if you had incurred the loss or outgoing and had also received the \*recoupment.

**20-65 If 2 or more entities can deduct amounts for the loss or outgoing**

- (1) Special rules apply if:
  - (a) an entity (the *first entity*) incurs a loss or outgoing; and
  - (b) 2 or more entities (the *deducting entities*, which may include the first entity) have deducted or can deduct amounts for the loss or outgoing (whether for the same income year or for different income years); and
  - (c) the first entity receives one or more amounts as \*recoupment of the loss or outgoing.
- (2) This Subdivision (except this section and section 20-60) applies as if the first entity and the deducting entities together constituted a single entity (the *notional entity*) that had:
  - (a) incurred the loss or outgoing; and
  - (b) received the amount or amounts as \*recoupment; and
  - (c) included in its assessable income any amount included in the assessable income of any of the deducting entities under a \*previous recoupment law or this Subdivision (except this section).

- (3) If because of subsection (2) the notional entity's assessable income for an income year (the *assessment year*) would include an amount under this Subdivision (the *assessable amount*), the amount reverses in the assessment year the deductions for the loss or outgoing, in accordance with the rules in subsection (5).
- (4) The assessable income of each deducting entity for the assessment year includes the total amounts (if any) by which that entity's actual deductions for the loss or outgoing are reversed in that income year.
- (5) Deductions for the loss or outgoing are reversed in the assessment year as follows:
  - (a) the amounts by which deductions are reversed total the assessable amount (unless all the deductions have been reversed);
  - (b) a deduction for an income year is not reversed until all deductions for earlier income years have been reversed;
  - (c) a deduction is not reversed in the assessment year to the extent that it has already been reversed in an earlier year;
  - (d) if each of 2 or more entities can deduct an amount for the loss or outgoing for the same income year, those deductions are reversed in the assessment year by amounts proportionate to the amounts of the deductions.

**11 Subsection 25-5(1) (note)**

Omit "Note", substitute "Note 1".

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

Add:

Note 2: If you receive an amount as recoupment of the expenditure, the amount may be included in your assessable income: see Subdivision 20-A.

**13 Subsection 25-5(5) (example)**

Omit "section 54 (Depreciation) of the *Income Tax Assessment Act 1936*", substitute "Division 42".

**14 Subsection 25-10(1)**

Omit ", \*plant, machinery, tools or articles", substitute "or \*plant".

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**15 Subsection 25-35(5)**

Omit “Your entitlement to deductions under this section may be affected by the rules described in the table.”, substitute “The rules described in the table may affect your entitlement to deductions under this section, or may result in a deduction being reversed.”.

**16 Subsection 25-35(5) (at the end of the table)**

Add:

- 4        If you receive an amount as recoupment of a        Subdivision  
             bad debt that you can deduct under this        20-A  
             section, the amount may be included in your  
             assessable income.

**17 At the end of section 25-45**

Add:

- Note:        If you receive an amount as recoupment of the loss, the amount may  
             be included in your assessable income: see Subdivision 20-A.

**18 Section 25-60 (note)**

Repeal the note, substitute:

- Note 1:        Entertainment expenses are excluded: see section 25-70.  
Note 2:        If you receive an amount as recoupment of the expenditure, the  
             amount may be included in your assessable income: see Subdivision  
             20-A.

**19 At the end of subsection 25-75(1)**

Add:

- Note:        If the entity receives an amount as recoupment of the rates or land tax,  
             the amount may be included in its assessable income: see Subdivision  
             20-A.

**20 Section 28-15**

Omit “On the next page”, substitute “Below”.

**21 Subsection 40-30**

Omit “on the next page”, substitute “in this section”.

**22 Subsection 41-25(1) (note)**

Repeal the note, substitute:

Note: If there is a later disposal of the property where roll-over relief is not available, or the property is lost or destroyed, section 41-40 tells you how the balancing adjustment is affected.

**23 Section 42-65 (example)**

Omit “The market value of the car is \$60,000.”, substitute “If the parties had dealt at arm’s length, the cost would have been \$60,000.”.

**24 At the end of section 42-65**

Add:

- (2) An item in the table applies to a \*quasi-ownership right only if it was granted by an \*exempt Australian government agency or an \*exempt foreign government agency.

**25 At the end of section 42-205**

Add:

- (2) An item in the table applies to a \*quasi-ownership right only if it was granted by an \*exempt Australian government agency or an \*exempt foreign government agency.

**26 Paragraph 42-310(1)(b)**

Repeal the paragraph, substitute:

- (b) you either:
  - (i) acquired or constructed the plant and attached it to the land after you acquired the right; or
  - (ii) acquired the right from the entity that acquired or constructed the plant and attached it to the land or from a later successive holder of the right; and

**27 Section 43-250**

Repeal the section, substitute:



**43-250 The amount of the balancing deduction**

*Method statement*

Step 1. Calculate the amount (if any) by which the \*undeducted construction expenditure for the part of \*your area that was destroyed exceeds the amounts you have received or have a right to receive for the destruction of that part.

Step 2. Reduce the amount at Step 1 if one or more of these happened to that part of \*your area:

- (a) Step 2 or 4 in section 43-210, or Step 2 or 3 in section 43-215, applied to you or another person for it;
- (b) you were, or another person was, not allowed a deduction for it under this Division;
- (c) a deduction for it was not allowed or was reduced (for you or another person) under Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*.

The reduction under this step must be reasonable.

**28 Subsection 70-30(4)**

Repeal the subsection, substitute:

- (4) However, if you last acquired the item for no consideration, its cost is worked out using this table:

---

**Cost of item acquired for no consideration**

---

<b>Item</b>	<b>In this case:</b>	<b>The cost is:</b>
1	your acquisition of the item involved a disposal of the item to you within the meaning of Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i>	the item's market value when you last acquired it

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**Cost of item acquired for no consideration**

---

<b>Item</b>	<b>In this case:</b>	<b>The cost is:</b>
2	your acquisition of the item involved the item passing to you: <ul style="list-style-type: none"> <li>(a) as someone's *legal personal representative; or</li> <li>(b) as a beneficiary in a dead person's estate;</li> </ul> and, if you dispose of the item (within the meaning of Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i> ), a capital gain or capital loss may result that would be taken into account in working out your net capital gain or net capital loss for the income year of the disposal	the dead person's indexed cost base for the item just before his or her death (but worked out disregarding section 160ZG (which affects the indexed cost base for a non-listed personal use asset) of the <i>Income Tax Assessment Act 1936</i> )
3	any other case where you last acquired the item for no consideration	a nil amount

---

**29 At the end of section 70-90**

Add:

Note 5: This section and section 70-95 also apply to disposals of certain items on hand at the end of 1996-97 that are not trading stock but were trading stock as defined in the *Income Tax Assessment Act 1936*: see section 70-10 of the *Income Tax (Transitional Provisions) Act 1997*.

**30 Subsection 175-5(2)**

After "if", insert "the company".

