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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

New Business Tax System (Miscellaneous) Bill (No. 2) 2000

No.   , 2000

(Treasury)

A Bill for an Act to amend the law about taxation to implement the New Business Tax System, and for related purposes

ISBN: 0642 431108

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A Bill for an Act to amend the law about taxation to implement the New Business Tax System, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New Business Tax System (Miscellaneous) Act (No. 2) 2000*.

2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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Schedule 1

(2) Items 18 and 67 of Schedule 1 are taken to have commenced at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

(3) Items 26 to 29 and 33 of Schedule 1 commence, or are taken to have commenced, immediately after the commencement of Schedule 9 to the *Taxation Laws Amendment Act (No. 8) 1999*.

Schedule 2

(4) Items 25 and 26 of Schedule 2 commence, or are taken to have commenced, on 1 July 2000, immediately after the commencement of Subdivision D of Division 3 of Part 3 of the *Taxation (Deficit Reduction) Act (No. 2) 1993*.

(5) Items 67, 68 and 70 of Schedule 2 commence on 1 July 2001.

(6) Items 114 and 116 of Schedule 2 commence, or are taken to have commenced, immediately after the commencement of items 36 and 37 in Schedule 4 to the *A New Tax System (Taxation Administration) Act (No. 2) 2000*.

Schedule 3

(7) Parts 1 and 4 of Schedule 3 commence on the day on which this Act receives the Royal Assent.

(8) Part 2 of Schedule 3 commences, or is taken to have commenced, on 1 July 2000.

(9) Part 3 of Schedule 3 commences, or is taken to have commenced, immediately after the commencement of item 13 in Schedule 3 to the *New Business Tax System (Miscellaneous) Act (No.1) 2000*.

Schedule 7

(10) Schedule 7 commences, or is taken to have commenced, immediately after the commencement of section 1 of the *A New Tax System (Tax Administration) Act (No. 1) 2000*.

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Schedule 9

(11) Schedule 9 (except items 5, 9, 26, 43, 55, 56, 57, 62, 63, 66 and 67) commences, or is taken to have commenced, on 1 July 2000.

3 Schedule(s)

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

4 Amendment of assessments

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

Schedule 1—Company losses and bad debts

Part 1—Income Tax Assessment Act 1997

1 Section 112-97 (after table item 12)

Insert:

12A	Entity has interest in loss company immediately before alteration time	The total reduced cost base	sections 165-115ZA and 165-115ZB

2 Subsection 165-12(2) (note)

Omit “rights to”.

3 At the end of section 165-12

Add:

Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances

(7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the *tax loss has been reflected in the making of losses, or in increased losses or reduced gains, on the *disposal during the *ownership test period of any direct and indirect equity interests in the company (other than interests to which Subdivision 165-CD has applied in relation to the tax loss).

Time of disposal of interests

(8) A *disposal of a direct or indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the *ownership test period.

Meaning of ***direct and indirect equity interests***

(9) For the purposes of subsections (7) and (8):

(a) the ***direct equity interests*** in the company are *shares in the company; and

(b) the ***indirect equity interests*** in the company are shares or other interests in entities interposed between the company and persons referred to in subsection (2), (3) or (4).

4 Subsection 165-37(3)

Omit "at any time during", substitute "at the beginning of".

5 At the end of section 165-37

Add:

Conditions in subsection (1) may be treated as having been satisfied in certain circumstances

(4) If any of the conditions in subsection (1) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the *notional loss for the *ownership test period has been reflected in the making of losses, or in increased losses or reduced gains, on the *disposal during that period of any direct and indirect equity interests in the company (other than interests to which Subdivision 165-CD has applied in relation to the notional loss).

Time of disposal of interests

(5) A *disposal of a direct or indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (1) is taken, for the purposes of paragraph (4)(b), to have occurred during the *ownership test period.

Meaning of ***direct and indirect equity interests***

(6) For the purposes of subsections (4) and (5):

(a) the ***direct equity interests*** in the company are *shares in the company; and

(b) the ***indirect equity interests*** in the company are shares or other interests in entities interposed between the company and persons referred to in subsection (1).

6 Section 165-115

Repeal the section, substitute:

165-115 What this Subdivision is about

> If a change occurs in the ownership or control of a company that has an unrealised net loss, the company cannot, to the extent of the unrealised net loss, have capital losses taken into account, or deduct revenue losses, in respect of CGT events that happen to CGT assets that it owned at the time of the change, unless it satisfies the same business test.
>
> However, special rules, directed at saving compliance costs, apply to exempt any company that has a net asset value of under $5,000,000 at the time of the change. Further, the company may choose to exclude every asset that it acquired for less than $10,000 from the application of this Subdivision in respect of the change and, if it does so:
>
> (a) unrealised losses and gains on assets so excluded will not be taken into account in calculating the company's unrealised loss at that time; and
>
> (b) losses on assets so excluded that are held at that time will be allowed without the company being subject to the same business test.

7 Paragraph 165-115A(1)(c)

Repeal the paragraph, substitute:

(c) either of the following applies:

(i) the company makes a *capital loss, or apart from this Subdivision would be entitled to a deduction, in respect of a *CGT event that happens to a *CGT asset referred to in subsection (1A);

(ii) the company makes a *trading stock loss in respect of a CGT asset referred to in subsection (1A) that is an item of *trading stock; and

(d) the company would not, at the changeover time, satisfy the maximum net asset value test under section 152-15.

8 After subsection 165-115A(1)

Insert:

CGT assets in respect of which Subdivision applies

(1A) The *CGT assets for the purposes of paragraph 165-115A(1)(c) are:

(a) any CGT asset that the company owned at the changeover time; and

(b) any CGT asset that the company did not own at the changeover time but had owned at a previous time, where:

(i) a deferral event referred to in subsection 170-255(1) happened before the changeover time; and

(ii) the deferral event involved the company as the originating company referred to in that subsection; and

(iii) the deferral event would have resulted in the company making a *capital loss, or becoming entitled to a deduction, in respect of the CGT asset except for section 170-270; and

(iv) the company is not taken to have made a capital loss at or before the changeover time, or to have become entitled to a deduction at that time, under section 170-275 in respect of the asset.

Company may choose to disregard CGT assets acquired for less than $10,000

(1B) A company may choose, for the purposes of the application of this Subdivision to it in respect of a particular changeover time, that every *CGT asset that has been acquired by it for less than $10,000 is to be disregarded.

Time for making choice

(1C) A choice under subsection (1B) must be made on or before:

(a) the day on which the company lodges its income tax return for the income year in which the relevant changeover time occurred; or

(b) such later day as the Commissioner allows.

Trading stock loss

(1D) A company is taken to have made a ***trading stock loss*** in respect of an asset that is an item of *trading stock if, and only if:

(a) the company *disposes of the item or the item stops being trading stock (within the meaning of section 70-80); and

(b) the market value of the item of trading stock at the time when it is disposed of or stops being trading stock is less than:

(i) in respect of an item that has been valued under Division 70—the item's latest value under that Division; or

(ii) otherwise—the cost of the item at that time.

The difference is the amount of the *trading stock loss.

9 Paragraph 165-115A(2)(a)

Repeal the paragraph, substitute:

(a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or

10 After subsection 165-115A(2)

Insert:

Reference time

(2A) For the purposes of the application of this Subdivision to a company in relation to a particular time (the ***test time***), the ***reference time*** is:

(a) if no changeover time occurred in respect of the company before the test time—the commencement time; or

(b) otherwise—the time immediately after the last changeover time that occurred in respect of the company before the test time.

11 Subsection 165-115B(1)

Omit "paragraph 165-115A(1)(c)", substitute "subparagraph 165-115A(1)(c)(i)".

Note: The heading to section 165-115B is altered by omitting "**owned at a changeover time**", and substituting "**after a changeover time**".

12 Subsection 165-115B(2)

Repeal the subsection, substitute:

Where capital loss or deduction is greater than residual unrealised net loss

(2) If the *capital loss or deduction referred to in subparagraph 165-115A(1)(c)(i) is greater than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:

(a) the part of the capital loss that is equal to the residual unrealised net loss is taken to have been a *net capital loss; or

(b) the part of the deduction that is equal to the residual unrealised net loss is taken to have been a *tax loss;

of the company for the income year immediately before the income year in which the changeover time occurred.

13 Subsections 165-115B(5) and (6)

Omit "paragraph 165-115A(1)(c)", substitute "subparagraph 165-115A(1)(c)(i)".

14 Subsections 165-115B(7) and (8) (excluding the note)

Repeal the subsections.

15 Sections 165-115C and 165-115D

Repeal the sections, substitute:

165-115BA What happens when a CGT event happens after a changeover time to a CGT asset of the company that is trading stock

Application

(1) This section applies to the company if, after the changeover time, the company makes a *trading stock loss in respect of an item of *trading stock as mentioned in subparagraph 165-115A(1)(c)(ii).

Where trading stock loss is equal to or less than residual unrealised net loss

(2) If the *trading stock loss is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the amount of the trading stock loss is to be included in the company's assessable income.

Where trading stock loss is greater than unrealised net loss

(3) If the *trading stock loss is greater than the company's residual unrealised net loss at the time of the occurrence of the trading stock loss, the part of the trading stock loss that is equal to the residual unrealised net loss is to be included in the company's assessable income.

No increase in assessable income if company satisfies the same business test

(4) Neither subsection (2) nor (3) applies to the company if the company meets the conditions in section 165-13 (the same business test).

Assumptions for purposes of same business test

(5) In determining whether the company meets the conditions in section 165-13, assume:

(a) that the *trading stock loss (if subsection (2) applies) or the part of the trading stock loss (if subsection (3) applies) is a *net capital loss of the company for the income year immediately before the income year in which the changeover time occurred; and

(b) that the company failed, at the changeover time, to meet the conditions in subsections 165-12(2), (3) and (4) in relation to the net capital loss referred to in paragraph (a); and

(c) that the continuity period ended at the changeover time; and

(d) that the same business test period is the income year in which the loss occurred.

165-115BB Order of application of assets: residual unrealised net loss

Order in which assets are to be applied

(1) In applying subsection 165-115B(2) or 165-115BA(3) in respect of assets that the company owned at the changeover time:

(a) the company's *capital losses are taken to have been made, the company is taken to have become entitled to deductions and the company is taken to have made *trading stock losses in the order in which the events that resulted in the capital losses, deductions or trading stock losses occurred; and

(b) if 2 or more such events occurred at the same time, they are taken to have occurred in such order as the company determines.

Residual unrealised net loss

(2) The company's ***residual unrealised net loss***, at the time of an event (the ***relevant event***) that resulted in the company making a *capital loss, becoming entitled to a deduction or making a *trading stock loss, in respect of an asset, is the amount worked out using the following formula:

$$\text{Unrealised net loss} - \begin{array}{c}\text{Previous capital losses, deductions}\\ \text{or trading stock losses}\end{array}$$

where:

previous capital losses, deductions or trading stock losses means capital losses that the company made, deductions to which the company became entitled or trading stock losses that the company made as a result of events earlier than the relevant event in respect of other assets that the company owned at the changeover time.

unrealised net loss means the company's unrealised net loss at the last changeover time that occurred before the relevant event.

Note: For ***changeover time*** see sections 165-115C and 165-115D.

165-115C Changeover time—change in ownership of company

(1) A time (the ***test time***) is a ***changeover time*** in respect of a company if:

(a) persons who had *more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or

(b) persons who had rights to *more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the test time; or

(c) persons who had rights to *more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

Note 4: For ***reference time*** see subsection 166-115A(2A).

(2) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (3) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

(3) Apply the alternative test if one or more other companies beneficially owned *shares or interests in shares in the company at the reference time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

(4) A *test time that would, apart from this subsection, be a changeover time in respect of the company because of the

application of subsection (1) is taken not to be a changeover time if:

(a) that subsection would not have applied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the company's unrealised net loss at the test time has been reflected in the making of losses, or in increased losses or reduced gains, on the *disposal during the period from the reference time to the test time of any direct and indirect equity interests in the company (other than interests to which Subdivision 165-CD has applied in relation to the unrealised net loss).

(5) A *disposal of a direct or indirect equity interest in the company that results in the time of the disposal being a changeover time in respect of the company is taken, for the purposes of paragraph (4)(b), to have occurred during the period referred to in that paragraph.

(6) The ***direct equity interests*** in the company are *shares in the company.

(7) The ***indirect equity interests*** in the company are *shares or other interests in entities interposed between the company and persons referred to in subsection (1).

165-115D Changeover time—change in control of company

(1) A time (the ***test time***) is also a ***changeover time*** in respect of a company if, at the test time:

(a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference time began to control, or became able to control, that voting power immediately after the test time; and

(b) that person or those persons so began, or became able, to control that voting power for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

(2) In this section:

control of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

16 Section 165-115E (method statement, step 4)

Repeal the step, substitute:

Step 4.	If the unrealised gross loss at the relevant time exceeds the unrealised gross gain at that time, the excess is the company's ***preliminary unrealised net loss*** at that time.
Step 5.	Add up the company's preliminary unrealised net loss and any *capital loss, deduction or share of a deduction disregarded under section 170-270 in relation to an asset referred to in paragraph 165-115A(1A)(b). The total is the company's ***unrealised net loss*** at the relevant time.

17 At the end of section 165-115F

Add:

(5) A company may choose that this section is to apply to the company at the relevant time in respect of an asset to which subsection (6) applied at that time as if references to the *market value of the asset were references to its *written down value.

(6) This subsection applies to an asset at the relevant time if:

(a) the asset is *plant (not a building or structure) for which the company has deducted or can deduct an amount for depreciation; and

(b) the expenditure incurred by the company to *acquire the plant was less than $1,000,000 (the expenditure can include the giving of property: see section 103-5); and

(c) it would be reasonable for the company to conclude that the *market value of the plant at that time was not less than 80% of its *written down value at that time.

(7) The Commissioner may give advice, in any way that he or she thinks appropriate, about methods to be used, and other things to

be done, in valuing assets for the purposes of this Subdivision (including, where consistent with those purposes, the grouping together of assets) with the object of reducing the costs of compliance with this Subdivision.

18 After Subdivision 165-CC

Insert:

Subdivision 165-CD—Reductions after alterations in ownership or control of loss company

Guide to Subdivision 165-CD

165-115G What this Subdivision is about

This Subdivision requires reductions and other adjustments (***adjustments***) to be made to the tax attributes of significant equity and debt interests (***interests***) that entities (***affected entities***) (not individuals) have in a company (a ***loss company***) that has realised losses or unrealised losses, or both, if an event (an ***alteration time***) of a particular kind occurs in respect of the loss company. The purpose of the reductions and other adjustments is to prevent multiple recognition of the company's losses when the interests are realised.

An ***alteration time*** occurs in respect of the loss company when an alteration takes place in the control or ownership of the company. It also occurs if the liquidator of the loss company declares that shares in the company are worthless (CGT event G3). An alteration time is the trigger for the making of adjustments. Adjustments may also be made when an affected entity's interests in the loss company are partly realised within 12 months before an alteration time or where, under an arrangement, such interests are realised partly within that period or at the alteration time and partly at an earlier time.

An ***affected entity*** is one that, alone or with its associates, has a controlling stake in the loss company and has either a direct or indirect equity interest of at least 10% in the loss company or is owed a debt of at least $10,000 by the loss company or by another entity that has a significant equity or debt interest in the loss company. However, entities in which there are no interests in respect of which a company's losses have been, or can be, duplicated are not affected by this Subdivision.

Adjustments are made to the reduced cost base of the interests of an affected entity and also to deductions that relate to such interests if they are held as trading stock or otherwise on revenue account.

The adjustments are based on the ***overall loss*** of the loss company. This amount comprises its realised losses and unrealised losses on CGT assets.

Special rules, directed at saving compliance costs, apply to determine whether unrealised losses have to be counted at an alteration time. If that time is not also a changeover time for the purposes of Subdivision 165-CC, and the company has no realised losses, it may not have to calculate its unrealised losses.

Unrealised losses on assets acquired for less than $10,000 do not have to be calculated at any time. In addition, an entity that (together with certain related entities) has a net asset value of under $5,000,000 does not have to count unrealised losses at an alteration time. This net asset value test is similar to the threshold for the small business CGT relief provisions.

Amounts (whether realised or unrealised) counted at a previous alteration time are not counted again at a later alteration time. However, if unrealised amounts are *not* counted at a previous alteration time (for example, because of the $10,000 or small business entity exclusions) and are not required to be taken into account in adjustments made at that time, they may be counted at a later time as part of a realised loss.

A ***formula*** is provided for the making of adjustments in straightforward cases where the application of the formula gives a reasonable result having regard to the object of the Subdivision. Otherwise, ***reasonable adjustments*** must be made having regard to a number of stated factors.

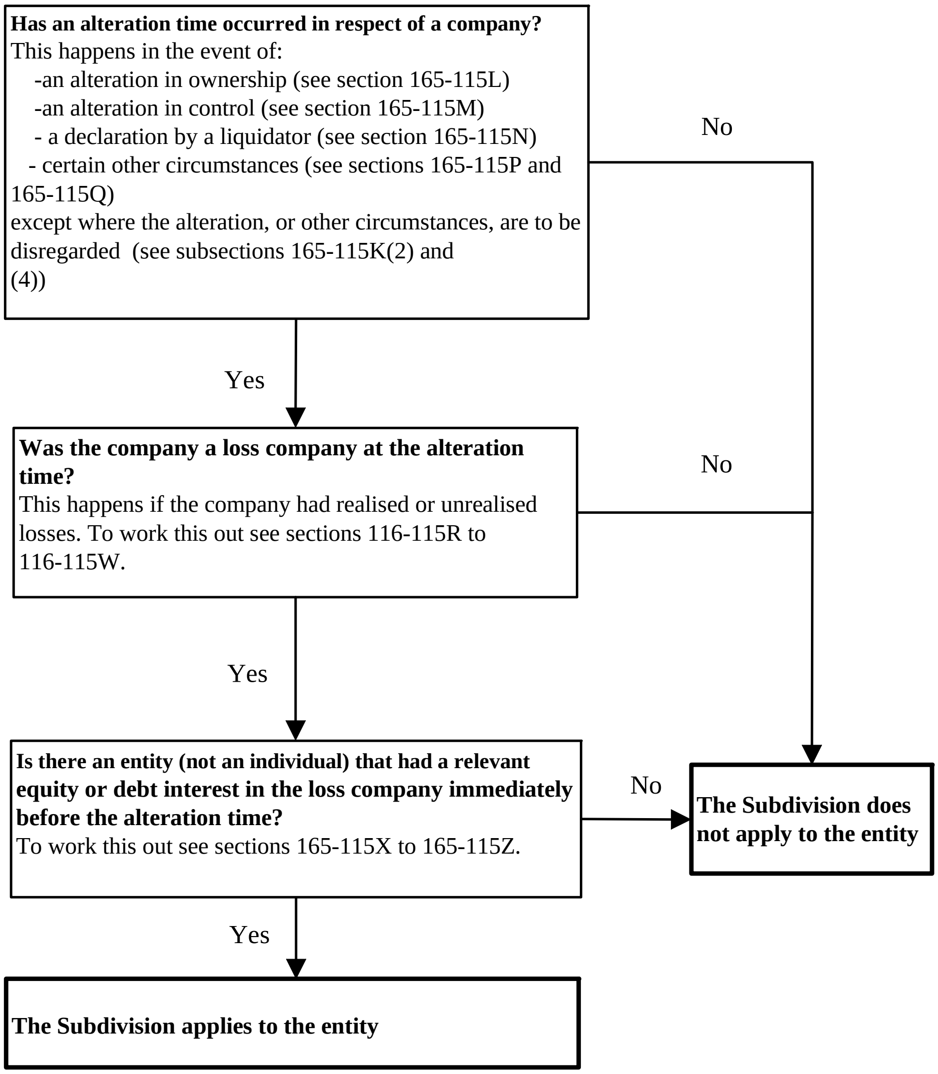
> To assist entities in making the required adjustments, any entity that, in its own right, has a controlling stake in a loss company is required to provide a written ***notice*** to its associates setting out relevant information. In limited circumstances, the loss company itself may have to provide a written notice to entities that, to its knowledge, have a significant equity or debt interest in the loss company.

165-115H How this Subdivision applies

(1) This Subdivision provides for certain taxation consequences for an entity (not an individual) that had a significant equity or debt interest in a loss company immediately before an alteration time occurred in respect of the company.

(2) The following flowchart explains how to work out whether this Subdivision applies to an entity.

Application of Subdivision



(3) If this Subdivision applies to an entity, reductions are made to:

(a) the reduced cost base of the entity's equity or debt (see subsection 165-115ZA(3)); or

(b) any deduction to which the entity is entitled in respect of the disposal of the equity or debt (see subsection 165-115ZA(4)); or

(c) deductions in respect of, and the cost of, any of the equity or debt that is trading stock (see subsection 165-115ZA(5)).

Example: The following is an example of how this Subdivision operates:

Facts: Alpha Co acquired 80% of the shares in Beta Co on 5 May 1998 for $1,000.

Gamma Co owns 20% of the shares in Beta Co.

On 6 February 2000, Alpha Co disposed of its shares for $600.

At the beginning of the 1999-2000 income year, Beta Co had an unapplied net capital loss of $500 from the 1998-99 income year. This loss was fully reflected in the market value of shares in Beta Co.

Alpha Co and Gamma Co are not associated in any way.

Result:

Step 1: An alteration time occurred in respect of Beta Co as a result of the change in ownership that occurred when Alpha Co sold its shares.

Step 2: Beta Co was a loss company at the alteration time because it had an unapplied net capital loss from an earlier income year.

Step 3: Alpha Co had a relevant equity interest in Beta Co immediately before the alteration time because it had a controlling stake and significant interest (80% equity interest). Gamma Co did not have a relevant equity interest in Beta Co because it did not have a controlling stake.

Step 4: Because Alpha Co had a relevant equity interest in Beta Co, the reduced cost bases of its shares in Beta Co are reduced by 80% of Beta Co’s net capital loss:

$$80\% \times \$500 = \$400$$

Alpha Co does not make a capital gain on the disposal of its shares in Beta Co because the capital proceeds ($600) are less than the cost bases ($1,000).

Nor did Alpha Co make a capital loss on the disposal of its shares in Beta Co because the capital proceeds ($600) are not less than the reduced cost bases as further reduced by this Subdivision ($600).

The net capital loss in Beta Co is not duplicated on the sale of Alpha Co’s shares in Beta Co.

Step 5. There are no notice requirements in this simple case. If Gamma Co and Alpha Co were associates (so that Gamma Co had a relevant equity interest in Beta Co), Alpha Co would need to provide the following information to Gamma Co:

(a) the alteration time: 6 February 2000;

(b) Beta Co’s overall loss at the alteration time: $500;

(c) details of the overall loss: a net capital loss of $500 for the 1998-99 income year.

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[This is the end of the Guide]

Operative provisions

165-115J Object of Subdivision

The main object of this Subdivision is to make appropriate adjustments (under section 165-115ZA) to the tax values of significant equity and debt interests held directly or indirectly by entities other than individuals in a *loss company whose ownership or control alters.

The purpose of the adjustments is to prevent the duplication of the company's realised and unrealised losses when any of those interests are *disposed of or otherwise realised. This happens because the company's losses are reflected in the values of the interests.

165-115K Application and interpretation

Application

(1) This Subdivision applies if:

(a) an alteration time occurs in respect of a company; and

(b) the company is a *loss company at the alteration time; and

(c) one or more entities had relevant equity interests or relevant debt interests in the company immediately before the alteration time.

Note 1: For ***alteration time***, see sections 165-115L, 165-115M, 165-115N, 165-115P and 165-115Q.

Note 2: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

Alteration time before commencement time to be disregarded

(2) An ***alteration time*** does not include a time before the commencement time.

Commencement time

(3) The ***commencement time*** for a company is:

(a) if the company was in existence at 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999—that time; or

(b) if the company came into existence after that time—the time when it came into existence.

Certain alteration times to be disregarded

(4) If:

(a) a time (the ***test time***) would, apart from this subsection, be an alteration time in relation to a company; and

(b) the company does not have any losses of the kinds referred to in paragraphs 165-115R(3)(a), (b), (c) and (d) and 165-115S(3)(a) and (b); and

(c) the test time is not a changeover time in relation to the company under Subdivision 165-CC; and

(d) if the test time were such a changeover time, it would be reasonable for the company to conclude that it would not have an unrealised net loss at that time under section 165-115E;

the test time is taken not to be an alteration time in relation to the company.

Application to CGT events other than disposals

(5) This Subdivision applies to a *CGT event (other than a *disposal) happening in relation to a CGT asset (for example, an interest in a company that is constituted by an equity or debt):

(a) in the same way as it applies to a disposal of a CGT asset; and

(b) as if the asset had been disposed of at the time when the CGT event happens.

165-115L Alteration time—alteration in ownership of company

(1) A time (the ***test time***) is an ***alteration time*** in respect of a company if:

(a) persons who had *more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the test time; or

(b) persons who had rights to *more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the test time; or

(c) persons who had rights to *more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the test time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

(2) The ***reference time*** is:

(a) if no alteration time occurred in respect of the company before the *test time—the commencement time; or

(b) otherwise—the time immediately after the last alteration time.

(3) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (4) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

(4) Apply the alternative test if one or more other companies beneficially owned *shares or interests in shares in the company at the reference time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

165-115M Alteration time—alteration in control of company

(1) A time (the ***test time***) is also an ***alteration time*** in respect of a company if, at the test time:

(a) a person or persons who did not control, and were not able to control, the voting power in the company at the reference time began to control, or became able to control, that voting power immediately after the test time; and

(b) that person or those persons so began, or became able, to control that voting power for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

(2) The ***reference time*** is:

(a) if no alteration time occurred in respect of the company before the *test time—the commencement time; or

(b) otherwise—the time immediately after the last alteration time.

(3) In this section:

control of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

165-115N Alteration time—declaration by liquidator

If the liquidator of a company makes a declaration referred to in section 104-145, the time of the declaration is also an ***alteration time*** in respect of the company.

165-115P Notional alteration time—disposal of interests in company within 12 months before alteration time

(1) This section applies if:

(a) an alteration time occurs in respect of a *loss company; and

(b) an entity *disposed of an interest in the company (an ***equity***) or a debt (a ***debt***) at a time (the ***disposal time***) within 12 months before the alteration time but not earlier than the commencement time; and

(c) immediately before the disposal time, the entity had a relevant equity interest or a relevant debt interest in the company that included the equity or debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and

(d) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.

(2) The references in paragraphs (1)(c) and (d) to previous *disposals of interests or debts by the entity are references to:

(a) previous disposals within the period referred to in paragraph (1)(b); and

(b) previous disposals before that period if those previous disposals and any one or more of the following:

(i) the disposal of the equity or debt;

(ii) a disposal referred to in paragraph (a);

(iii) a disposal at the alteration time;

occurred as part of an *arrangement.

(3) The time immediately before the *disposal of the equity or debt is taken to have been an alteration time (a ***notional alteration time***) in respect of the company.

(4) The entity:

(a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the equity or a relevant debt interest in the company constituted by the debt, as the case may be; and

(b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.

(5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.

(6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

Note: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

165-115Q Notional alteration time—disposal of interests in company earlier than 12 months before alteration time

(1) This section applies if:

(a) an alteration time occurs in respect of a *loss company; and

(b) an entity that *disposed of an interest in the company (the ***later equity***) or a debt (the ***later debt***) at, or within 12 months before, the alteration time also disposed of an interest in the company (the ***earlier equity***) or a debt (the ***earlier debt***) at a time (the ***earlier disposal time***) earlier than 12 months before the alteration time but not earlier than the commencement time; and

(c) the disposal of the later equity or later debt and the disposal of the earlier equity or earlier debt occurred as part of an *arrangement; and

(d) immediately before the earlier disposal time, the entity had a relevant equity interest or a relevant debt interest in the company that included the earlier equity or earlier debt, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred; and

(e) immediately before the alteration time, the entity had a relevant equity interest or a relevant debt interest in the company, or would have had such an interest if any previous disposals of interests or debts by the entity had not occurred.

(2) The references in paragraphs (1)(d) and (e) to previous *disposals of interests or debts by the entity are references to:

(a) previous disposals within the period referred to in paragraph (1)(b); and

(b) previous disposals before that period if those previous disposals and any one or more of the following:

(i) the disposal of the equity or debt;

(ii) a disposal referred to in paragraph (a);

(iii) a disposal at the alteration time;

occurred as part of an *arrangement.

(3) The time immediately before the *disposal of the earlier equity or earlier debt is taken to have been an alteration time (a ***notional alteration time***) in respect of the company.

(4) The entity:

(a) is taken to have had, immediately before the notional alteration time, a relevant equity interest in the company constituted by the earlier equity or a relevant debt interest in the company constituted by the earlier debt, as the case may be; and

(b) is taken not to have had, immediately before the notional alteration time, any other relevant equity interest or relevant debt interest in the company.

(5) No entity (other than the entity referred to in paragraph (1)(b)) is taken to have had a relevant equity interest or a relevant debt interest in the company immediately before the notional alteration time.

(6) In applying this Subdivision in relation to the company in respect of a time after a notional alteration time, the notional alteration time is taken not to have occurred.

Note: For ***relevant equity interests*** and ***relevant debt interests***, see sections 165-115X and 165-115Y.

165-115R When company is a loss company at first or only alteration time in income year

Application

(1) The question whether a company is a ***loss company*** at the first or only alteration time in a particular income year is to be worked out in this way.

Assumed income year

(2) Assume that the period that started at the beginning of the income year and ended at the alteration time is an income year and apply paragraphs (3)(a), (b), (c) and (d) on that assumption.

What is a loss company

(3) The company is a ***loss company*** at the alteration time if:

(a) at the beginning of the income year it had an undeducted *tax loss or undeducted tax losses for an earlier income year or earlier income years; or

(b) at the beginning of the income year it had an unapplied *net capital loss or unapplied net capital losses for an earlier income year or earlier income years; or

(c) it has a tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or

(d) it has a net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or

(e) it has an adjusted unrealised loss at the alteration time.