**31 Paragraph 175-5(2)(a)**

Omit "the company".

**32 Paragraph 175-5(2)(a)**

After "in respect of", insert "the \*loss year or".

**33 Section 330-10**

Omit "on the next page", substitute "below".

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**34 At the end of subsection 330-15(1)**

Add:

Note 3: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

**35 At the end of section 330-80**

Add:

Note 3: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

**36 Paragraph 330-110(1)(a)**

Omit “330-85(1)(h)”, substitute “330-85(h)”.

**37 Subsection 330-110(1) (note)**

Omit “330-85(1)(h)”, substitute “330-85(h)”.

**38 Paragraph 330-175(b)**

Repeal the paragraph, substitute:

(b) the sum of:

- if the authority was granted to the person (whether or not the person holds the authority at the test time)—each \*exploration or prospecting cash bidding payment paid before the test time in relation to the grant of the authority; and
- all amounts (if any) specified in agreements made (including after the test time) under section 330-180 in relation to the acquisition *by* the person of \*qualifying interests in relation to the authority before the test time;

exceeds:

- the sum of all amounts (if any) specified in agreements made (including after the test time) under section 330-180 in relation to the acquisition *from* the person of \*qualifying interests in relation to the authority before the test time;

**39 Paragraph 330-175(c)**

Repeal the paragraph.

**40 At the end of section 330-370**

Add:

Note 3: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

**41 At the end of subsection 330-435(1)**

Add:

Note: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

**42 Subsection 330-547(1) (note 3)**

Omit "from the election".

**43 Subsection 995-1(1) (definition of *listed public company*)**

Repeal the definition, substitute:

*listed public company* means a company \*shares in which (except shares that carry a right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange. However, a company is *not a listed public company* if:

- (a) a person (who is not a company) controls, or is able to control, or up to 20 persons (none of them companies) between them control, or are able to control, 75% or more of the voting power in the company (whether directly, or indirectly through one or more interposed entities); or
- (b) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any \*dividends that the company may pay; or
- (c) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or \*indirectly through one or more interposed entities) 75% or more of any distribution of capital of the company.

**44 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

## **Schedule 6—Technical amendments of the Income Tax Assessment Act 1936**

### **1 At the end of subsection 36(1)**

Add:

Note: If subsection (1) applies to a disposal in the 1997-98 year of income of an item that is trading stock, but not trading stock as defined in the *Income Tax Assessment Act 1997*, you can deduct the item's value as taken into account at the end of the 1996-97 income year under Subdivision B (Trading stock) of Division 2 of Part III of this Act: see subsection 70-10(4) of the *Income Tax (Transitional Provisions) Act 1997*.

### **2 After subsection 51(1A)**

Insert:

(1B) Subsection (2) does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: Section 70-25 (Cost of trading stock is not a capital outgoing) of the *Income Tax Assessment Act 1997* applies instead.

### **3 Before subsection 93(1)**

Insert:

(1A) This section does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: Section 70-35 of the *Income Tax (Transitional Provisions) Act 1997* makes transitional provision for the 1997-98 year of income. The *Income Tax Assessment Act 1997* provides that partnerships, and not partners, exercise options and rights to select values for live stock for later years of income.

### **4 After subsection 124AF(1)**

Insert:

(1A) A deduction is not allowable under subsection (1) for the 1997-98 year of income or any later year of income.

### **5 Subsection 160ZK(3A)**

Repeal the subsection, substitute:

(3A) The reference in paragraph (3)(a) to any part of the consideration, of the costs or of the expenditure that has been allowed or is allowable as a deduction to the partnership in respect of any year of income includes:

- (a) an amount that, apart from subsections 124ZB(4) and 124ZG(5), would have been so allowed or allowable under Division 10C or 10D of Part III of this Act; and
- (b) an amount that, apart from paragraph 43-70(2)(h) of the *Income Tax Assessment Act 1997*, would have been so allowed or allowable under Division 43 of that Act.

**6 Subparagraph 177C(2)(a)(i)**

Omit “or selection”, substitute “, selection or choice”.

**7 Subparagraphs 177C(2)(a)(i) and (ii)**

Omit “selection, notice”, substitute “selection, choice, notice”.

**8 Subparagraph 177C(2)(b)(i)**

Omit “or selection”, substitute “, selection or choice”.

**9 Subparagraphs 177C(2)(b)(i) and (ii)**

Omit “selection, notice”, substitute “selection, choice, notice”.

**10 Paragraph 262A(2)(b)**

After “election,”, insert “choice,”.

**11 Subsection 390(1)**

After “election”, insert “, choice”.

**12 Subsection 390(1)**

After “exercised,”, insert “under this Act”.

**13 Paragraph 577(1)(a)**

After “election”, insert “, choice”.

**14 Paragraph 577(1)(a)**

After “exercised,”, insert “under this Act”.

**15 Subparagraph 579(b)(i)**

Omit “or selection”, substitute “, selection or choice”.

**16 Subparagraph 579(b)(i)**

After “exercised,”, insert “under this Act”.

**17 Application**

The amendments made by this Schedule (except items 2, 3 and 4) apply to assessments for the 1997-98 year of income and later years of income.

## Schedule 7—Technical amendments of the Income Tax (Transitional Provisions) Act 1997

### 1 Section 43-105 (link note)

Repeal the link note, substitute:

#### 43-110 Application of subsection 43-75(3)

Subsection 43-75(3) of the *Income Tax Assessment Act 1997* does not apply to capital works being a hotel building or an apartment building begun before 1 July 1997.

*[The next Part is Part 2-15.]*

### 2 Section 70-10

Repeal the section, substitute:

#### 70-10 Accounting for your disposal of items that stop being trading stock because of the change of definition

- (1) This section explains how to account for your disposal of an item during or after the 1997-98 income year if:
- (a) just *before* that income year, the item was an item of your trading stock, as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* as in force at that time; and
  - (b) at no time since that time has the item been an item of your trading stock, as defined in section 70-10 of the *Income Tax Assessment Act 1997*.

Example: This section applies to an item you produced, manufactured, acquired or purchased *before* 1997-98 for manufacture, sale or exchange, but have not held for that purpose at any time since just before the start of that year.

*If the disposal is outside the ordinary course of business*

- (2) If:
- (a) the disposal occurred *on or after* 1 July 1997; and



- (b) subsection 36(1) of the *Income Tax Assessment Act 1936* (dealing with disposals of trading stock outside the ordinary course of business) would have applied to the disposal if it had occurred *before* 1 July 1997;

sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* (dealing with disposals of trading stock outside the ordinary course of business) apply to your disposal of the item as if it were an item of your trading stock (as defined in section 70-10 of the *Income Tax Assessment Act 1997*).

Note: This ensures that your assessable income includes the market value of the item on the day of disposal. This counters your deduction under the *Income Tax Assessment Act 1936* for your expenditure to acquire the item as trading stock.