Note: For ***adjusted unrealised loss***, see section 165-115U.

How losses are to be calculated

(4) In applying subsection (3):

(a) an undeducted *tax loss or unapplied *net capital loss that was taken into account in working out under this section whether the company was a *loss company at an alteration time in a previous income year is to be disregarded; and

(b) Subdivision 170-D is to be disregarded.

Overall loss

(5) The sum of:

(a) the amount or amounts of any *tax loss or tax losses referred to in paragraph (3)(a); and

(b) the amount or amounts of any *net capital loss or net capital losses referred to in paragraph (3)(b); and

(c) the amount of any tax loss referred to in paragraph (3)(c); and

(d) the amount of any net capital loss referred to in paragraph (3)(d); and

(e) the amount of any adjusted unrealised loss referred to in paragraph (3)(e);

is the *loss company's ***overall loss*** at the alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

Certain losses to be disregarded

(6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

Amounts of losses may be reduced

(7) The amounts referred to in paragraphs (5)(a) to (d) may be reduced under section 165-115T.

165-115S When company is a loss company at second or later alteration time in income year

Application

(1) The question whether a company is a ***loss company*** at an alteration time (the ***current alteration time***) that is the second or a later alteration time in the same income year is to be worked out in this way.

Assumed income year

(2) Assume that the period that started immediately after the last alteration time and ended at the current alteration time is an income year and apply paragraphs (3)(a) and (b) on that assumption.

What is a loss company

(3) The company is a ***loss company*** at the current alteration time if:

(a) it has a *tax loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-B; or

(b) it has a *net capital loss for the income year, calculated as if the income year were a period for the purposes of Subdivision 165-CB; or

(c) it has an adjusted unrealised loss at the current alteration time.

Note: For ***adjusted unrealised loss***, see section 165-115U.

How losses are to be calculated

(4) In applying subsection (3), Subdivision 170-D is to be disregarded.

Overall loss

(5) The sum of:

(a) the amount of any *tax loss referred to in paragraph (3)(a); and

(b) the amount of any *net capital loss referred to in paragraph (3)(b); and

(c) the amount of any adjusted unrealised loss referred to in paragraph (3)(c);

is the *loss company's ***overall loss*** at the current alteration time.

Note: The loss company's overall loss is relevant for the purposes of subsections 165-115ZB(3) and (6).

Certain losses to be disregarded

(6) A reference in a paragraph of subsection (3) and in the corresponding paragraph of subsection (5) to a particular loss is a reference only to a loss to the extent to which it represents an outlay or loss of any of the economic resources of the company.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

Amounts of losses may be reduced

(7) The amounts referred to in paragraphs (5)(a) and (b) may be reduced under section 165-115T.

165-115T Reduction of certain amounts included in company's overall loss at alteration time

In working out under section 165-115R or 165-115S whether a company was a *loss company at an alteration time (the ***current alteration time***), if a loss (the ***realised loss***) referred to in paragraph 165-115R(3)(a), (b), (c) or (d) or 165-115S(3)(a) or (b) that the company had at the current alteration time reflected an amount of a notional revenue loss, a trading stock decrease or a notional capital loss included in an adjusted unrealised loss, that the company had at a previous alteration time, the realised loss is taken to be reduced by that amount.

Note 1: For ***notional revenue loss*** and ***notional capital loss*** see section 165-115V.

Note 2: For ***trading stock decrease*** see section 165-115W.

165-115U Adjusted unrealised loss

(1) The question whether a company has an ***adjusted unrealised loss*** at an alteration time (the ***relevant alteration time***) is worked out in this way.

Method statement

Step 1. Work out under section 165-115V or 165-115W in respect of each *CGT asset that the company owned at the relevant alteration time any notional capital loss, notional revenue loss or trading stock decrease that the company has at that time in respect of the asset.

To the extent that a notional capital loss or a notional revenue loss in respect of an asset at the relevant alteration time reflected an amount that was counted at an earlier alteration time, do not count it again at the relevant alteration time.

Step 2. Add up the notional capital losses and the notional revenue losses that the company had at the relevant alteration time. The total is the company's ***nominal unrealised loss*** at that time.

Step 3. Add up the trading stock decreases that the company had at the relevant alteration time. The total is the company's ***overall trading stock decrease*** at that time.

Step 4. The sum of the company's nominal unrealised loss and overall trading stock decrease at the relevant time is the company's ***adjusted unrealised loss*** at that time.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

(2) However, the company does not have an adjusted unrealised loss at the relevant alteration time if the company would, at that time, satisfy the maximum net asset value test under section 152-15.

165-115V Notional losses

(1) This section applies for the purpose of calculating whether a company has at an alteration time a notional capital loss or a notional revenue loss in respect of a *CGT asset that it owned at that time.

(2) However, a company does not have a notional capital loss or a notional revenue loss at an alteration time in respect of a CGT asset that it *acquired for less than $10,000.

(3) The calculation is to be made on the assumption that the company disposed of the asset at its market value at the alteration time.

(4) If the company would make a *capital loss in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a ***notional capital loss*** equal to the amount of the capital loss.

(5) If the company would be entitled to a deduction in respect of the disposal of the asset, the company has at the alteration time in respect of the asset a ***notional revenue loss*** equal to the amount of the deduction.

(6) A company may choose that this section is to apply to the company at the alteration time in respect of an asset to which subsection (7) applied at that time as if the reference in subsection (3) to the market value of the asset were a reference to its *written down value.

(7) This subsection applies to an asset at the alteration time if:

(a) the asset is *plant (not a building or structure) for which the company has deducted or can deduct an amount for depreciation; and

(b) the expenditure incurred by the company to *acquire the plant was less than $1,000,000 (the expenditure can include the giving of property: see section 103-5); and

(c) it would be reasonable for the company to conclude that the market value of the plant at the alteration time was not less than 80% of its *written down value at that time.

(8) The Commissioner may give advice, in any way that he or she thinks appropriate, about methods to be used, and other things to

be done, in valuing assets for the purposes of this Subdivision (including, where consistent with those purposes, the grouping together of assets) with the object of reducing the costs of compliance with this Subdivision.

165-115W Calculation of trading stock decrease

(1) The question whether there is a ***trading stock decrease*** in relation to a company at an alteration time for a *CGT asset of the company that was an item of *trading stock at that time is worked out in this way.

Method statement

Step 1. Work out whether the item's market value immediately before the alteration time was less than:

(a) if there was no earlier alteration time in the income year in which that alteration time occurred—the item's value under subsection 70-40(1) at the start of that income year or its cost if subsection 70-40(2) applies; or

(b) if there was an earlier alteration time or there were earlier alteration times in that income year—the item's market value immediately before that earlier alteration time or the later or latest of those earlier alteration times, as the case may be, or its cost if the company did not own it at that time.

Step 2. If the item's market value immediately before the alteration time was less than:

(a) the item's value or cost referred to in paragraph (a) in step 1; or

(b) its market value or cost (as applicable) in paragraph (b) in step 1;

as the case requires, the difference is the ***trading stock decrease*** for the item.

To the extent (if any) to which the difference reflects an amount counted at an earlier alteration time, do not count that amount again.

Note: Certain alteration times are disregarded (see subsections 165-115K(2) and (4)).

(2) However, a company does not have a trading stock decrease at an alteration time in respect of an item of *trading stock that it *acquired for less than $10,000.

165-115X Relevant equity interest

(1) An entity (not an individual) has a ***relevant equity interest*** in a *loss company at a particular time if:

(a) at that time the entity has a controlling stake in the loss company (see section 165-115Z); and

(b) at that time the entity has an interest (an ***equity***) that gives, or interests (each of which is also called an ***equity***) that between them give, the entity:

(i) the control of, or the ability to control, 10% or more of the voting power in the loss company (either directly, or indirectly through one or more interposed entities); or

(ii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any dividends that the loss company may pay; or

(iii) the right to receive (either directly, or indirectly through one or more interposed entities) 10% or more of any distribution of capital of the loss company; and

(c) the equity or each equity is either:

(i) an interest (including a *share or shares, or an option or right to acquire a share or shares) in the loss company; or

(ii) an interest (including an option or right to acquire an interest) held by the entity directly in another entity that has a relevant equity interest or relevant debt interest in the loss company.

(2) The equity or equities constitute the entity's relevant equity interest in the *loss company.

(3) An entity (the ***first entity***) that, apart from this subsection, would have a relevant equity interest in a *loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:

(a) the other entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(b) the other entity has deducted or can deduct, or could deduct at a later time:

(i) an amount in respect of the cost of the *acquisition of the interest or debt; or

(ii) a net loss on the *disposal of the interest or debt;

where the deduction reflected, or would reflect, any part of the loss company's overall loss.

(4) However, subsection (3) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:

(a) made a capital loss (other than a capital loss that was disregarded) because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(5) An individual is not taken to have a ***relevant equity interest*** in a *loss company at any time.

(6) A partnership that consists only of individuals is not taken to have a ***relevant equity interest*** in a *loss company at any time.

(7) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to an interest as having been done by an individual, the interest is not a relevant equity interest.

165-115Y Relevant debt interest

(1) An entity (not an individual) has a ***relevant debt interest*** in a *loss company at a particular time if, at that time:

(a) the entity has a controlling stake in the loss company (see section 165-115Z); and

(b) the entity is owed by the loss company a debt of not less than $10,000 (a ***debt***) or debts at least one of which is not less than $10,000 (each debt of not less than $10,000 is also called a ***debt***).

(2) An entity (not an individual) also has a ***relevant debt interest*** in a *loss company at a particular time if, at that time:

(a) the entity has a controlling stake in the loss company; and

(b) the entity is owed by an entity (the ***debtor entity***) other than the loss company a debt of not less than $10,000 (also a ***debt***) or debts at least one of which is not less than $10,000 (each debt of not less than $10,000 is also called a ***debt***); and

(c) the debtor entity has a relevant equity interest or a relevant debt interest in the loss company.

(3) The total of the debts referred to in subsections (1) and (2) constitutes the entity's relevant debt interest in the *loss company.

(4) An entity (the ***first entity***) that, apart from this subsection, would have a relevant debt interest in a *loss company at a particular time does not have such an interest if, at that time, there is no other entity that has a direct or indirect interest in, or is owed a debt by, the first entity, being an interest or debt in respect of which:

(a) the other entity could, if a *CGT event happened in respect of the interest or debt, make a *capital loss (other than a capital loss that would be disregarded) that reflects any part of the loss company's overall loss; or

(b) the other entity could deduct, or can deduct or could deduct at a later time:

(i) an amount in respect of the cost of the *acquisition of the interest or debt; or

(ii) a net loss on the *disposal of the interest or debt;

where the deduction reflects, or would have reflected, any part of the loss company's overall loss.

(5) However, subsection (4) does not apply to the first entity in respect of a particular time if an entity that had a direct or indirect interest in, or was owed a debt by, the first entity at an earlier time:

(a) made a capital loss (other than a capital loss that would be disregarded) at an earlier time because a *CGT event happened in respect of the interest or debt, where the capital loss reflected any part of the *loss company's overall loss; or

(b) has deducted or could have deducted at an earlier time, or could deduct at a later time, an amount in respect of the cost of the *acquisition, or a net loss on the *disposal, of the interest or debt, where the deduction reflected or would have reflected, or would reflect, as the case may be, any part of the company's overall loss.

(6) An individual is not taken to have a ***relevant debt interest*** in a *loss company at any time.

(7) A *partnership that consists only of individuals is not taken to have a ***relevant debt interest*** in a *loss company at any time.

(8) If section 106-30, 106-50 or 106-60 would treat an act referred to in that section that is done in relation to a debt as having been done by an individual, the debt is not a relevant debt interest.

165-115Z What constitutes a controlling stake in a company

(1) An entity has a ***controlling stake in a company*** at a particular time if the entity, or the entity and the entity's *associates between them:

(a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or

(b) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or

(c) have at that time the right to receive (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.

Note: The effect of subsection (1) is that, if an entity has a controlling stake in a company, each associate of the entity also has a controlling stake in the company.

(2) If:

(a) apart from this subsection, an interest that gives an entity and its *associates (if any):

(i) the ability to exercise, or control the exercise of, any of the voting power in a company; or

(ii) the right to receive dividends that a company may pay; or

(iii) the right to receive a distribution of capital of a company;

would, in the application of paragraph (1)(a), (b) or (c), be counted more than once; and

(b) the interest is both direct and indirect;

only the direct interest is to be counted.

165-115ZA Reductions and other consequences if entity has relevant equity interest or relevant debt interest in loss company immediately before alteration time

Application of section

(1) This section applies to an entity (an ***affected entity***) that has a relevant equity interest or a relevant debt interest, or both, in a *loss company immediately before a time (a ***relevant time***) that is an alteration time in respect of the loss company.

Application of section nullified in certain circumstances

(2) However, if:

(a) this section has applied to an entity in respect of a debt owed to the entity; and

(b) section 245-10 in Schedule 2C to the *Income Tax Assessment Act 1936* (which relates to the forgiveness of commercial debts) also applied in respect of the debt at the same time or at a later time;

any reductions or other consequences affecting the entity in respect of the debt under this section are taken not to have occurred or to have been required to occur.

Note: An amendment of an assessment can be made at any time to give effect to this subsection (see subsection 170(10AA) of the *Income Tax Assessment Act 1936*).

Reduction of reduced cost base

(3) The *reduced cost base of an equity or debt that was *acquired on or after 20 September 1985 is to be reduced immediately before the relevant time by the adjustment amount calculated under section 165-115ZB.

Reduction of deduction—equity or debt is not trading stock

(4) If an equity or debt is not an item of *trading stock of the affected entity immediately before the relevant time, any amount that the entity can deduct in respect of the disposal of any of the equity or debt is to be reduced by the adjustment amount calculated under section 165-115ZB.

Reduction of cost—equity or debt is trading stock

(5) If:

(a) an equity or debt is an item of *trading stock of the affected entity immediately before the relevant time; and

(b) the *cost for the purposes of Division 70 of the equity or debt exceeds its market value immediately before the relevant time;

then, subject to any later application or applications of this Subdivision, the cost of the equity or debt for the purposes of Division 70, and any deduction for an outlay to *acquire it, are reduced by the lesser of the following amounts or, if they are equal, by one of them:

(c) the adjustment amount calculated under section 165-115ZB;

(d) the amount of the excess referred to in paragraph (b).

Subsection (4) to apply only in respect of certain income years

(6) For the purpose of working out:

(a) deductions under section 8-1; or

(b) whether an amount is included in assessable income under subsection 70-35(2); or

(c) whether an amount can be deducted under subsection 70-35(3);

subsection (5) applies only in respect of income years ending after the later of the following:

(d) the commencement time;

(e) the time 12 months before the relevant time.

Further election to value trading stock

(7) If an election has been made under section 70-45 to value an item of *trading stock on hand at the end of an income year otherwise than at its *cost and subsection (5) applies in respect of it, a further election may be made under that section to value the item of trading stock at cost.

Previous applications of this section in relation to trading stock to be taken into account

(8) In applying this section to the affected entity in respect of an equity or debt that is *trading stock of the entity, any previous applications of this section to the entity in respect of the equity or debt are to be taken into account.