*Additional rule for early balancers*

- (3) If the disposal occurred *before* 1 July 1997, then, for the purposes of subsection 36(1) of the *Income Tax Assessment Act 1936* (dealing with disposals of trading stock outside the ordinary course of business), the item is taken to have been, at the time of the disposal, trading stock as defined in section 70-10 of the *Income Tax Assessment Act 1997*.

Note: See the note to subsection (2).

*Deduction for closing value at end of 1996-97*

- (4) If:
- (a) subsection 36(1) of the *Income Tax Assessment Act 1936* applies to the disposal, or would have if it had occurred before 1 July 1997; and
  - (b) the item's value was taken into account at the end of the 1996-97 income year under Subdivision B (Trading stock) of Division 2 of Part III of the *Income Tax Assessment Act 1936*;

you can deduct for the income year of the disposal the item's value as so taken into account.

Note: This deduction offsets the effect of the item's value *not* having been taken into account under Subdivision 70-C of the *Income Tax Assessment Act 1997* at the start of the income year of the disposal.

**3 Section 70-20 (link note)**

Repeal the link note, substitute:

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[The next section is section 70-35.]

### 70-35 Transitional provision for partnerships with live stock

- (1) This section affects the calculation of a partner's share in a partnership's net income or partnership loss for the 1997-98 income year if the partnership has live stock that is trading stock on hand at the start of that income year.
- (2) Calculate the amount of each partner's share as if the net income or partnership loss were worked out using:
  - (a) the value of the live stock at the start of the 1997-98 income year worked out under subsection 70-40(1) on the basis of its value taken into account at the end of the 1996-97 income year for the purposes of working out *that partner's* share of the partnership's net income or partnership loss for the 1996-97 income year; and
  - (b) the value of the live stock at the end of the 1997-98 income year elected by the partnership (and not the partner) under Subdivision 70-C of the *Income Tax Assessment Act 1997*.

Note 1: The value of the live stock at the end of the 1996-97 income year depended on the choices made by the partner, not the partnership. (See section 93 of the *Income Tax Assessment Act 1936*, which does not apply to assessments for the 1997-98 income year.)

Note 2: Choices made by the partnership under Division 385 of the *Income Tax Assessment Act 1997* may affect the value of the live stock under Subdivision 70-C of that Act.

### 4 Section 70-55 (link note)

Repeal the link note, substitute:

- (3) For the purposes of Subdivision 70-C of the *Income Tax Assessment Act 1997*, the *cost* of an animal acquired by a partnership by natural increase before the 1997-98 income year depends on whether its cost price has been used in working out the share of a partner in the partnership's net income or partnership loss for an earlier income year:
  - (a) if it has, the *cost* is that cost price, or the *lowest* of those cost prices if more than one cost price was used to work out the respective shares of partners;
  - (b) if it has not, the *cost* is the minimum cost price prescribed for the purposes of section 34 of the *Income Tax Assessment Act*

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*1936* for that class of animal for the time when the animal was acquired, or the animal's actual cost price if no minimum was prescribed.

Note 1: Section 93 of the *Income Tax Assessment Act 1936* allowed each partner to choose the cost price of an animal for working out the partner's share of the partnership's net income or partnership loss for income years before the 1997-98 income year.

Note 2: Section 34 of the *Income Tax Assessment Act 1936* provides for the valuation of live stock acquired by natural increase before the 1997-98 income year.

*[The next section is section 70-70.]*

## **5 Section 330-20**

Omit "exceeds", substitute "does not exceed".

## **6 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

**Schedule 8—Technical amendments of the  
Income Tax (Consequential  
Amendments) Act 1997**

**1 Item 98 of Schedule 1 (heading)**

Omit “**82KZM(c)**”, substitute “**82KZM(1)(c)**”.

**2 Item 99 of Schedule 1 (heading)**

Omit “**Section 82KZM**”, substitute “**Subsection 82KZM(1)**”.

**3 Item 1 of Schedule 3 (heading)**

Omit “**Paragraph 3(e)**”, substitute “**Paragraph (e)**”.

**4 Item 88 of Schedule 3**

Repeal the item.

## **Schedule 9—Technical amendments of other Acts**

### ***Financial Corporations (Transfer of Assets and Liabilities) Act 1993***

#### **1 Subsection 22(1)**

Repeal the subsection, substitute:

*General*

- (1) In relation to a transfer of a debt, these rules about deductions for bad debts have effect as shown in the table:
- (a) section 25-35 of the *Income Tax Assessment Act 1997*;
  - (b) subsection 63(1A) of the *Income Tax Assessment Act 1936*.

<b>Effect of rules about deductions for bad debts</b>		
<b>Case</b>	<b>If:</b>	<b>then those rules have effect as if:</b>
1	the debt was included in the transferring corporation's assessable income of a year of income	the debt had been included in the receiving corporation's assessable income of that year of income
2	the debt is in respect of money lent by the transferring corporation in the ordinary course of its business of lending money	the debt were in respect of money lent by the receiving corporation in the ordinary course of a business of lending money
3	the transferring corporation bought the debt in the ordinary course of its business of lending money	the receiving corporation had bought the debt in the ordinary course of a business of lending money

#### **2 Application of amendment**

The amendment made by item 1 applies to assessments for the 1997-98 year of income and later years of income.

## Schedule 10—“Catch-up” amendments

### Part 1—Amendment of the Income Tax Assessment Act 1997

#### 1 Section 10-5 (table item headed “balancing adjustment”)

After “*scientific research*”, insert “, *tax exempt entities*”.

#### 2 Section 10-5 (table item headed “shares”)

After:

holding company shares held by a subsidiary, cancellation  
of .....

**159GZZZC  
to 159GZZZI**

insert:

small-medium enterprise, profit on disposal of shares in ..

**128TG to  
128TL**

#### 3 Section 10-5 (after the table item headed “shipping”)

Insert:

**small-medium enterprises (SMEs)**

see *shares*

#### 4 Section 10-5 (after the table item headed “tax avoidance”)

Insert:

**tax exempt entities**

treatment of income and gains on becoming taxable .....

**Schedule 2D**

#### 5 Section 10-5 (at the end of the table item headed “trading stock”)

Add “and *tax exempt entities*”.

#### 6 Section 11-5 (before the table)

Insert:

Note: Special rules apply to entities that cease to be exempt. See Schedule 2D to the *Income Tax Assessment Act 1936*.

#### 7 Section 12-5 (table item headed “shares”)

After:

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employee share acquisition schemes, deduction for  
provider of qualifying shares or rights ..... **139DC**

insert:

small-medium enterprise, loss on disposal of shares in ..... **128TG to  
128TL**

**8 Section 12-5 (after the table item headed “shares”)**

Insert:

**small-medium enterprises (SMEs)**

see *shares*

**9 Section 12-5 (after the table item headed “tax avoidance schemes”)**

Insert:

**tax exempt entities**

treatment of losses and outgoings on becoming taxable .... **Schedule 2D**

**10 Section 13-1 (table item headed “low income earner”)**

Repeal the item, substitute:

**low income earner**

aged beneficiary, trustee liable to be assessed for  
beneficiary’s share of net income of trust estate ..... **160AAAB**

aged person ..... **160AAAA**

general ..... **159N**

**11 Section 13-1 (table item headed “trustee”)**

After “*dividends*”, insert “, *low income earner*”.

**12 Section 42-65 (table item 9, 3rd column)**

After “(21)”, insert “, (21A)”.

**13 Section 42-65**

At the end of the table, add:

**Schedule 10** “Catch-up” amendments

**Part 1** Amendment of the Income Tax Assessment Act 1997

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- |    |  |   |
|----|--|---|
| 13 | for which the Minister for Finance has determined a cost for you under section 49A, 50A or 51A of the <i>Airports (Transitional) Act 1996</i>                            | the cost so determined  |
| 14 | for which the Minister for Finance has determined a cost for you under section 49A, 50A or 51A of the <i>Airports (Transitional) Act 1996</i> together with other assets | so much of the cost so determined as is reasonably attributable to the *plant |

**14 Section 42-205**

At the end of the table, add:

- |    |   |   |
|----|---|---|
| 13 | for which the Minister for Finance has determined an amount for you under section 52A of the <i>Airports (Transitional) Act 1996</i>                            | the amount so determined  |
| 14 | for which the Minister for Finance has determined an amount for you under section 52A of the <i>Airports (Transitional) Act 1996</i> together with other assets | so much of the amount so determined as is reasonably attributable to the *plant |

**15 Paragraph 166-265(1)(c)**

Repeal the paragraph, substitute:

- (c) at all times during the income year of the listed public company in which the ownership test time occurs:
  - (i) the superannuation fund is a \*complying superannuation fund or a \*foreign superannuation fund; or
  - (ii) the approved deposit fund is a \*complying approved deposit fund; or



- (iii) the special company is a special company.

## **16 Paragraph 166-270(1)(c)**

Repeal the paragraph, substitute:

- (c) at all times during the income year of the listed public company in which the ownership test time occurs:
  - (i) the superannuation fund is a \*complying superannuation fund or a \*foreign superannuation fund; or
  - (ii) the approved deposit fund is a \*complying approved deposit fund; or
  - (iii) the special company is a special company.

## **17 Section 960-220**

Repeal the section, substitute:

### **960-220 Meaning of *trading***

#### *Shares in a listed public company*

- (1) There is a ***trading*** in \*shares in a \*listed public company if there is an issue, redemption or transfer of those shares, or any other dealing in those shares, but only if it changes the respective proportions in which all the registered holders of shares in the company:
  - (a) can exercise the voting power in the company; or
  - (b) have the right to receive, as registered holders (whether or not for their own benefit) any dividends that the company may pay; or
  - (c) have the right to receive, as registered holders (whether or not for their own benefit) any distribution of capital of the company.

#### *Units in a unit trust*

- (2) There is a ***trading*** in units in a unit trust if there is an issue, redemption or transfer of those units, or any other dealing in those units, but only if it changes the respective proportions in which all the registered holders of units in the trust hold (whether beneficially or not) interests in the trust income or trust capital.

**18 Subsection 995-1(1)**

Insert:

*foreign superannuation fund* has the meaning given by subsections 6(1), (7) and (7A) of the *Income Tax Assessment Act 1936*.

**19 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

## **Part 2—Amendment of the Income Tax Assessment Act 1936**

### **20 Subsection 73B(4J)**

Omit “section 54A”, substitute “Subdivision 42-C of the *Income Tax Assessment Act 1997*”.

### **21 Paragraph 73B(4J)(a)**

Omit “this Act”, substitute “that Act”.

### **22 Paragraph 73B(4J)(b)**

Omit “that section to the use of a unit of property for assessable income producing purposes”, substitute “Division 42 of that Act to the use of plant for the purpose of producing assessable income”.

### **23 Subsection 128TG(2)**

Omit “25 or 51”, substitute “6-5 or 8-1 of the *Income Tax Assessment Act 1997*”.

### **24 Subparagraph 128TH(d)(i)**

Omit “25”, substitute “6-5 of the *Income Tax Assessment Act 1997*”.

### **25 Subparagraph 128TH(d)(ii)**

Omit “51”, substitute “8-1 of that Act”.

### **26 Paragraph 128TI(a)**

Omit “25”, substitute “6-5 of the *Income Tax Assessment Act 1997*”.

### **27 Paragraph 128TI(b)**

Omit “51”, substitute “8-1 of that Act”.

### **28 Paragraph 128TI(d)**

Omit “25”, substitute “6-5 of that Act”.

### **29 Paragraph 128TI(d)**

Omit “51”, substitute “8-1 of that Act”.

**30 Section 128TI (note)**

Omit “25 or 51”, substitute “6-5 or 8-1 of that Act”.

**31 Section 128TI (note)**

After “Part IIIA”, insert “of this Act”.

**32 Subsection 245-230(4) of Schedule 2C**

Repeal the subsection, substitute:

(4) In this section:

*deductible revenue loss* of a company does not include an amount of a tax loss transferred to the company by another company if the other company incurred the tax loss in the relevant year of income.

Note: Subdivision 170-A of the *Income Tax Assessment Act 1997* provides for the transfer of tax losses within wholly-owned groups of companies.

**33 Subsection 57-10(1) of Schedule 2D (note)**

Omit “Division 10 of Part III as modified by Subdivision 57-J”, substitute “Division 330 of the *Income Tax Assessment Act 1997* as modified by Subdivision 57-J of this Schedule”.

**34 Subsection 57-20(1) of Schedule 2D**

After “51”, insert “of this Act or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate”.

**35 Subsection 57-20(2) of Schedule 2D**

After “51”, insert “of this Act or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate”.

**36 Subsection 57-25(4) of Schedule 2D**

Repeal the subsection, substitute:

(4) For the purposes of subsection (2), the *excluded provisions* are:

- (a) sections 53I to 62AAV of this Act (relating to depreciation on trading ships); and
- (b) Subdivision B of Division 3 of Part III of this Act (about development allowance); and

- (c) Divisions 10, 10AAA, 10AA and 10AB of Part III (about operations relevant to the mining and quarrying industry); and
- (d) Division 10A of Part III (about timber operations and timber mill buildings); and
- (e) Division 10B of Part III of this Act (about industrial property); and
- (f) Division 10BA of Part III of this Act (about Australian films); and
- (g) Divisions 10C and 10D (about deductions for capital expenditure on some buildings); and
- (h) Division 42 of the *Income Tax Assessment Act 1997* (about depreciation); and
- (i) Division 43 of the *Income Tax Assessment Act 1997* (about deductions for capital works); and
- (j) section 70-120 of the *Income Tax Assessment Act 1997* (about deducting capital costs of acquiring trees); and
- (k) Division 330 of the *Income Tax Assessment Act 1997* (about mining and quarrying); and
- (l) Subdivision 387-G of the *Income Tax Assessment Act 1997* (about forestry roads and timber mill buildings).