Cost of equity or debt that becomes trading stock after relevant time

(9) If:

(a) an equity or debt becomes an item of *trading stock of the affected entity after the relevant time; and

(b) had the equity or debt been an item of trading stock of the affected entity at an earlier time that was, or at 2 or more earlier times each of which was, the relevant time for the purposes of a previous application or previous applications of this section, its *cost for the purposes of Division 70 would have exceeded its market value at the earlier time or at one of the earlier times;

its cost for the purposes of Division 70 is taken to be its market value at the earlier time or the smallest of its market values at the earlier times.

Reduction of proceeds of disposal of trading stock

(10) If:

(a) an equity or debt was an item of *trading stock of the affected entity immediately before a relevant time or became such an item of trading stock after a relevant time; and

(b) the equity or debt is *disposed of by the entity after the relevant time concerned; and

(c) the equity or debt is an item of trading stock of the affected entity at the time of the disposal; and

(d) the proceeds of the disposal exceed the market value of the equity or debt immediately before the relevant time concerned or the market value of the equity or debt immediately before any previous relevant time;

the proceeds of the disposal are taken to be reduced by so much of the amount or the total of the amounts of any reductions made by any previous application or applications of subsection (5) in relation to the affected entity in respect of the equity or debt as does not exceed the excess amount or the greater or greatest of the excess amounts referred to in paragraph (d).

165-115ZB Adjustment amounts for the purposes of section 165-115ZA

Calculation of adjustment amount

(1) For the purposes of section 165-115ZA, an adjustment amount in relation to an equity or debt is to be worked out by the affected entity, and applied by it in making reductions referred to in that section:

(a) if subsection (2) applies—in accordance with subsection (3); or

(b) otherwise—in accordance with subsection (6).

Selection of method of calculation

(2) This subsection applies if:

(a) the affected entity has a relevant equity interest, but does not have a relevant debt interest, in the *loss company immediately before the alteration time and:

(i) all the *shares in the loss company are of the same class and have the same *market value; and

(ii) the equity consists only of a share or shares in the loss company; or

(b) the affected entity has both a relevant equity interest, and a relevant debt interest under subsection 165-115Y(1), in the loss company immediately before the alteration time and:

(i) all the shares in the loss company are of the same class and have the same market value; and

(ii) the equity consists only of a share or shares in the loss company; and

(iii) the debt consists of a single debt or 2 or more debts of the same kind;

and the reductions that would result from the application of subsection (3) would be reasonable in the circumstances.

Formula method

(3) The ***adjustment amount*** to be worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{The number of shares in the loss company constituted by the equity immediately before the alteration time}}{\text{The total number of shares in the loss company immediately before the alteration time}} \times \text{The amount of the loss company's overall loss at the alteration time}$$

and the amount so worked out is to be applied in making reductions as follows:

(a) the adjustment amount is to be applied in relation to the *share or shares constituting the equity; and

(b) if there is an amount remaining after making reductions in relation to those shares—the amount remaining is to be applied in relation to any debt or, if there is a debt consisting of 2 or more separate debts, in relation to those debts.

Applying adjustment amount under formula method to shares

(4) If the adjustment amount referred to in subsection (3) is to be applied in relation to an equity consisting of 2 or more *shares:

(a) it is to be applied equally among the shares; and

(b) if there is any amount remaining after the application of part of the adjustment amount to a share, the amount remaining is to be applied to any other share, or equally among any other shares, to the maximum extent possible.

Applying adjustment amount under formula method to debt

(5) If the adjustment amount referred to in subsection (3) or part of it is to be applied in relation to a debt (the ***overall debt***) and the overall debt consists of 2 or more debts (the ***constituent debts***), the amount to be applied in relation to each constituent debt is the amount worked out using the formula:

$$\text{The adjustment amount or part of the adjustment amount} \times \frac{\text{The amount of the constituent debt}}{\text{The amount of the overall debt}}$$

Non-formula method

(6) The ***adjustment amount*** to be worked out under this subsection is the amount that is appropriate having regard to:

(a) the object of this Subdivision and other matters set out in section 165-115J; and

(b) the extent of the affected entity's relevant equity interests or relevant debt interests, as the case may be, in the *loss company immediately before the alteration time; and

(c) when, and under what circumstances, the relevant equity interests or relevant debt interests were *acquired by the affected entity; and

(d) the loss company's overall loss at the alteration time; and

(e) the extent to which that overall loss has reduced the market values of the equity or debt; and

(f) to prevent double counting, the extent of any adjustments required under this Subdivision because of any application of this Subdivision to another loss company in which the affected entity has a relevant equity interest or relevant debt interest;

and the amount so worked out is to be applied in making reductions in an appropriate way.

How to work out the extent to which the overall loss has reduced the market value of an equity or debt

(7) To avoid doubt in applying paragraph (6)(e) in relation to an equity or a debt, if factors other than an overall loss altered the market value of the equity or debt, the extent to which the overall loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note 1: For a company's ***overall loss*** see subsections 165-115R(5) and 165-115S(5).

Note 2: An example of a factor other than the overall loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

165-115ZC Notices to be given

Application

(1) This section applies when an alteration time occurs in respect of a *loss company.

Controlling entity

(2) For the purposes of this section, an entity is a ***controlling entity*** of a *loss company if:

(a) the entity is not an individual; and

(b) the entity, disregarding any of its *associates, has a controlling stake in the loss company; and

(c) no other entity (except an individual or 2 or more individuals between them) has a controlling stake in the entity.

Non-resident controlling entity to be disregarded in certain circumstances

(3) If:

(a) apart from this subsection, an entity that is a non-resident (the ***non-resident entity***) would be a controlling entity of a *loss company; and

(b) there is an entity that is a resident (the ***resident entity***) and would be a controlling entity of the loss company if all the non-resident entities that held direct or indirect interests in the resident entity were individuals;

then, for the purposes of this section, the non-resident entity is taken not to be a controlling entity of the company but the resident entity is taken to be a controlling entity of the company.

Notice by controlling entity of loss company

(4) An entity that was a controlling entity of the *loss company immediately before the alteration time must, before the end of 6 months after the later of the following:

(a) the alteration time;

(b) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

give a written notice, setting out the information mentioned in subsection (6), to each of its *associates that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the loss company immediately before the alteration time.

Penalty: 30 penalty units.

Notice by loss company

(5) If:

(a) there was no controlling entity of the *loss company immediately before the alteration time; or

(b) no entity that was a controlling entity of the loss company immediately before the alteration time told the loss company in writing, within 2 months after the later of the following:

(i) the alteration time;

(ii) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

that it had given, or proposed to give, notices to its associates under subsection (4);

the loss company must, before the end of 6 months after the later of the following:

(c) the alteration time;

(d) the day on which the *New Business Tax System (Miscellaneous) Act (No. 2) 2000* received the Royal Assent;

give a written notice, setting out the information mentioned in subsection (6), to each entity that, to the loss company's knowledge, had a relevant equity interest or relevant debt interest in the company immediately before the alteration time.

Penalty: 30 penalty units.

Information to be included in notice

(6) The information to be contained in a notice given under subsection (4) or (5) must include:

(a) the time that is the alteration time; and

(b) the amount of the *loss company's overall loss at that time; and

(c) for each income year for which the loss company had at that time a *tax loss or *net capital loss referred to in subsection 165-115R(3) or 165-115S(3)—the type and amount of the loss; and

(d) the amount of any adjusted unrealised loss that the loss company had at that time; and

(e) particulars (for the purpose of assisting the entity to whom the notice is given (the ***recipient***) to comply with the requirements of this Subdivision) of the amounts, proportions, and times of *acquisition, of all relevant equity interests and relevant debt interests in the loss company held by entities through which the recipient had relevant equity interests or relevant debt interests in the loss company.

Entity or loss company not required to give information about matters that are not known to it

(7) An entity or *loss company is not required by this section to set out information in a notice unless:

(a) the information is known to the entity or company; or

(b) the entity or company could reasonably be expected to know the information and can readily obtain it.

Obligations of person not affected by failure to give notice

(8) Any failure by an entity or the *loss company to give a notice to a person under this section does not affect any obligation of the person to comply with the requirements of this Subdivision.

19 Subsection 165-123(2) (note)

Omit "rights to".

20 At the end of section 165-123

Add:

Conditions in subsections (2), (3) and (4) may be treated as having been satisfied in certain circumstances

(7) If any of the conditions in subsections (2), (3) and (4) have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of section 165-165; and

(b) the company has information from which it would be reasonable to conclude that less than 50% of the debt or of the part of a debt has been reflected in the making of losses, or in increased losses or reduced gains, on the *disposal during the *ownership test period of any direct and indirect equity interests in the company.

Time of disposal of interests

(8) A *disposal of a direct or indirect equity interest in the company that results in the failure of the company to satisfy a condition in subsection (2), (3) or (4) is taken, for the purposes of paragraph (7)(b), to have occurred during the *ownership test period.

*Meaning of **direct and indirect equity interests***

(9) The ***direct equity interests*** in the company are *shares in the company.

(10) The ***indirect equity interests*** in the company are *shares or other interests in entities interposed between the company and persons referred to in subsection (2), (3) or (4).

21 Sections 165-150 to 165-160

Repeal the sections, substitute:

165-150 Who has more than 50% of the voting power in the company

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to exercise more than 50% of the voting power in the company, those persons have ***more than 50% of the voting power*** in the company at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies or *trustees) who (between them) at a particular time control, or are able to control (whether directly, or indirectly through one or more interposed entities) the voting power in the company, those persons have ***more than 50% of the voting power*** in the company at that time.

165-155 Who has rights to more than 50% of the company's dividends

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to receive more than 50% of any *dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for their own benefit (whether directly or *indirectly) more than 50%

of any *dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** at that time.

165-160 Who has rights to more than 50% of the company's capital distributions

The primary test

(1) Applying the primary test: if there are persons who, at a particular time, beneficially own (between them) *shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** at that time.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have the right to receive for their own benefit (whether directly or *indirectly) more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** at that time.

22 Section 165-165

Repeal the section, substitute:

165-165 Rules about tests for a condition or occurrence of a circumstance

Exactly the same shares or interests must continue to be held

(1) For the purpose of determining whether a company has satisfied a condition or whether a time is a changeover time or an alteration time in respect of a company:

(a) a condition that has to be satisfied is not satisfied; or

(b) a time that, apart from this subsection, would not be a changeover time or alteration time is taken to be a changeover time or alteration time, as the case may be;

unless, at all relevant times:

(c) the only *shares in the company that are taken into account are exactly the same shares and are held by the same persons; and

(d) the only interests in any other entity (including shares in another company) that are taken into account are exactly the same interests and are beneficially owned by the same persons.

What happens in case of share splitting

(2) If:

(a) a particular *share (an ***old share***) in a company of which a person is the beneficial owner at the start of a *test period is divided into 2 or more new shares; and

(b) the person becomes the beneficial owner of each of the new shares immediately after the division takes place and remains the beneficial owner until the end of that period;

the new shares are taken to be exactly the same shares as the old share.

What happens in case of splitting of units in a unit trust

(3) If:

(a) a particular unit (the ***old unit***) in a unit trust of which a person is the holder at the start of a *test period is divided into 2 or more new units; and

(b) the person becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;

the new units are taken to be exactly the same units as the old unit.

What happens in case of consolidation of shares

(4) If:

(a) a particular *share (an ***old share***) in a company of which a person is the beneficial owner at the start of a *test period, and other shares (each of which also called an ***old share***) in the company of which the person is the beneficial owner at the start of that period, are consolidated into a new share; and

(b) the person becomes the beneficial owner of the new share immediately after the consolidation takes place;

the new share is taken to be exactly the same share as the old shares.

What happens in case of consolidation of units in a unit trust

(5) If:

(a) a particular unit (an ***old unit***) in a unit trust of which a person is the holder at the start of a *test period and other units (each of which also called an ***old unit***) in the trust of which the person is the holder at the start of that period are consolidated into a new unit; and

(b) the person becomes the holder of the new unit immediately after the consolidation takes place;

the new unit is taken to be exactly the same unit as the old units.

Test period

(6) A ***test period*** is:

(a) for the purpose of determining whether a condition in section 165-12 has been satisfied—the *ownership test period; or

(b) for the purpose of determining whether a test time is a changeover time for the purposes of section 165-115C—the period between the reference time referred to in subsection 165-115A(2A) and the test time; or

(c) for the purpose of determining whether a test time is an alteration time for the purposes of section 165-115L—the period between the reference time referred to in subsection 165-115L(2) and the test time.

Satisfaction by primary test by public company

(7) A *public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

23 Heading to section 165-200

Repeal the heading, substitute:

165-200 Rules do not affect totals of shares, units in unit trusts or rights carried by shares and units

24 Section 165-200

After "sections", insert "165-165,".

25 At the end of section 165-200

Add:

(2) Section 165-165 does not affect how units in a unit trust, or the rights carried by such units, are counted for the purposes of determining the total rights, or the total rights of a particular kind, in the trust of the holders of such units.

26 Subsections 165-215(2) and (3)

Omit "loss year and the income year", substitute "*ownership test period".

27 Subsection 165-215(5)

Omit "in the loss year or the income year", substitute "during the *ownership test period".

28 Subsections 165-230(2) and (3)

Repeal the subsections, substitute:

First condition

(2) At all times during the *ownership test period:

(a) both:

(i) persons must have held fixed entitlements to all of the income and capital of the company; and

(ii) non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the company; or

(b) both:

(i) a fixed trust or a company (which trust or company is the ***holding entity***) must have held, directly or indirectly, fixed entitlements to all of the income and capital of the company; and

(ii) non-fixed trusts, other than *family trusts, must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

Second condition

(3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:

(a) in a paragraph (2)(a) case—the company; or

(b) in a paragraph (2)(b) case—the holding entity;

at the beginning of the *first continuity period must have held those entitlements to those shares at all times during the *ownership test period.

29 Subsection 165-230(5)

Omit "in the first continuity period or the second continuity period", substitute "during the *ownership test period".

30 After Subdivision 166-C

Insert:

Subdivision 166-CA—Change of ownership or control of listed public company

Table of sections

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Operative provisions

166-80 How Subdivision 165-CC or 165-CD applies to a listed public company

(1) This Subdivision modifies the way in which:

(a) Subdivision 165-CC applies in determining whether a changeover time (within the meaning of section 165-115C) has occurred; or

(b) Subdivision 165-CD applies in determining whether an alteration time (within the meaning of section 165-115L) has occurred;

in relation to a *listed public company during the period (the ***test period***) starting at the time that is the reference time for the purposes of Subdivision 165-CC or section 165-115L, as the case may be, and ending at a *test time.

Note 1: Subdivision 165-CC is about the conditions a company that has an unrealised net loss must satisfy before it can have capital losses taken into account or deduct revenue losses.

Note 2: Subdivision 165-CD provides for reductions in cost bases and certain other reductions after alterations have occurred in the ownership or control of a loss company.

Note 3: This Subdivision also modifies how Subdivision 165-CC and 165-CD apply to a 100% subsidiary of a listed public company: see section 166-85.

Note 4: A company can choose that this Subdivision is not to apply to it: see section 166-90.