### **37 Subsection 57-25(6) of Schedule 2D**

Repeal the subsection, substitute:

- (6) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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<b>Listed provisions</b>	
<b>Item</b>	<b>Provision</b>
1	section 26BB
2	section 26C
3	section 70B
4	<b>Division 3B of Part III</b>
5	<b>Division 16E of Part III</b>

---

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**Listed provisions**

**Item Provision**

6	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under <b>subsection 82Z(1)</b> .
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**38 Subsection 57-30(3) of Schedule 2D**

Omit “Division 3B of Part III”, substitute “A provision listed in subsection (4)”.

**39 Subsection 57-30(3) of Schedule 2D**

Omit “that Division”, substitute “Division 3B of Part III”.

**40 At the end of section 57-30 of Schedule 2D**

Add:

- (4) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

---

**Listed provisions**

**Item Provision**

1	<b>Division 3B of Part III</b>
2	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under <b>subsection 82Z(1)</b> .

**41 Subsection 57-60(1) of Schedule 2D**

After “51(1)”, insert “of this Act or section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*”.

**42 Subsection 57-60(1) of Schedule 2D (note)**

Repeal the note, substitute:

Note: Subsection 51(3) of this Act or section 26-10 of the *Income Tax Assessment Act 1997* (as appropriate) contains additional requirements for certain leave payments to be deductible.

**43 Subsection 57-70(1) of Schedule 2D**

Omit “subsection 51(1) or subsection 78(11)”, substitute “section 8-1 (about general deductions) or 25-50 (about pensions, gratuities or retiring allowances) of the *Income Tax Assessment Act 1997*”.

**44 Section 57-75 of Schedule 2D**

Omit “79E, 79F, 80, 80AAA or 80AA”, substitute “36-15 of the *Income Tax Assessment Act 1997* (about how to deduct tax losses)”.

**45 Paragraph 57-75(b) of Schedule 2D**

Omit everything before “they are in respect of”, substitute “the transition taxpayer’s deductions are taken into account only so far as”.

**46 Section 57-85 of Schedule 2D**

Repeal the section, substitute:

**57-85 What are the *modified deduction rules and corresponding deduction provisions*?**

- (1) A ***modified deduction rule*** is a provision listed in column 3 of an item in the table in subsection (3). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text, while provisions of the *Income Tax Assessment Act 1936* are **in bold**.
- (2) The ***corresponding deduction provision*** (if any) for a modified deduction rule listed in column 3 of an item in the table in subsection (3) is the provision of the *Income Tax Assessment Act 1936* listed in column 4 of the item.
- (3) The table is as follows:

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<b>Modified deduction rules and corresponding deduction provisions</b>			
Column 1	Column 2	Column 3	Column 4
<b>Item</b>	<b>Description</b>	<b>Modified deduction rule</b>	<b>Corresponding deduction provision</b>
1	Borrowing expenses	Section 25-25	Section 67
2	Electricity connections	Subdivision 387-E	Section 70A

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**Schedule 10** “Catch-up” amendments**Part 2** Amendment of the Income Tax Assessment Act 1936

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<b>Modified deduction rules and corresponding deduction provisions</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Description</b>	<b>Modified deduction rule</b>	<b>Corresponding deduction provision</b>
3	Environmental impact studies	<b>Subdivision C of Division 3 of Part III</b>	
4	Environment protection	<b>Subdivision CA of Division 3 of Part III</b>	
5	Films, Australian	<b>Division 10BA of Part III</b>	
6	Grapevines	Subdivision 387-D	Section 75AA
7	Industrial property	<b>Division 10B of Part III</b>	
8	Landcare operations	Subdivision 387-A	Section 75D
9	Gifts	Section 25-50 and Division 30	Section 78
10	Mining and quarrying	Subdivision 330-C	Division 10 of Part III (except sections 122J and 122JF) or Division 10AA of Part III (except section 124AH) (as appropriate)
11	Mining transport and quarrying transport	Subdivision 330-H	Division 10AAA of Part III
12	Mining etc. site rehabilitation	Subdivision 330-I	Division 10AB of Part III
13	Research and development (“R&D”)	<b>Section 73B</b>	
14	Scientific research	<b>Section 73A</b>	
15	Telephone lines	Subdivision 387-F	Section 70
16	Timber mill buildings	Subdivision 387-G	Subdivision B of Division 10A of Part III
17	Timber operations: forestry roads	Subdivision 387-G	Subdivision A of Division 10A of Part III

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<b>Modified deduction rules and corresponding deduction provisions</b>			
Column 1	Column 2	Column 3	Column 4
<b>Item</b>	<b>Description</b>	<b>Modified deduction rule</b>	<b>Corresponding deduction provision</b>
18	Cost of acquiring trees	Section 70-120	Section 124J
19	Water conservation	Subdivision 387-B	Section 75B

**47 Section 57-90 of Schedule 2D**

After “rule” (second occurring), insert “or the corresponding deduction provision”.

**48 Paragraphs 57-100(a) and (b) of Schedule 2D**

After “rule”, insert “or the corresponding deduction provision (as appropriate)”.

**49 Subsections 57-105(1) and (2) of Schedule 2D**

Omit “Division 10 or 10AA of Part III”, substitute “Subdivision 330-A or 330-C of the *Income Tax Assessment Act 1997*”.

**50 Subsection 57-110(1) of Schedule 2D (definition of *actual deductions*)**

Omit “(3)”, substitute “(2)”.

**51 Subsections 57-110(2) and (3) of Schedule 2D**

Repeal the subsections, substitute:

- (2) Each *balancing adjustment provision* and its related *deduction rule* are shown in an item of the table. Provisions of the *Income Tax Assessment Act 1997* are shown in ordinary text, and provisions of the *Income Tax Assessment Act 1936* are shown in **bold**.