(2) Each of the following times is a ***test time***:

(a) the time immediately after an *abnormal trading of *shares in the company occurs;

(b) the end of the income year in which the relevant reference time occurred;

(c) the end of a later income year.

(3) If:

(a) the *listed public company was a listed public company throughout the *test period; and

(b) there is *substantial continuity of ownership of the *listed public company as between the start of the test period and the *test time;

a changeover time or an alteration time is taken not to have occurred in respect of the company during the test period.

Note: See section 166-145 to work out whether there is substantial continuity of ownership.

(4) If:

(a) the *listed public company was a listed public company throughout the *test period; and

(b) there is *no* *substantial continuity of ownership of the *listed public company as between the start of the test period and the *test time;

the following paragraphs have effect:

(c) the test time is taken to have been a changeover time or an alteration time, as the case may be, in respect of the company; but

(d) no other time during the test period is a changeover time or an alteration time, as the case may be, in respect of the company.

166-85 How Subdivision 165-CC or 165-CD applies to a 100% subsidiary of a listed public company

(1) This Subdivision modifies the way in which:

(a) Subdivision 165-CC applies in determining whether a changeover time (within the meaning of section 165-115C) has occurred; or

(b) Subdivision 165-CD applies in determining whether an alteration time (within the meaning of section 165-115L) has occurred;

in relation to a company (the ***subsidiary***) that is a subsidiary of a *listed public company (the ***holding company***) during the period (the ***test period***) starting at the time that is the reference time for the purposes of Subdivision 165-CC or section 165-115L, as the case may be, and ending at a *test time.

Note 1: Subdivision 165-CC is about the conditions a company that has an unrealised net loss must satisfy before it can have capital losses taken into account or deduct revenue losses.

Note 2: Subdivision 165-CD provides for reductions in cost bases and certain other reductions after alterations have occurred in the ownership or control of a loss company.

(2) Each of the following times is a ***test time***:

(a) the time immediately after an *abnormal trading of *shares in the holding company or the subsidiary occurs;

(b) the end of the income year in which the relevant reference time occurred;

(c) the end of a later income year.

(3) If:

(a) the subsidiary was a *100% subsidiary of the holding company throughout the *test period; and

(b) the holding company was a *listed public company throughout the test period; and

(c) there is *substantial continuity of ownership of the subsidiary as between the start of the test period and the *test time;

a changeover time or an alteration time is taken not to have occurred in respect of the subsidiary during the test period.

Note: See section 166-145 to work out whether there is substantial continuity of ownership.

(4) If:

(a) the subsidiary was a *100% subsidiary of the holding company throughout the *test period; and

(b) the holding company was a *listed public company throughout the test period; and

(c) there is *no* *substantial continuity of ownership of the subsidiary as between the start of the test period and the *test time;

the following paragraphs have effect:

(d) the test time is taken to have been a changeover time or an alteration time, as the case may be, in respect of the subsidiary; but

(e) no other time during the test period is a changeover time or an alteration time, as the case may be, in respect of the subsidiary.

(5) Subdivisions 166-D, 166-F and 166-G apply to the subsidiary as if:

(a) the subsidiary were itself a *listed public company throughout the *test period; and

(b) an *abnormal trading in *shares in the holding company were an abnormal trading in shares in the subsidiary.

166-90 Companies can choose that this Subdivision is not to apply to them

(1) The *listed public company or subsidiary can choose that Subdivision 165-CC or 165-CD is to apply to it in respect of a *test period for the purposes of section 166-80 or 166-85 *without* the modifications made by this Subdivision.

(2) The *listed public company or subsidiary must choose on or before the day it lodges its *income tax return for the income year in which the *test period begins or before a later day if the Commissioner allows.

31 Subsections 166-145(2), (3) and (4)

After “companies”, insert “or trustees”.

32 Section 166-150

After “companies”, insert “or trustees”.

33 Section 166-165

Repeal the section, substitute:

166-165 Rules in Division 165 apply

(1) The rules in the following provisions:

(a) section 165-175 (which is about how an ownership test can be satisfied by a single person);

(b) subsection 165-185(1) (which treats some shares as never having carried rights);

(c) subsection 165-190(1) (which treats some shares as always having carried rights);

(d) section 165-200 (which is about how other rules do not affect how *shares or rights are counted);

(e) section 165-205 (which deals with death of beneficial owners);

(f) subsection 165-207(2) (which treats the *trustee of a family trust as a beneficial owner of some rights);

also apply for the purposes of an ownership test in this Subdivision.

(2) The rules in the following provisions:

(a) section 165-180 (which is about arrangements affecting beneficial ownership of *shares);

(b) subsection 165-185(2) (which treats some shares as never having carried rights);

(c) subsection 165-190(2) (which treats some shares as always having carried rights);

(d) section 165-195 (which disregards *redeemable shares);

also apply for the purposes of an ownership test in this Subdivision as if the reference to a particular time were a reference to the *ownership test time.

34 At the end of Subdivision 166-D

Add:

166-170 Rules about substantial continuity of ownership of 100% subsidiary of listed public company

Application

(1) This section has effect in applying this Subdivision to a *100% subsidiary (the ***subsidiary***) of a *listed public company (the ***holding company***) for the purpose of determining whether there was substantial continuity of ownership of the subsidiary as between the start of a *test period and another time in that period.

Exactly the same shares or interest must be continued to be held

(2) There is no substantial continuity of ownership unless at all relevant times:

(a) the only *shares in the subsidiary that are taken into account are exactly the same shares and are held by the holding company; and

(b) the only interests in any entity (including shares in another company) interposed between the holding company and the subsidiary that are taken into account are exactly the same interests and are held by the same persons.

What happens in case of share splitting

(3) If:

(a) a particular *share (an ***old share***) in a company of which the holding company, or an entity interposed between the subsidiary and the holding company, is the beneficial owner at the start of the *test period is divided into 2 or more new shares; and

(b) the holding company or entity becomes the beneficial owner of each of the new shares immediately after the division takes place and remains the beneficial owner until the end of that period;

the new shares are taken to be exactly the same shares as the old share.

What happens in case of splitting of units in a unit trust

(4) If:

(a) a particular unit (an ***old unit***) in a unit trust of which the holding company, or an entity interposed between the holding company and the subsidiary, is the holder at the start of the *test period is divided into 2 or more new units during that period; and

(b) the holding company or entity becomes the holder of each of the new units immediately after the division takes place and remains the holder until the end of that period;

the new units are taken to be exactly the same units as the old unit.

What happens in case of consolidation of shares

(5) If:

(a) a particular *share (an ***old share***) in a company of which the holding company, or an entity interposed between the subsidiary and the holding company, is the beneficial owner at the start of the *test period, and other shares (each of which is also called an ***old share***) in the company of which the holding company or entity is the beneficial owner at the start of that period, are consolidated into a new share during that period; and

(b) the holding company or entity becomes the beneficial owner of the new share immediately after the consolidation takes place;

the new share is taken to be exactly the same share as the old shares.

What happens in case of consolidation of units in a unit trust

(6) If:

(a) a particular unit (an ***old unit***) in a unit trust of which the holding company, or an entity interposed between the subsidiary and the holding company, is the holder at the start of the *test period and other units (each of which is also called an ***old unit***) in the trust of which the holding company or entity is the holder at the start of that period are consolidated into a new unit; and

(b) the holding company or entity becomes the holder of the new unit immediately after the consolidation takes place;

the new unit is taken to be exactly the same unit as the old units.

Totals of shares or rights not affected

(7) This section does not affect how *shares, and rights carried by shares, are counted for the purpose of determining:

(a) the total voting power in the subsidiary; or

(b) the total dividends that the subsidiary may pay; or

(c) the total distributions of capital of the subsidiary.

Conditions in section 166-145 may be treated as having been satisfied in certain circumstances

(8) If any of the conditions in section 166-145 have not been satisfied, those conditions are taken to have been satisfied if:

(a) they would have been satisfied except for the operation of subsection (2) of this section; and

(b) the subsidiary has information from which it would be reasonable to conclude that less than 50% of:

(i) the *tax loss; or

(ii) the *notional loss; or

(iii) the bad debt; or

(iv) the unrealised net loss (within the meaning of section 165-115E);

as the case requires, has been reflected in the making of losses, or in increased losses or reduced gains, on the disposal during the *test period of any direct and indirect equity interests held by the holding company in the subsidiary (other than interests to which Subdivision 165-CD has applied in relation to the tax loss, notional loss or unrealised net loss, as the case requires).

Subsection (8) not to apply for purpose of determining whether an alteration time has occurred

(9) However, subsection (8) does not apply in relation to any of the conditions in section 166-145 in so far as those conditions have effect for the purpose of determining whether an alteration time (within the meaning of section 165-115M) has occurred.

Time of disposal of interests

(10) A disposal of a direct or indirect equity interest in the subsidiary that results in the failure of the subsidiary to satisfy a condition in section 166-145 is taken, for the purposes of paragraph (8)(b), to have occurred during the *test period.

*Meaning of **direct and indirect equity interests***

(11) For the purposes of subsections (8) and (10):

(a) the ***direct equity interests*** in the subsidiary are *shares in the subsidiary; and

(b) the ***indirect equity interests*** in the subsidiary are shares or other interests in entities interposed between the subsidiary and the holding company.

35 Paragraph 166-265(1)(a)

After “companies”, insert “or trustees”.

36 Subsections 166-265(2) and (3)

After “other than a company”, insert “or a trustee”.

37 Before paragraph 170-210(3)(a)

Insert:

(aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and

38 After paragraph 170-210(3)(a)

Insert:

(ba) any reduction in the reduced cost base made under Subdivision 165-CD; and

39 After subsection 170-210(3)

Insert:

(3A) To avoid doubt in applying paragraph (3)(c) in relation to a *share or debt, if factors other than the loss altered the market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

(3B) This section applies to a *tax loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the *loss company.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

40 Section 170-210 (note)

Repeal the note, substitute:

Note 1: For ***deduction year*** see subsection 170-20(1).

Note 2: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

41 After paragraph 170-215(1)(g)

Insert:

and (h) there are shares in, or debts owed by, the *loss company the *reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);

42 After paragraph 170-215(2)(h)

Insert:

and (i) there are shares in, or debts owed by, the *loss company the *reduced cost base of at least one of which has been reduced by subsection 170-210(1) or (2);

43 Before paragraph 170-215(3)(a)

Insert:

(aa) the matters mentioned in subsections 170-205(3) and (4); and

(ab) the amounts of any reductions to the cost base and reduced cost base of *shares, and to the reduced cost base of debts, under subsection 170-210(3); and

44 After subsection 170-215(4)

Insert:

(4A) No increase is to be made to the extent that the *tax loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the tax loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

45 At the end of section 170-215

Add:

Note: For ***deduction year*** see subsection 170-20(1).

46 Subsections 170-220(1) and (2)

Omit “debt are”, substitute “the reduced cost base of the debt is”.

47 Subsection 170-220(3)

Omit “are”, substitute “of the share or the reduced cost base of the debt is”.

48 Before paragraph 170-220(3)(a)

Insert:

(aa) the main object of this Subdivision and other matters mentioned in subsections 170-205(1) and (2); and

(ab) the amounts of any reductions to the cost base and reduced cost base of *shares, and to the reduced cost base of debts, under subsection 170-220(3); and

49 After paragraph 170-220(3)(a)

Insert:

(ba) any reduction in the reduced cost base made under Subdivision 165-CD; and

50 After subsection 170-220(3)

Insert:

(3A) To avoid doubt in applying paragraph (3)(c) in relation to a *share or debt, if factors other than the loss altered the market value of the share or debt, the extent to which the loss reduced that market value is taken to be the extent to which that market value would have been reduced apart from those other factors.

Note: An example of a factor other than the loss is the unrealised value of assets (including assets in respect of which there is an unrealised gain) of the loss company, whether or not generated by outlays or economic losses reflected in the loss for income tax purposes.

(3B) This section applies to a *net capital loss only to the extent that the loss represents an outlay or loss of any of the economic resources of the *loss company.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay or loss of economic resources of the company.

51 At the end of section 170-220

Add:

Note 3: For ***applicable year*** see subsection 170-115(1).

52 After paragraph 170-225(1)(f)

Insert:

and (g) there are shares in, or debts owed by, the *loss company the *cost base and *reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);

53 After paragraph 170-225(2)(g)

Insert:

and (h) there are shares in, or debts owed by, the *loss company the *cost base and *reduced cost base of at least one of which have been reduced by subsection 170-220(1) or (2);

54 Before paragraph 170-225(3)(a)

Insert:

(aa) the matters mentioned in subsections 170-205(3) and (4); and

(ab) the amounts of any reductions to the cost base and reduced cost base of *shares, and to the reduced cost base of debts, under subsection 170-220(3); and

55 After subsection 170-225(4)

Insert:

(4A) No increase is to be made to the extent that the *net capital loss transferred does not represent an outlay or loss of any of the economic resources of the company that transferred the net capital loss.

Note: Where the income tax law allows, as all or part of a loss, an amount for plant depreciation that exceeds the actual economic depreciation or depletion of the plant concerned, the excess is not to be regarded for the purposes of this subsection as representing an outlay of economic resources of the company.

56 At the end of subparagraphs 170-255(1)(b)(ii) and (iii)

Add “or of an interest in a CGT asset”.

57 Subparagraph 170-255(1)(d)(iv)

Omit “and”.

58 At the end of paragraph 170-255(1)(d)

Add:

(v) if subparagraph (b)(ii) or (iii) applies—the originating company is a non-resident at the time of the deferral event; and

59 Subsection 170-255(2)

Repeal the subsection, substitute:

(2) Despite subsection (1):

(a) this Subdivision does not apply because of *CGT event B1 if title in the *CGT asset does not pass to the other entity when the agreement ends; and

(b) this Subdivision does not apply if the deferral event involves the *acquisition of a greater than 50% interest in a CGT asset by an entity other than an entity referred to in subparagraph (1)(e)(i), (ii) or (iii).

60 Paragraph 170-260(4)(a)

After "entity", insert "and its *associates (if any)".

61 Paragraph 170-265(3)(a)

After "entity", insert "and its *associates (if any)".

62 Paragraphs 170-275(1)(a) to (c)

Repeal the paragraphs, substitute:

(a) the *CGT asset *acquired by the other entity referred to in paragraph 170-255(1)(a) (the ***relevant CGT asset***), or a greater than 50% interest in it, ceases to exist;

(b) the relevant CGT asset, or a greater than 50% interest in it, is acquired by an entity that is none of the following:

(i) a member of the *linked group of which the originating company is a member;

(ii) a connected entity of the originating company;

(iii) an *associate of such a connected entity;

(c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;

(d) the originating company ceases to be a member of that linked group;

(e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;

63 Heading to section 170-280

Repeal the heading, substitute:

170-280 What happens if certain events happen in respect of the asset

64 Subsection 170-280(1)

Repeal the subsection, substitute:

(1) This section applies if, as a result of the occurrence of a new event in respect of a *CGT asset, the originating company is taken by subsection 170-275(1) to have made a *capital loss or to be entitled to a deduction and, within 4 years after the occurrence of the new event, one of the following events (***further events***) occurs:

(a) the asset or a greater than 50% interest in it is *acquired by the originating company or by an entity that, at the time of the acquisition, is:

(i) a company that is a member of the *linked group of which the originating company is a member; or

(ii) a connected entity of the originating company; or

(iii) an *associate of such a connected entity;

(b) a company that owns the asset or a greater than 50% interest in it becomes a member of the linked group of which the originating company is a member;

(c) the originating company becomes a member of a linked group another member of which owns the asset or a greater than 50% interest in it;

(d) an entity that owns the asset or a greater than 50% interest in it becomes:

(i) a connected entity of the originating company; or

(ii) an associate of such a connected entity.