**Schedule 10** “Catch-up” amendments

**Part 2** Amendment of the Income Tax Assessment Act 1936

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<b>Balancing adjustment provisions and related deduction rules</b>			
<b>Item</b>	<b>Topic</b>	<b>Balancing adjustment provision</b>	<b>Deduction rule to which the balancing adjustment provision relates</b>
1	Capital works: buildings, structural improvements, environment protection earthworks and extensions, alterations or improvements	Section 43-40	Division 43 and whichever of <b>Divisions 10C and 10D of Part III</b> is appropriate
2	Depreciation	Section 42-30	Division 42 and <b>sections 53I to 62AAV (inclusive)</b>
3	Depreciation on trading ships	<b>Section 59</b>	<b>Sections 53I to 62AAV (inclusive)</b>
4	Grapevines	Section 387-315	Subdivision 387-D and <b>section 75AA</b>
5	Industrial property	<b>Sections 124N and 124P</b>	<b>Division 10B of Part III</b>
6	Exploration, prospecting, mining, quarrying and transporting mined or quarried product	Subdivision 330-J	Whichever of the following is appropriate: <ul style="list-style-type: none"> <li>• Subdivision 330-A</li> <li>• Subdivision 330-C</li> <li>• Subdivision 330-H</li> </ul> and whichever of the following is appropriate: <ul style="list-style-type: none"> <li>• <b>Division 10 of Part III</b></li> <li>• <b>Division 10AAA of Part III</b></li> <li>• <b>Division 10AA of Part III</b></li> </ul>
7	Research and development (“R&D”)	<b>Subsections 73B(23), (24), (25), (26) and (27)</b>	<b>Section 73B</b>
8	Scientific research	<b>Subsection 73A(4)</b>	<b>Section 73A</b>
9	Timber mill buildings and forestry roads	Section 387-485	Subdivision 387-G and whichever of <b>Subdivisions A and B of Division 10A of Part III</b> is appropriate

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**52 Subsection 57-115(1) of Schedule 2D**

Omit “Subdivision B of Division 2 of Part III”, substitute “Division 70 of the *Income Tax Assessment Act 1997*”.

**53 Subsection 57-115(1) of Schedule 2D**

Omit “28”, substitute “70-35 of that Act”.

**54 Subsection 57-115(2) of Schedule 2D (note)**

Omit “29”, substitute “70-40 of the *Income Tax Assessment Act 1997*”.

**55 Paragraph 57-115(3)(a) of Schedule 2D**

Omit “price”.

**56 Subsection 57-115(3) of Schedule 2D**

Omit “cost price of the trading stock”, substitute “cost of the trading stock for the purposes of Division 70 of the *Income Tax Assessment Act 1997*”.

**57 Application**

- (1) The amendments made by items 52 to 56 (inclusive) apply to a transition year that is the 1997-98 income year, or a later income year, of the transition taxpayer.
- (2) The other amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

## Part 3—Amendment of the Airports (Transitional) Act 1996

### 58 Before section 49

Insert:

#### 48A Definitions

In this Division:

*exempt Australian government agency* has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

*plant* has the meaning given by section 42-18 of the *Income Tax Assessment Act 1997*.

*quasi-owner* has the meaning given by section 42-310 of the *Income Tax Assessment Act 1997*.

*quasi-ownership right* over land has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

### 59 After section 49

Insert:

#### 49A Special depreciation rules for fixtures—*Income Tax Assessment Act 1997*

- (1) This section applies if:
  - (a) a company obtains a lease relating to particular land under section 21, 22 or 23; and
  - (b) at the time the lease was obtained, a unit of plant is attached to the land.
- (2) If:
  - (a) immediately before the land vested in the Commonwealth under Part 2:
    - (i) the part of the land to which the plant was attached was held by another entity under a quasi-ownership right

over land granted by an exempt Australian government agency; and

- (ii) the other entity was the quasi-owner of the plant under subsection 42-310(2) of the *Income Tax Assessment Act 1997*; and

- (b) on the grant of the lease referred to in paragraph (1)(a), the other entity became a sub-lessee of the company;

then, so long as the other entity continues to hold the sub-lease of that part of the land from the company or a successor, the other entity:

- (c) is taken to hold a quasi-ownership right over the land granted by an exempt Australian government agency; and
- (d) is taken to satisfy paragraph 42-310(2)(b) of that Act for the plant.

- (3) If:

- (a) subsection (2) does not apply to the plant; and
- (b) the FAC was the owner of the plant for the purposes of Division 42 of the *Income Tax Assessment Act 1997* immediately before the land vested in the Commonwealth under Part 2;

that Division applies to the plant as if:

- (c) the company satisfied paragraph 42-310(2)(b) of that Act for the plant; and
- (d) the company held a quasi-ownership right over the land and that right was assigned to the company; and
- (e) the amount paid by the company for the grant of the lease were an amount paid for the acquisition of the lease.

Note: If, as a result, the company is the quasi-owner of the plant, the cost of the plant to it will be determined under item 4 in the table in section 42-65 of that Act, unless item 13 or 14 applies.

- (4) However, the Minister for Finance may make a written determination of the cost of the plant referred to in subsection (3) for the purposes of Division 42 of the *Income Tax Assessment Act 1997*.

Note: If a determination is made, the cost of the plant will be determined under item 13 or 14 in the table in section 42-65 of that Act.

- (5) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of

Subdivision 42-F of the *Income Tax Assessment Act 1997* to the plant and to the FAC.

(6) This section does not affect the operation of section 19 of the *Civil Aviation Legislation Amendment Act 1995*.

(7) In this section:

*entity* means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in a capacity of trustee;
- (d) any other person.

## 60 After section 50

Insert:

### 50A Acquisition of depreciated plant from the Commonwealth— *Income Tax Assessment Act 1997*

- (1) This section applies to a unit of plant that:
  - (a) was transferred from the Commonwealth to a company under section 23; and
  - (b) at the time of transfer, was not attached to land.
- (2) The Minister for Finance may make a written determination of the cost of the plant for the purposes of Division 42 of the *Income Tax Assessment Act 1997*.

Note: If a determination is made, the cost of the plant will be determined under item 13 or 14 in the table in section 42-65 of that Act.

- (3) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of Subdivision 42-F of the *Income Tax Assessment Act 1997* to the plant and to the FAC.

## 61 After section 51

Insert:

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**51A Acquisition of depreciated plant from the FAC—*Income Tax Assessment Act 1997***

- (1) This section applies to a unit of plant that was transferred from the FAC to a company under section 30.
- (2) The Minister for Finance may make a written determination of the cost of the plant for the purposes of Division 42 of the *Income Tax Assessment Act 1997*.

Note: If a determination is made, the cost of the plant will be determined under item 13 or 14 in the table in section 42-65 of that Act.
- (3) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of Subdivision 42-F of the *Income Tax Assessment Act 1997* to the plant and to the FAC.

**62 After section 52**

Insert:

**52A Consideration received by the FAC for transfer of assets—*Income Tax Assessment Act 1997***

- (1) This section applies to an asset that was:
  - (a) transferred from the FAC to the Commonwealth under section 11, 12 or 13; or
  - (b) transferred from the FAC to an airport-lessee company under section 30 or 31.
- (2) The Minister for Finance may make a written determination that the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to the FAC as if the FAC had received consideration of an amount specified in the determination from the Commonwealth in respect of the transfer of a specified asset.

Note: If such a determination is relevant to working out a balancing adjustment, the termination value of the plant will be determined under item 13 or 14 in the table in section 42-205 of the *Income Tax Assessment Act 1997*.
- (3) The FAC must give the Minister for Finance such information as the Minister for Finance requires about the application of Subdivision 42-F of the *Income Tax Assessment Act 1997* to the asset and to the FAC.

- (4) A determination made by the Minister for Finance under section 52 before the commencement of this subsection has effect as if it had also been made under this section for the purposes of the *Income Tax Assessment Act 1997*.