(1A) If the originating company has information from which it would be reasonable to conclude that, if the *CGT asset involved were owned by the originating company immediately after the further event, *majority underlying interests in the asset immediately after the further event would not have been had by *ultimate owners who had majority underlying interests in the asset immediately before the deferral event, the further event is taken not to have occurred.

65 Paragraphs 170-280(3)(a) to (c)

Repeal the paragraphs, substitute:

(a) the *CGT asset referred to in subsection (1) (the ***relevant CGT asset***), or a greater than 50% interest in it, ceases to exist;

(b) the relevant CGT asset, or a greater than 50% interest in it, is *acquired by an entity that is none of the following:

(i) a member of the linked group of which the originating company is a member;

(ii) a connected entity of the originating company;

(iii) an *associate of such a connected entity;

(c) if the relevant CGT asset is acquired by a company that is a member of that linked group—that company ceases to be a member of that linked group;

(d) the originating company ceases to be a member of that linked group;

(e) if the relevant CGT asset is acquired by an entity that is a connected entity of the originating company or is an associate of such a connected entity—that entity ceases to be such a connected entity or ceases to be an associate of such a connected entity, as the case may be;

Part 2—Income Tax Assessment Act 1936

66 Subsection 170(10AA) (after table item 165)

Insert:

170	Subsection 165-115ZA(2)	Reduction in respect of reduced cost base etc. of debt disregarded if commercial debt forgiveness provisions apply

67 After paragraph 427(b)

Insert:

(ba) Subdivisions 165-CC and 165-CD of the *Income Tax Assessment Act 1997*;

Part 3—Application of amendments

68 Application

(1) The amendments made by items 6 to 17 apply to tax losses, net capital losses or deductions claimed in returns for an income year ending after 11 November 1999.

(2) The amendments made by items 3 to 5, 20 to 22, 24 to 29, 31 to 33 and 34 to 36 apply to tax losses, net capital losses or deductions claimed in returns for an income year ending after 21 September 1999.

(3) The amendment made by item 30 applies for the purpose of determining whether a time after 11 November 1999 is a changeover time or alteration time in respect of a company.

(4) The amendments made by items 37, 39, 43, 46 to 50 and 54 apply where the agreement transferring the relevant tax loss or net capital loss was made on or after 22 February 1999.

(5) The amendments made by items 41, 42, 44, 52, 53 and 55 apply where the agreement transferring the relevant tax loss or net capital loss was made on or after 13 April 2000.

(6) The amendments made by items 56 to 65 are taken to have applied, or apply, to CGT events happening on or after 21 October 1999.

Schedule 2—Life insurance companies

Part 1—Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

life assurance company has the meaning given to ***life insurance company*** by the *Income Tax Assessment Act 1997*.

2 Subsection 6(1)

Insert:

life assurance policy has the meaning given to ***life insurance policy*** by the *Income Tax Assessment Act 1997*.

3 Subsection 6(1)

Insert:

life assurance premium has the meaning given to ***life insurance premium*** by the *Income Tax Assessment Act 1997*.

4 After subsection 26AH(6)

Insert:

(6A) If, during the year of income, an amount referred to in subsection (6) is received during the eligible period in relation to an eligible policy held by the trustee of a non-complying superannuation fund (within the meaning of Part IX):

(a) subsection (6) does not apply to the amount; and

(b) the amount is included in the assessable income of the fund of the year of income.

5 Paragraph 26AH(7)(b)

Repeal the paragraph, substitute:

(b) the eligible policy is held by the trustee of:

(i) a complying superannuation fund; or

(ii) a complying ADF; or

(iii) a pooled superannuation trust;

within the meaning of Part IX; or

(ba) the eligible policy is issued by a life assurance company and the company's liabilities under the policy are to be discharged out of:

(i) virtual PST assets within the meaning of the *Income Tax Assessment Act 1997*; or

(ii) segregated exempt assets within the meaning of that Act; or

6 After subsection 70B(2)

Insert:

(2A) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of traditional securities that are:

(a) segregated exempt assets (for the purposes of the *Income Tax Assessment Act 1997*) of a life assurance company; or

(b) segregated current pension assets (as defined in Part IX) of a complying superannuation fund (as defined in that Part); or

(c) segregated exempt superannuation assets (as defined in Part IX) of a PST (as defined in that Part).

7 After subsection 92(2)

Insert:

(2A) Subsection (2) does not apply to a partnership loss if the partner's interest in the partnership at the end of the income year is:

(a) a segregated exempt asset (as defined in the *Income Tax Assessment Act 1997*) of a life assurance company; or

(b) a segregated current pension asset (as defined in Part IX) of a complying superannuation fund (as defined in that Part); or

(c) a segregated exempt superannuation asset (as defined in Part IX) of a PST (as defined in that Part).

8 Subsection 110(1) (definition of *non-exempt modified capital gain*)

After "any capital gain", insert "(excluding a discount capital gain within the meaning of the *Income Tax Assessment Act 1997* but including, in respect of a life assurance company that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of that Act)".

9 Subsection 110(1)

Insert:

non-exempt modified discount capital gain for a notional CGT event means any discount capital gain within the meaning of the *Income Tax Assessment Act 1997* (including, in respect of a life assurance company that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of that Act) that would (apart from this Division) arise from the event if Division 10 of Part IX applied in respect of the event, reduced as follows:

(a) if, had the gain instead been ordinary income derived when the gain was made, some or all of the ordinary income would have been exempt income under section 112C:

(i) reduce the gain by so much of that ordinary income as would have been so exempt; and

(ii) further reduce the rest of the gain (if any) by the proportion worked out using the formula in section 112A;

(b) otherwise—reduce the gain by the proportion worked out using the formula in section 112A.

10 Subsection 110(1) (definition of *non-exempt ordinary capital gain*)

After "any capital gain", insert "(including, in respect of a life assurance company that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of the *Income Tax Assessment Act 1997*)".

11 Subsection 110(1) (definition of *total non-exempt modified capital gain*)

Omit "as has", substitute "and non-exempt modified discount capital gains as have".

12 After section 110

Insert:

110A Year of income in which 1 July 2000 occurs

If the year of income of a life assurance company in which 1 July 2000 occurs ends after that date, the period beginning at the start of that year of income and ending at the end of 30 June 2000 is taken for the purposes of this Division to be a year of income of the company.

13 After paragraph 116CB(1)(g)

Insert:

(ga) any non-exempt modified discount capital gain;

14 Paragraph 116CB(3)(f)

After “non-exempt modified capital gain”, insert “, non-exempt modified discount capital gain”.

15 After subsection 116CD(6)

Insert:

(7) The life assurance company must choose the extent to which:

(a) the total modified capital loss (if any); and

(b) the losses (if any) that, under subsections (3) to (6), are to be applied in reduction of the CS/RA class;

are respectively applied:

(c) in respect of non-exempt modified capital gains; and

(d) in respect of non-exempt modified discount capital gains.

(7A) The non-exempt modified capital gains and the non-exempt modified discount capital gains are reduced by the amounts respectively applied in respect of them in accordance with the choices made under subsection (7).

(7B) After making the reductions referred to in subsection (7A), the assessable income of the CS/RA class includes:

(a) the amount left over of the non-exempt modified capital gains; and

(b) two-thirds of the amount left over of the non-exempt modified discount capital gains.

16 Subsection 116E(1) (definition of *modified capital gain*)

Repeal the definition, substitute:

modified capital gain for a notional CGT event means any capital gain (excluding a discount capital gain within the meaning of the *Income Tax Assessment Act 1997* but including, in respect of a registered organisation that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of that Act) that would (apart from this Division) arise from the event if Division 10 of Part IX of this Act applied in respect of the event.

17 Subsection 116E(1)

Insert:

modified discount capital gain for a notional CGT event means any discount capital gain within the meaning of the *Income Tax Assessment Act 1997* (including, in respect of a registered organisation that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of that Act) that would (apart from this Division) arise from the event if Division 10 of Part IX of this Act applied in respect of the event.

18 Subsection 116E(1) (definition of *ordinary capital gain*)

Repeal the definition, substitute:

ordinary capital gain for a notional CGT event means any capital gain (including, in respect of a registered organisation that is a beneficiary of a trust estate, any capital gain notionally included under subsection 115-215(3) of the *Income Tax Assessment Act 1997*) that would (apart from this Division) arise from the event.

19 Subsection 116E(1) (definition of *total modified capital gain*)

Omit "as has", substitute "and modified discount capital gains as have".

20 After paragraph 116GA(1)(g)

Insert:

(ga) any modified discount capital gain;

21 Paragraph 116GA(2)(f)

After "modified capital gain", insert ", modified discount capital gain".

22 After subsection 116GB(5)

Insert:

(6) The registered organisation must choose the extent to which:

(a) the total modified capital loss (if any); and

(b) the losses (if any) that, under subsections (3) to (5), are to be applied in reduction of the CS/RA class;

are respectively applied:

(c) in respect of modified capital gains; and

(d) in respect of modified discount capital gains.

(6A) The modified capital gains and the modified discount capital gains are reduced by the amounts respectively applied in respect of them in accordance with the choices made under subsection (6).

(6B) After making the reductions referred to in subsection (6A), the assessable income of the CS/RA class includes:

(a) the amount left over of the modified capital gains; and

(b) two-thirds of the amount left over of the modified discount capital gains.

23 Divisions 8 and 8A of Part III

Repeal the Divisions.

24 Section 121

Repeal the section, substitute:

121 Mutual insurance associations

(1) An association of persons formed for the purpose of insuring those persons against loss, damage or risk of any kind is taken, for the purposes of this Act, to be a company carrying on the business of insurance.

(2) The assessable income of such a company includes all life assurance premiums derived by it, whether from its members or not.

25 Subsection 160AAB(1)

Insert:

statutory percentage means:

(a) if the policy concerned was issued by a friendly society:

(i) if the year of income is earlier than the 2002-03 year of income—33%; or

(ii) if the year of income is the 2002-03 year of income or a later year of income—30%; or

(b) otherwise:

(i) if the year of income is earlier than the 2001-02 year of income—39%; or

(ii) if the year of income is the 2001-02 year of income—34%; or

(iii) if the year of income is the 2002-03 year of income or a later year of income—30%.

26 Subsections 160AAB(2) to (6)

Omit “39%” (wherever occurring), substitute “the statutory percentage”.

27 Subsection 267(1)

Insert:

allocated annuity means an immediate annuity that satisfies the requirements of subregulation 1.05(4) of the Superannuation Industry (Supervision) Regulations.

28 Subsection 267(1)

Insert:

allocated pension means a current pension that satisfies the requirements of subregulation 1.06(4) of the Superannuation Industry (Supervision) Regulations.

29 Subsection 267(1)

Insert:

current pension means a pension that has begun to be paid.

30 Subsection 267(1) (definition of *current pension liability*)

Repeal the definition.

31 Subsection 267(1)

Insert:

current pension liabilities of a complying superannuation fund has the meaning given by section 273E.

32 Subsection 267(1)

Insert:

exempt superannuation liabilities of a PST has the meaning given by section 273F.

33 Subsection 267(1)

Insert:

exempt units in a PST are units in the PST that:

(a) are held by the trustee of a complying superannuation fund and are segregated current pension assets of the fund; or

(b) are held by the trustee of a constitutionally protected superannuation fund; or

(c) are held by a life assurance company and are segregated exempt assets of the company within the meaning of the *Income Tax Assessment Act 1997*; or

(d) are held by another PST and are exempt units of the other PST.

34 Subsection 267(1)

Insert:

immediate annuity means an annuity that is presently payable.

35 Subsection 267(1) (definition of *life assurance company*)

Repeal the definition.

36 Subsection 267(1) (definition of *life assurance policy*)

Repeal the definition.

37 Subsection 267(1)

Insert:

notional undeducted cost of an asset means its undeducted cost (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997*) reduced by the amounts assumed under subsection 273H(5) of this Act to have been deducted for depreciation.

38 Subsection 267(1) (definition of *segregated current pension assets*)

Repeal the definition, substitute:

segregated current pension assets of a complying superannuation fund means the assets from time to time segregated by the trustee of the fund under Division 1A, whether included at the time of the initial segregation or at a later time.

39 Subsection 267(1)

Insert:

segregated exempt superannuation assets of a PST means the assets from time to time segregated by the trustee of the PST under Division 1A, whether included at the time of the initial segregation or at a later time.

40 Subsection 267(1) (definition of *segregated non-current pension assets*)

Repeal the definition.

41 Subsection 267(1) (definition of *superannuation liability*)

Repeal the definition.

42 Subsection 267(1)

Insert:

transfer value has the same meaning as in the *Income Tax Assessment Act 1997*.

43 Sections 273A and 273B

Repeal the sections, substitute:

Division 1A—Segregated current pension assets of complying superannuation funds and segregated exempt superannuation assets of PSTs or exempt superannuation liabilities

273A Segregation of assets of complying superannuation fund or PST for the purpose of discharging current pension liabilities or exempt superannuation liabilities

(1) The trustee of a complying superannuation fund or of a PST may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of the assets of the fund or PST for the sole purpose of discharging the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be, out of those assets.

(2) The assets segregated must, at the time of the segregation, be a representative sample of all the assets of the fund or PST that support its current pension liabilities or exempt superannuation liabilities, as the case may be, immediately before the segregation.

(3) The assets segregated must have, at the time of the segregation, a total transfer value that does not exceed the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be, at that time.

(4) The trustee of a complying superannuation fund or of a PST that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.

(5) The trustee of a complying superannuation fund that held segregated current pension assets immediately before 1 July 2000 in accordance with this section as in force at that time is taken to have duly segregated those assets in accordance with this section on 1 July 2000.

(6) If a segregation of assets is made in accordance with the above subsections, the trustee of the fund or PST must use the segregated assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be.

(7) In this Division:

(a) a reference to the transfer of an asset to, or from, the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST:

(i) is a reference to the inclusion of an asset among those assets, or the exclusion of an asset from those assets, as the case may be; and

(ii) includes a reference to the transfer of money to, or from, those assets, as the case may be; and

(b) if an asset transferred to or from those assets is money, a reference to the transfer value of the asset transferred is a reference to the amount of the money.

273B Annual valuations of segregated current pension assets of complying superannuation fund or segregated exempt superannuation assets of PST

(1) The trustee of a complying superannuation fund or of a PST that has segregated any of the assets of the fund or PST in accordance with section 273A must cause the transfer values of the segregated assets to be calculated as at the following times (***valuation times***):

(a) the end of the year of income in which the segregation occurred;

(b) the end of each later year of income.

(2) A calculation for a valuation time is to be made not later than 60 days after that time.