**63 Paragraphs 55(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the provisions of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* relating to depreciation;  
and
- (b) the provisions of either of those Acts relating to capital gains and capital losses;

**64 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.



## **Part 4—Amendment of the Civil Aviation Legislation Amendment Act 1995**

### **65 Subsection 19(1)**

Omit “section 54, or Division 10D of Part III, of the *Income Tax Assessment Act 1936*”, substitute “Division 42 or 43 of the *Income Tax Assessment Act 1997*”.

### **66 Application**

The amendment made by this Part applies to assessments for the 1997-98 income year and later income years.

## **Part 5—Amendment of the Federal Airports Corporation Act 1986**

### **67 Subsections 57E(1) and (2)**

After “Assessment Act”, insert “or the *Income Tax Assessment Act 1997*”.

### **68 Application**

The amendments made by this Part apply to assessments for the 1997-98 income year and later income years.

## **Schedule 11—Amendments to improve further the readability of the Income Tax Assessment Act 1997**

### **Part 1—Asterisking in operative provisions**

#### **1 Subsection 36-10(3)**

Omit “exempt” (first occurring), substitute “\*exempt”.

#### **2 Subsection 36-20(1)**

Omit “total exempt”, substitute “total \*exempt”.

#### **3 Paragraphs 36-20(2)(a) and (b)**

Omit “exempt” (first occurring), substitute “\*exempt”.

#### **4 Subsection 36-20(3)**

Omit “is exempt income”, substitute “is \*exempt income”.

#### **5 Subsection 70-30(3)**

Omit “your trading stock”, substitute “your \*trading stock”.

#### **6 Paragraph 165-75(2)(b)**

Repeal the paragraph, substitute:

- (b) the \*company’s share of each \*notional loss (if any) of a partnership for the period;

#### **7 Paragraph 165-75(2)(d)**

Repeal the paragraph, substitute:

- (b) the \*company’s share of each \*notional net income (if any) of a partnership for the period;

#### **8 Subsection 165-75(3)**

Omit “\*income total exceeds the \*loss total”, substitute “income total exceeds the loss total”.

**9 Subsection 165-80(2)**

Omit “notional loss or notional net income”, substitute “*notional loss* or *notional net income*”.

**10 Subsection 165-80(3)**

Omit “company’s share”, substitute “*company’s share*”.

**11 Subsection 165-80(4)**

Omit “company’s share”, substitute “*company’s share*”.

**12 Subsection 165-85(2)**

Omit “\*notional net income or \*notional loss”, substitute “*notional net income* or *notional loss*”.

**13 Subsection 165-85(3)**

Omit “company’s share”, substitute “*company’s share*”.

**14 Subsection 165-90(2)**

Omit “company’s share”, substitute “\*company’s share”.

**15 Subsection 165-90(3)**

Omit “company’s share”, substitute “*company’s share*”.

**16 Subsection 165-90(4)**

Omit “company’s share”, substitute “*company’s share*”.

**17 Subsection 165-90(5)**

Omit “company’s share”, substitute “*company’s share*”.

**18 Subsection 166-10(3)**

Omit “\*holding”, substitute “holding”.

**19 Paragraph 166-10(4)(b)**

Omit “\*holding”, substitute “holding”.

**20 Subsection 166-30(3)**

Omit “\*holding”, substitute “holding”.

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**21 Paragraph 166-30(4)(b)**

Omit “\*holding”, substitute “holding”.

**22 Subsection 166-145(2)**

Omit “\*listed” (twice occurring), substitute “listed”.

**23 Subsection 166-145(3)**

Omit “\*listed” (twice occurring), substitute “listed”.

**24 Subsection 166-145(3)**

Omit “\*dividends”, substitute “dividends”.

**25 Subsection 166-145(4)**

Omit “\*listed” (twice occurring), substitute “listed”.

**26 Subsection 995-1(1)**

Insert:

*company’s share:*

- (a) of a partnership’s \*notional loss or \*notional net income—has the meaning given by sections 165-80 and 165-85; and
- (b) of a partnership’s \*full year deductions—has the meaning given by sections 165-90.

**27 Subsection 995-1(1) (definition of *notional loss*)**

Repeal the definition, substitute:

*notional loss:*

- (a) of a company—has the meaning given by sections 165-50 and 165-75; and
- (b) of a partnership—has the meaning given by sections 165-80 and 165-85.

**28 Subsection 995-1(1)**

Insert:

*notional net income* of a partnership has the meaning given by sections 165-80 and 165-85.

## **Part 2—Removing asterisks from Guide material**

### **29 Subsections 6-1(1), (2), (3) and (4)**

Repeal the subsections, substitute:

- (1) Assessable income consists of ordinary income and statutory income.
- (2) Some ordinary income, and some statutory income, is exempt income.
- (3) Exempt income is not assessable income.
- (4) Some ordinary income, and some statutory income, is neither assessable income nor exempt income.

### **30 Section 28-15**

Omit “\*car”, substitute “car”.

### **31 Section 28-110**

Omit “\*car”, substitute “car”.

### **32 Section 40-10**

Omit “\*capital”, substitute “capital”.

### **33 Subsection 40-15(1)**

Omit “\*capital”, substitute “capital”.

### **34 Paragraph 40-15(1)(a)**

Omit “\*plant”, substitute “plant”.

### **35 Subsections 40-20(1) and (2)**

Omit “\*capital”, substitute “capital”.

### **36 Subsections 40-25(1) and (3)**

Omit “\*capital”, substitute “capital”.

### **37 Subsection 40-25(4)**

Repeal the subsection, substitute:

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(4) You make the balancing adjustment by comparing:

- the property's termination value for the purpose of the particular capital allowance;

with:

- the property's written down value for the purpose of the particular capital allowance.

**38 Subsection 40-25(5)**

Omit “\*termination” (wherever occurring), substitute “termination”.

**39 Subsection 40-25(5)**

Omit “\*written” (wherever occurring), substitute “written”.

**40 Subsection 40-30(1)**

Omit “\*capital”, substitute “capital”.

**41 Subsections 41-5(1) and (2)**

Omit “\*capital”, substitute “capital”.

**42 Section 43-65**

Omit “\*construction” (wherever occurring), substitute “construction”.

**43 Section 43-65**

Omit “\*pool”, substitute “pool”.

**44 Section 43-110**

Omit “\*construction” (wherever occurring), substitute “construction”.

**45 Section 43-110**

Omit “\*your”, substitute “your”.

**46 Section 43-110**

Omit “\*Your”, substitute “Your”.

**47 Subsection 165-25(2)**

Omit “\*tax”, substitute “tax”.

**48 Subsection 165-25(2)**

Omit “\*full”, substitute “full”.

**49 Subsections 330-5(2) and (3)**

Omit “\*petroleum” (wherever occurring), substitute “petroleum”.

**50 Section 330-10**

Omit “\*ordinary”, substitute “ordinary”.

**51 Section 330-10**

Omit “\*genuine”, substitute “genuine”.

**52 Section 330-10**

Omit “\*petroleum”, substitute “petroleum”.



### **Part 3—Removing asterisks from non-operative material outside Guides**

**53 Section 11-1**

Omit “\*Ordinary”, substitute “Ordinary”.

**54 Section 11-1**

Omit “\*statutory”, substitute “statutory”.

**55 Section 13-1**

Omit “\*tax”, substitute “tax”.

**56 Subsection 43-50(4)**

Omit “\*entertainment”, substitute “entertainment”.

**57 Subsection 43-50(4)**

Omit “\*purpose”, substitute “purpose”.

**58 Subsection 43-50(5)**

Omit “\*purpose”, substitute “purpose”.

**59 Subsection 43-50(5)**

Omit “\*rehabilitation”, substitute “rehabilitation”.

## **Part 4—Making Guide status more obvious**

### **60 At the end of section 6-1**

Add:

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

### **61 Before the group heading before section 15-3**

Insert:

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

### **62 At the end of section 20-15**

Add:

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

### **63 At the end of section 20-105**

Add:

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

### **64 Before the group heading before section 25-5**

Insert:

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

### **65 Before the group heading before section 26-5**

Insert:

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

### **66 Before the group heading before section 30-255**

Insert:

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

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**67 Before the group heading before section 30-295**

Insert:

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

**68 Section 30-320**

Omit “(except this section) has effect as if it were”, substitute “is”.

**69 Before the group heading before section 36-35**

Insert:

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

**70 Section 40-7**

Omit “(except this section) has effect as if it were”, substitute “is”.

**71 Before the group heading before section 41-15**

Insert:

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

**72 Before the group heading before section 42-15**

Insert:

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

**73 Before the group heading before section 42-65**

Insert:

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

**74 Before the group heading before section 42-100**

Insert:

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

**75 Before the group heading before section 42-120**

Insert:

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

**76 Before the group heading before section 42-160**

Insert:

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

**77 At the end of section 42-182**

Add:

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

**78 At the end of section 42-232**

Add:

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

**79 At the end of section 42-270**

Add:

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

**80 Before the group heading before section 42-310**

Insert:

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

**81 Before the group heading before section 42-330**

Insert:

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

**82 Before the group heading before section 42-345**

Insert:

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

**83 Before the group heading before section 42-355**

Insert:

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

**84 Before the group heading before section 43-10**

Insert:

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

**85 At the end of section 43-65**

Add:

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

**86 At the end of section 43-110**

Add:

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

**87 Before the group heading before section 43-140**

Insert:

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

**88 Before the group heading before section 43-160**

Insert:

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

**89 At the end of section 43-205**

Add:

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

**90 Before the group heading before section 43-230**

Insert:

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

**91 Before the group heading before section 43-250**

Insert:

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

**92 Before the group heading before section 52-10**

Insert:

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

**93 Before the group heading before section 52-65**

Insert:

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

**94 Before the group heading before section 52-105**

Insert:

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

**95 Before the group heading before section 53-10**

Insert:

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

**96 Before the group heading before section 55-5**

Insert:

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

**97 At the end of section 70-80**

Add:

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

**98 Before the group heading before section 165-10**

Insert:

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

**99 At the end of section 165-30**

Add:

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

**100 Before the group heading before section 166-145**

Insert:

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

**101 Before the group heading before section 166-220**

Insert:

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

**102 Before the group heading before section 166-265**

Insert:

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

**103 At the end of section 170-5**

Add:

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

**104 Before the group heading before section 195-5**

Insert:

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

**105 Before the group heading before section 330-150**

Insert:

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

**106 Before the group heading before section 330-300**

Insert:

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

**107 Before the group heading before section 330-480**

Insert:

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

**109 Before the group heading before section 375-805**

Insert:

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

**110 At the end of section 385-95**

Add:

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

**111 Before the group heading before section 387-55**

Insert:

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

**112 Before the group heading before section 387-125**

Insert:

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

**113 Before the group heading before section 387-305**

Insert:

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

**114 Before the group heading before section 387-355**

Insert:

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

**115 Before the group heading before section 387-405**

Insert:

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

**116 At the end of section 387-455**

Add:

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

**117 Before the group heading before section 900-105**

Insert:

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

**118 At the end of section 900-145**

Add:

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

**119 At the end of section 900-165**

Add:

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

**120 Before the group heading before section 900-215**

Insert:

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

**121 Subsection 950-150(1)**

Repeal the definition, substitute:

- (1) A *Guide* consists of:
- (a) sections under a heading indicating that what follows is a Guide to a particular Subdivision, Division etc.; or
  - (b) a Subdivision, Division or Part that is identified as a Guide by a provision in the Subdivision, Division or Part.

**122 Subsection 995-1(1) (definition of *link note*)**

Repeal the definition, substitute:

*link note* means a note:

- (a) included at the end of one group of units to indicate the number of the next unit (see section 2-30); or
- (b) indicating the end of a \*Guide.

## **Part 5—Application of amendments made by this Schedule**

### **123 Application**

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.



**Table of Acts****Notes to the *Taxation Laws Amendment Act (No. 1) 1998*****Note 1**

The *Taxation Laws Amendment Act (No. 1) 1998* as shown in this compilation comprises Act No. 16, 1998 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Taxation Laws Amendment Act (No. 1) 1998</i>	16, 1998	16 Apr 1998	See s. 2	
<i>Taxation Laws Amendment Act (No. 3) 1999</i>	11, 1999	31 Mar 1999	Schedule 3 (items 3, 4): (a)	—
<i>Taxation Laws Amendment Act (No. 2) 2002</i>	57, 2002	3 July 2002	Schedule 12 (items 74, 75, 86): Royal Assent	Sch. 12 (item 86)
<i>Tax Laws Amendment (2010 Measures No. 2) Act 2010</i>	75, 2010	28 June 2010	Schedule 6 (item 34): 29 June 2010	—

**Act Notes**

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- (a) Subsection 2(5) of the *Taxation Laws Amendment Act (No. 3) 1999* provides as follows:
- (5) Items 3 and 4 of Schedule 3 are taken to have commenced immediately after the commencement of section 2 of the *Taxation Laws Amendment Act (No. 1) 1998*.
- Section 2 of the *Taxation Laws Amendment Act (No. 1) 1998* commenced on 16 April 1998.

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 2.....	am. No. 11, 1999
S. 4.....	rep. No. 75, 2010
<b>Schedule 3</b>	
Items 8, 9.....	rep. No. 57, 2002
<b>Schedule 11</b>	
Item 108.....	rep. No. 57, 2002

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Taxation Laws Amendment Act (No. 2) 2002* (No. 57, 2002)

**Schedule 12**

**86 Application**

An item in a Schedule to an Act that is repealed by an item in this Part is taken never to have had any effect.