273C Consequences of annual valuation

(1) If the total transfer value of the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST at a valuation time exceeds the

current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be, at that time, the trustee of the fund or PST must, within 30 days after the day on which the valuations of the transfer values of those assets are made, transfer, from the segregated assets, assets of any kind having a total transfer value equal to the excess.

(2) If the total transfer value of the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST at a valuation time is less than the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be, at that time, the trustee of the fund or PST can transfer, to the segregated assets, assets of any kind that have a total transfer value not exceeding the difference.

(3) A transfer of assets under subsection (1) is taken to have been made in the year of income at the end of which the valuation time occurred.

(4) If a transfer of assets under subsection (2) is made within 30 days after the day on which the valuations of the transfer values of those assets are made, the transfer is taken to have been made in the year of income at the end of which the valuation time occurred.

273D Transfer of assets to segregated current pension assets or segregated exempt superannuation assets otherwise than as a result of annual valuation

(1) If the trustee of a complying superannuation fund or of a PST determines, at a time other than a valuation time, that the total transfer value of the segregated current pension assets of the fund or of the segregated exempt superannuation assets of the PST is less than the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be, the trustee can transfer, to the segregated assets, assets of any kind having a total transfer value not exceeding the difference.

(2) If a current pension begins to be paid to a member of a complying superannuation fund otherwise than because of the roll-over of an eligible termination payment, the trustee of the fund can transfer, to the segregated current pension assets of the fund, assets of any kind

having a total transfer value not exceeding the current pension liabilities of the fund attributable to the current pension.

(3) If:

(a) a unit in a PST that is held by a complying superannuation fund becomes an exempt unit because of subsection (2); or

(b) a unit in a PST that is held by a life assurance company becomes an exempt unit because of subsection 320-195(1) of the *Income Tax Assessment Act 1997*;

then the trustee of the PST can transfer, to the segregated exempt superannuation assets of the PST, assets of any kind having a total transfer value not exceeding the value of the unit.

(4) The trustee of a complying superannuation fund or of a PST can at any time transfer an asset of any kind to the segregated current pension assets of the fund or the segregated exempt superannuation assets of the PST, as the case may be, in exchange for an amount of money equal to the transfer value of the asset at the time of the transfer.

(5) When:

(a) a current pension begins to be paid out of a complying superannuation fund on or after 1 July 2000; or

(b) an eligible termination payment is paid to a complying superannuation fund for the purchase of a current pension;

the trustee of the fund must transfer, to the fund's segregated current pension assets, assets having a total transfer value equal to the amount required to pay the pension at the time when it began to be paid or the amount of the eligible termination payment, as the case may be.

(6) When an amount is paid to a PST in respect of exempt units, the trustee of the PST must transfer, to the PST's segregated exempt superannuation assets, assets having at the time of the payment a total transfer value equal to the amount paid.

(7) Except as provided by this section and subsection 273C(2), the trustee of a complying superannuation fund or of a PST cannot transfer an asset to the segregated current pension assets of the fund or the segregated exempt superannuation assets of the PST.

273E Current pension liabilities

(1) The current pension liabilities of a complying superannuation fund are to be worked out in accordance with subsection (2) in respect only of current pensions being paid by the fund where the liabilities for those pensions are to be discharged out of the fund's segregated current pension assets.

(2) The ***current pension liabilities*** of a complying superannuation fund in respect of current pensions at a particular time are the sum of the following amounts at that time:

(a) the withdrawal benefits (as defined in the Superannuation Industry (Supervision) Regulations) held by the fund at that time in respect of members who are being paid allocated pensions; and

(b) the present values at that time (as calculated by an actuary using best estimate assumptions as to future experience in the payment of current pensions other than allocated pensions) of the future payments to be made by the fund of current pensions (other than allocated pensions).

273F Exempt superannuation liabilities

(1) The exempt superannuation liabilities of a PST are to be worked out in accordance with subsection (2) in respect only of exempt units of the PST where the liabilities under the units are to be discharged out of the PST's exempt superannuation assets.

(2) The ***exempt superannuation liabilities*** of a PST in respect of exempt units at a particular time are the sum of the following amounts at that time:

(a) the values at that time of exempt units that are held for the sole purpose of providing allocated pensions or allocated annuities; and

(b) the present values at that time (as calculated by an actuary using best estimate assumptions as to future experience in the payment of current pensions and immediate annuities, other than allocated pensions and allocated annuities) of exempt units that are held for the sole purpose of providing for future payments of current pensions and immediate annuities (other than allocated pensions and allocated annuities); and

(c) the present values at that time (as calculated by an actuary using best estimate assumptions as to future experience) of exempt units (other than exempt units to which paragraph (a) or (b) applies).

273G Transfer of assets and payments of amounts from segregated current pension assets or from segregated exempt superannuation assets otherwise than as the result of an annual valuation

(1) The trustee of a complying superannuation fund or of a PST can at any time transfer an asset from the segregated current pension assets of the fund or the segregated exempt superannuation assets of the PST in exchange for an amount of money equal to the transfer value of the asset at the time of the transfer.

(2) If the trustee of a complying superannuation fund or of a PST:

(a) imposes any fees or charges in respect of segregated current pension assets of the fund or segregated exempt superannuation assets of the PST, as the case may be; or

(b) imposes any fees or charges in respect of:

(i) amounts paid to the fund for the purchase of current pensions where the liabilities for those pensions are to be discharged out of the fund's segregated current pension assets; or

(ii) amounts paid to the PST for the purchase of exempt units where the liabilities for those units are to be discharged out of the PST's segregated exempt superannuation assets; or

(c) determines, at a time other than a valuation time, that the total transfer value of the segregated current pension assets of the fund or of the segregated exempt superannuation assets of the PST exceeds the current pension liabilities of the fund or the exempt superannuation liabilities of the PST, as the case may be;

the trustee must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer, from the segregated assets, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

(3) When:

(a) any current pension liabilities of a complying superannuation fund or any exempt superannuation liabilities of a PST arise; or

(b) any expenses are incurred by a complying superannuation fund directly in respect of segregated current pension assets of the fund or by a PST directly in respect of segregated exempt superannuation assets of the PST, in relation to the period during which the assets were such segregated assets;

the trustee of the fund or PST must pay from the segregated assets the amounts required to discharge the liabilities or amounts equal to the expenses, as the case may be.

273H Consequences of transfer of assets to or from segregated current pension assets or segregated exempt superannuation assets

(1) This section applies if:

(a) an asset (other than money) is transferred from the segregated current pension assets of a complying superannuation fund or segregated exempt superannuation assets of a PST under subsection 273C(1) or 273G(1) or (2); or

(b) an asset (other than money) is transferred to the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST under subsection 273C(2) or 273D(1), (4), (5) or (6).

(2) In determining:

(a) except for the purposes of Division 42, and Parts 3-1 and 3-3, of the *Income Tax Assessment Act 1997*, whether an amount is included in, or can be deducted from, the assessable income of a complying superannuation fund or PST in respect of the transfer of the asset; or

(b) for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*:

(i) whether the fund or PST made a capital gain in respect of the transfer of the asset; or

(ii) whether the fund or PST made a capital loss in respect of the transfer of the asset;

the fund or PST is taken:

(c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its market value; and

(d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.

(3) If, apart from this subsection and subsections 281B(1) and 296B(1), a complying superannuation fund or a PST could deduct an amount or apply a capital loss as a result of the transfer of an asset to its segregated current pension assets or segregated exempt superannuation assets, as the case may be, the deduction or capital loss is disregarded until:

(a) the asset ceases to exist; or

(b) the asset, or a greater than 50% interest in it, is acquired by an entity (within the meaning of Part X) other than an entity that is an associate (within the meaning of that Part) of the trustee of the fund or PST, immediately after the acquisition.

(4) A complying superannuation fund or a PST cannot deduct an amount or apply a capital loss as a result of the transfer of an asset from its segregated current pension assets or segregated exempt superannuation assets, as the case may be.

(5) If an asset that is a unit of plant (as defined in the *Income Tax Assessment Act 1997*) is transferred from the segregated current pension assets of a complying superannuation fund or from the segregated exempt superannuation assets of a PST, the trustee of the fund or PST must assume, for the purposes of Division 42 of that Act, that:

(a) the unit had, at all times during the period beginning when the asset was acquired or constructed by the fund or PST and ending immediately before the time of the transfer, been used by the fund or PST wholly for the purpose of producing assessable income; and

(b) the fund or PST had deducted amounts for depreciation in respect of the asset during that period by using a formula in subsection 42-160(3) or 42-165(2A) of that Act.

(6) If an asset that is a unit of plant is transferred to the segregated current pension assets of a complying superannuation fund or to the segregated exempt superannuation assets of a PST, then, in

determining for the purposes of Division 42 whether an amount is included in, or can be deducted from, the assessable income of the fund or PST as a result of the transfer, the fund or PST is taken:

(a) to have at the time immediately before the transfer, sold the asset for a consideration equal to its market value at that time; and

(b) to have, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.

(7) If an asset that is a unit of plant that has been included in the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST since the asset was acquired by the fund or PST or the initial segregation of those assets took place is transferred from those assets, then, the trustee of the fund or PST must assume for the purposes of Division 42 of the *Income Tax Assessment Act 1997* that:

(a) if the asset's market value at the time of the transfer is greater that its notional undeducted cost at that time, the fund or PST:

(i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its notional undeducted cost at that time; and

(ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its notional undeducted cost at that time; or

(b) if the asset's market value at the time of the transfer is equal to or less than its notional undeducted cost at that time, the fund or PST:

(i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its market value at that time; and

(ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.

(8) If an asset that is a unit of plant that was previously transferred to the segregated current pension assets of a complying superannuation fund or the segregated exempt superannuation assets of a PST, is transferred from those assets, then the trustee of

the fund or PST must assume for the purposes of Division 42 of the *Income Tax Assessment Act 1997* that:

(a) if the asset's market value at the time of its transfer from those assets is greater than its market value at the time when it was transferred to those assets, the fund or PST:

(i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at the time when it was transferred to those assets; and

(ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at the time when it was transferred to those assets; or

(b) if the asset's market value at the time of its transfer from those assets is equal to or less than its market value at the time when it was transferred to those assets, the fund or PST:

(i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at that time; and

(ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at that time.

273J Inclusion of part of an asset in the segregated assets of complying superannuation funds and PSTs

(1) This section applies to an asset (an ***approved asset***) of a complying superannuation fund or of a PST if the asset was acquired by the fund or PST before 1 July 2000 and:

(a) for a fund that is not a self managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) or for a PST—the market value of the asset at that date exceeds whichever is the lesser of:

(i) $50,000,000; or

(ii) whichever is the greater of 2% of the value of the fund or PST at that date or $5,000,000; or

(b) for a fund that is a self managed superannuation fund (within the meaning of that Act)—the market value of the asset at that date exceeds 50% of the value of the fund.

(2) If the trustee of the fund or of the PST wishes to include a part of an approved asset in the segregated current pension assets of the fund or the segregated exempt superannuation assets of the PST before 1 October 2000, the trustee must, before that date, certify in writing the part of the asset to be included in the segregated assets.

(3) If the life insurance company so certifies, the part of the asset stated in the certificate is to be treated as a separate asset of the company.

273K Certain transfers of assets to segregated current pension assets or segregated exempt superannuation assets to be disregarded

If:

(a) a complying superannuation fund or a PST had a liability before 1 July 2000 to a member of the fund or the holder of a unit in the PST, as the case may be, where the income of the fund or PST attributable to the liability was exempt from tax before that date; and

(b) the liability or a part of it becomes a liability that is to be discharged out of the fund's segregated current pension assets or the PST's segregated exempt superannuation assets;

then the transfer of any of the fund's assets to the segregated current pension assets or the transfer of any of the PST's assets to the segregated exempt superannuation assets is to be disregarded for any purposes of this Act or the *Income Tax Assessment Act 1997* to the extent to which the assets are transferred to meet the liability or that part of the liability, as the case may be.

44 Subsection 275(2)

Omit "subsection (3)", substitute "subsections (2A) and (3)".

45 After subsection 275(2)

Insert:

(2A) Subsection (2) does not apply unless the transferee has given to the transferor a certificate, signed by an auditor who is independent of the transferee, stating that the amount specified in the agreement is so specified in compliance with the requirements of this section.

46 Paragraphs 275(7)(b) and (c)

Repeal the paragraphs, substitute:

(b) must be made on or before the date of lodgment of the return of income of the transferor for the transferor's year of income.

47 At the end of section 275

Add:

(8) The transferor and the transferee may, by a written notice, signed by each of them and given to the Commissioner, tell the Commissioner that they have agreed to vary, in a way stated in the notice, the amount specified in the agreement.

(9) If the notice of variation is received by the Commissioner not later than the latest date by which the Commissioner can amend assessments of the transferor and the transferee for the year of income to which the agreement relates, this section has effect as if the amount as varied were the amount specified in the agreement.

48 At the end of section 279E

Add:

(3) A complying superannuation fund cannot deduct an amount (otherwise than under section 279) for fees or charges incurred in respect of:

(a) virtual PST life insurance policies (as defined in the *Income Tax Assessment Act 1997*); or

(b) exempt life insurance policies (as defined in that Act); or

(c) exempt units in a PST.

49 After section 281

Insert:

281A Assessable income of complying superannuation fund

(1) The assessable income of a complying superannuation fund of a year of income includes:

(a) subject to section 283, the transfer values of assets transferred in that year of income from the fund's segregated current pension assets under subsection 273C(1) or 273G(2); and

(b) if an asset (other than money) is transferred in that year of income to the fund's segregated current pension assets under subsection 273C(2) or 273D(1), (4) or (5)—the amount (if any) that is included in its assessable income because of section 273H.

(2) If an asset (other than money) that was transferred to the segregated current pension assets of a complying superannuation fund under subsection 273D(2) is disposed of by the fund, the assessable income of the fund of the year of income in which the disposal occurred includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 273H applied at the time of the transfer;

(b) the amount (if any) that would have been included in that assessable income because of section 273H if the asset was not a segregated current pension asset of the fund at the time of the disposal.

(3) If an asset (other than money) that was transferred to the segregated current pension assets of a complying superannuation fund under subsection 273D(2) is transferred in a year of income from those segregated current pension assets under subsection 273C(1) or 273G(1) or (2), the assessable income of the fund of that year of income includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 273H applied at the time of the transfer to the segregated current pension assets;

(b) the amount (if any) that would have been included in that assessable income because of section 273H if the asset had not been a segregated current pension asset of the fund at the time of the transfer from the segregated current pension assets.

281AA Deduction where asset transferred to segregated current pension assets and subsequently disposed of or transferred

(1) If an asset (other than money) that was transferred to the segregated current pension assets of a complying superannuation fund under subsection 273D(2) is disposed of by the fund, the fund can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 273H applied at the time of the transfer;

(b) the amount (if any) that could have been deducted because of section 273H if the asset was not a segregated current pension asset of the fund at the time of the disposal.

(2) If an asset (other than money) that was transferred to the segregated current pension assets of a complying superannuation fund under subsection 273D(2) is transferred from those segregated current pension assets under subsection 273C(1) or 273G(1) or (2), the fund can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 273H applied at the time of the transfer to the segregated current pension assets;

(b) the amount (if any) that could have been deducted because of section 273H if the asset had not been a segregated current pension asset of the fund at the time of the transfer from the segregated current pension assets.

281B Deduction for assets transferred to segregated current pension assets

(1) A complying superannuation fund can deduct the transfer values of assets transferred in the year of income to the fund's segregated current pension assets under subsection 273C(2) or 273D(1).

(2) If an asset (other than money) is transferred in the year of income to a complying superannuation fund's segregated current pension assets under subsection 273C(2) or 273D(1), (4) or (5), the fund can deduct the amount (if any) that it can deduct because of section 273H.

50 Section 283

Repeal the section, substitute:

283 Exemption of one-third of transfer values of certain assets transferred from segregated current pension assets

(1) If any assets are transferred from a complying superannuation fund's segregated current pension assets under a relevant provision of Division 1, the amount worked out using the following formula is exempt from income tax:

$$\frac{\text{Excess assets}}{3} \times \frac{\text{Pre-1 July 2000 current pension liabilities}}{\text{Total current pension liabilities}}$$

where:

excess assets means the sum of the transfer values of the assets transferred from the fund's segregated current pension assets under the relevant provision less the total amount transferred to the fund's segregated current pension assets under subsection 273C(2) or 273D(1).

pre-1 July 2000 current pension liabilities means the total of the fund's current pension liabilities immediately before 1 July 2000 that were also current pension liabilities of the fund at the transfer time.

total current pension liabilities means the total of the fund's current pension liabilities at the transfer time.

transfer time means the time when the assets were transferred under the relevant provision.

(2) Each of the following is a ***relevant provision of Division 1*** for the purposes of subsection (1):

(a) subsection 273C(1);

(b) subsection 273G(2) as it applies because of paragraph (a) of that subsection;

(c) subsection 273G(2) as it applies because of paragraph (b) of that subsection;

(d) subsection 273G(2) as it applies because of paragraph (c) of that subsection.

(3) This section does not apply to assets transferred from a complying superannuation fund's segregated current pension assets after 30 June 2005.

51 After section 296

Insert:

296A Assessable income of PST

(1) The assessable income of a PST of a year of income includes:

(a) subject to section 297BA, the transfer values of assets transferred in that year of income from the PST's segregated exempt superannuation assets under subsection 273C(1) or 273G(2); and

(b) if an asset (other than money) is transferred in that year of income to the PST's segregated exempt superannuation assets under subsection 273C(2) or 273D(1), (4) or (6)—the amount (if any) that is included in its assessable income because of section 273H.

(2) If an asset (other than money) that was transferred to the segregated exempt superannuation assets of a PST under subsection 273D(3) is disposed of by the PST, the assessable income of the PST of the year of income in which the disposal occurred includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 273H applied at the time of the transfer;

(b) the amount (if any) that would have been included in that assessable income because of section 273H if the asset was not a segregated exempt superannuation asset of the PST at the time of the disposal.

(3) If an asset (other than money) that was transferred to the segregated exempt superannuation assets of a PST under subsection 273D(3) is transferred in a year of income from those segregated exempt superannuation assets under subsection 273C(1) or 273G(1) or (2), the assessable income of the PST of that year of income includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 273H applied at the time of the transfer to the segregated exempt superannuation assets;

(b) the amount (if any) that would have been included in that assessable income because of section 273H if the asset had not been a segregated exempt superannuation asset of the PST at the time of the transfer from the segregated exempt superannuation assets.

296AA Deduction where asset transferred to segregated exempt superannuation assets and subsequently disposed of or transferred

(1) If an asset (other than money) that was transferred to the segregated exempt superannuation assets of a PST under subsection 273D(3) is disposed of by the PST, the PST can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 273H applied at the time of the transfer;

(b) the amount (if any) that could have been deducted because of section 273H if the asset was not a segregated exempt superannuation asset of the PST at the time of the disposal.

(2) If an asset (other than money) that was transferred to the segregated exempt superannuation assets of a PST under subsection 273D(3) is transferred from those segregated exempt superannuation assets under subsection 273C(1) or 273G(1) or (2), the PST can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 273H applied at the time of the transfer to the segregated exempt superannuation assets;

(b) the amount (if any) that could have been deducted because of section 273H if the asset had not been a segregated exempt superannuation asset of the PST at the time of the transfer from the segregated exempt superannuation assets.

296B Deduction for assets transferred to segregated exempt superannuation assets

(1) A PST can deduct the transfer values of assets transferred in the year of income to the PST's segregated exempt superannuation assets under subsection 273C(2) or 273D(1).

(2) If an asset (other than money) is transferred in the year of income to a PST's segregated exempt superannuation assets under subsection 273C(2) or 273D(1), (4) or (6), the PST can deduct the amount (if any) that it can deduct because of section 273H.

52 Section 297B

Repeal the section, substitute:

297B Exemption of normal assessable income derived from segregated exempt superannuation assets

Any amount of normal assessable income derived by a PST from assets that, when the income is derived, are segregated exempt superannuation assets is exempt from tax.

297BA Exemption of one-third of transfer values of certain assets transferred from segregated exempt superannuation assets

(1) If any assets are transferred from a PST's segregated exempt superannuation assets under a relevant provision of Division 1, the amount worked out using the following formula is exempt from income tax:

$$\frac{\text{Excess assets}}{3} \times \frac{\text{Pre-1 July 2000 exempt superannuation liabilities}}{\text{Total exempt superannuation liabilities}}$$

where:

excess assets means the sum of the transfer values of the assets transferred from the PST's segregated exempt superannuation assets under the relevant provision less the total amount transferred to the PST's segregated exempt superannuation assets under subsection 273C(2) or 273D(1).

pre-1 July 2000 exempt superannuation liabilities means the total of the PST's exempt superannuation liabilities immediately before 1 July 2000 that were also exempt superannuation liabilities of the PST at the transfer time.

total exempt superannuation liabilities means the total of the PST's exempt superannuation liabilities at the transfer time.

transfer time means the time when the assets were transferred under the relevant provision.

(2) Each of the following is a ***relevant provision of Division 1*** for the purposes of subsection (1):

(a) subsection 273C(1);

(b) subsection 273G(2) as it applies because of paragraph (a) of that subsection;

(c) subsection 273G(2) as it applies because of paragraph (b) of that subsection;

(d) subsection 273G(2) as it applies because of paragraph (c) of that subsection.

(3) This section does not apply to assets transferred from a PST's segregated exempt superannuation assets after 30 June 2005.

53 Section 299A

Omit "or a registered organisation".

54 Section 299A (notes)

Repeal the notes, substitute:

Note: RSA providers that are life assurance companies are covered by Division 320 of the *Income Tax Assessment Act 1997*.

55 Section 317 (definition of *life assurance company*)

Repeal the definition.

56 Section 317 (definition of *life assurance policy*)

Repeal the definition.

57 Section 317 (definition of *life assurance premiums*)

Repeal the definition.

58 Subsection 446(2) (formula)

Repeal the formula, substitute:

$$\text{Adjusted passive income} \times \frac{\text{Total assets} - \text{Untainted policy liabilities}}{\text{Total assets}}$$

59 Subsection 446(2) (definition of *untainted average calculated liabilities*)

Repeal the definition.

60 Subsection 446(2)

Insert:

untainted policy liabilities means so much of the company's policy liabilities, as defined in the Valuation Standard (within the meaning of the *Income Tax Assessment Act 1997*), as calculated by a Fellow or Accredited Member of the Institute of Actuaries of Australia, for the statutory accounting period as is referable to life assurance policies that do not give rise to tainted services income of the company of any statutory accounting period.

61 Subsection 446(3)

Repeal the subsection.

62 Application of amendments made by this Part

(1) The amendments made by items 4, 5, 25 and 26 apply to amounts received (within the meaning of section 26AH of the *Income Tax Assessment Act 1936*) on or after 1 July 2000.

(2) The amendments made by items 6 and 7 apply to losses arising on or after 1 July 2000.

(3) The amendments made by items 8 to 22 apply to assessments for the year of income in which 21 September 1999 occurs and later years of income.

(4) The amendments made by items 23, 24, 27 to 43 and 49 to 53 apply to income derived on or after 1 July 2000.

(5) The amendments made by items 44 to 47 apply to amounts transferred on or after 1 July 2000.

(6) The amendments made by items 58 to 61 apply in calculating passive income that is derived on or after 1 July 2000.

Part 2—Income Tax Assessment Act 1997

63 Section 10-5 (table item headed "life assurance companies")

Repeal the item, substitute:

life insurance companies	Subdivision 320-B

64 Section 11-15 (table item headed "life assurance")

Repeal the item, substitute:

life insurance companies	Subdivision 320-B

65 Section 12-5 (table item headed "life assurance companies")

Repeal the item, substitute

life insurance companies.......................................	Subdivision 320-C

66 Section 50-20

Omit "section 50-70", substitute "sections 50-70 and 50-72".

67 Section 50-20

Repeal the section.

68 Section 50-70

Omit "4.1,".

69 After section 50-70

Insert:

50-72 Special condition for item 4.1

The income of a *friendly society covered by item 4.1 that is derived from *life insurance business is not exempt from income tax under section 50-1.

70 Section 50-72

Repeal the section.

71 At the end of subsection 102-3(2)

Add:

; (d) life insurance companies, in relation to discount capital gains for CGT events in respect of CGT assets that are virtual CGT assets.

72 Section 102-30 (table items 11 and 12)

Repeal the items, substitute:

11	A life insurance company	Division 320 contains special rules that apply to capital gains and capital losses	Division 320

73 Section 109-60 (at the end of the table)

Add:

11	A CGT asset is transferred to or from a life insurance company's virtual PST	at the time of the transfer	Division 320
12	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	at the time of the transfer	Division 320
13	A CGT asset is transferred to or from the segregated current pension assets of a complying superannuation fund	at the time of the transfer	**section 273H**

14	A CGT asset is transferred to or from the segregated exempt superannuation assets of a PST	at the time of the transfer	**section 273H**

74 Subsection 110-25(1)

Omit "and (8)", substitute ", (8) and (9)".

75 At the end of section 110-25

Add:

(9) Also, for the purpose of working out the *capital gain of a *life insurance company from a *CGT event happening after 30 June 2000 in respect of a *CGT asset that is a *virtual PST asset, the cost base includes indexation only if the life insurance company chooses that the cost base includes indexation.

Note: Section 110-25 of the *Income Tax (Transitional Provisions) Act 1997* provides that, in working out the capital gain from a CGT event after 11.45 am on 21 September 1999 and before 1 July 2000 in respect of an asset of a life insurance company or registered organisation, the cost base includes indexation only if the company or organisation chooses it.

76 Section 112-97 (at the end of the table)

Add:

21	A CGT asset is transferred to or from a life insurance company's virtual PST	First element of cost base and reduced cost base	Division 320
22	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	First element of cost base and reduced cost base	Division 320

23	A CGT asset is transferred to or from the segregated current pension assets of a complying superannuation fund	First element of cost base and reduced cost base	**section 273H**
24	A CGT asset is transferred to or from the segregated exempt superannuation assets of a PST	First element of cost base and reduced cost base	**section 273H**

77 At the end of section 114-5

Add:

(3) Indexation is *not* relevant to the *capital gain of a *life insurance company from a *CGT event happening after 30 June 2000 in respect of a *CGT asset that is a *virtual PST asset unless the company has chosen that the *cost base include indexation for the purposes of section 110-25.

Note: Section 114-5 of the *Income Tax (Transitional Provisions) Act 1997* provides that indexation is not relevant to the capital gain of a life insurance company or registered organisation from a CGT event after 11.45 am on 21 September 1999 and before 1 July 2000 unless the company or organisation chooses it.

78 At the end of section 115-10

Add:

; or (d) a *life insurance company in relation to a *discount capital gain from a *CGT event in respect of a *CGT asset that is a *virtual CGT asset.

Note: Section 115-10 of the *Income Tax (Transitional Provisions) Act 1997* provides that a capital gain made by a life insurance company or registered organisation after 11.45 am on 21 September 1999 and before 1 July 2000 may be a discount capital gain in certain circumstances.

79 Section 115-100

Repeal the section, substitute:

115-100 What is the *discount percentage* for a discount capital gain

The ***discount percentage*** for an amount of a *discount capital gain is:

(a) 50% if the gain is made:
  (i) by an individual; or
  (ii) by a trust (other than a trust that is a *complying superannuation entity); or

(b) $33^1/_3$% if the gain is made:
  (i) by a complying superannuation entity; or
  (ii) by a *life insurance company from a *CGT asset that is a *virtual PST asset.

80 Subsection 118-300(1) (at the end of the table)

Add:

6	A *life insurance policy or an annuity instrument, where the *life insurance company's liabilities under the policy or instrument are to be discharged out of *virtual PST assets or *segregated exempt assets	the life insurance company

81 At the end of Subdivision 118-D

Add:

118-315 Segregated exempt assets of life insurance companies

A *capital gain or *capital loss that a *life insurance company makes from a *CGT event happening in relation to a *segregated exempt asset is disregarded.

118-320 Segregated current pension assets of a complying superannuation entity

A *capital gain or *capital loss that a *complying superannuation entity makes from a *CGT event happening in relation to a segregated current pension asset (as defined in Part IX of the *Income Tax Assessment Act 1936*) is disregarded.

82 At the end of Subdivision 118-E

Add:

118-355 Segregated exempt superannuation assets of pooled superannuation trust

A *capital gain or a *capital loss that a *pooled superannuation trust makes from a *CGT event happening in relation to a segregated exempt superannuation asset (as defined in Part IX of the *Income Tax Assessment Act 1936*) is disregarded.

83 Paragraphs 118-350(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) a *life insurance company and, just before the event happened, the unit must have been a *virtual PST asset or a *segregated exempt asset of the company.

84 Section 195-35 (link note)

Repeal the link note, substitute:

[The next Part is Part 3-35]

Part 3-35—Life insurance business

[The next Division is Division 320]

Division 320—Life insurance companies

Table of Subdivisions

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320-B	What is included in a life insurance company's assessable income
320-C	Deductions and capital losses
320-D	Classes of taxable income of life insurance companies
320-E	RSA component of complying superannuation class
320-F	Virtual PST component of complying superannuation class
320-G	Specified roll-over component of complying superannuation class
320-H	Segregation of assets to discharge exempt life insurance policy liabilities

Guide to Division 320

320-1 What this Division is about

This Division provides for the taxation of life insurance companies in a broadly comparable way to other entities that derive similar kinds of income.

Because of the nature of the business of life insurance companies, the Division contains special rules for working out their taxable income.

Those rules:

- include certain amounts in assessable income;
- identify certain amounts of exempt income;
- identify specific deductions.

The taxable income of life insurance companies is divided into 2 classes:

- the complying superannuation class, which contains taxable income that relates to complying superannuation business and is taxed at the rate of tax that applies to complying superannuation funds

- the ordinary class, which contains the rest of the taxable income and is taxed at the company tax rate.

The Division also contains rules for segregating the assets of life insurance companies into:

- assets that relate to complying superannuation business;

- assets that relate to immediate annuity and other exempt business.

[This is the end of the Guide]

Operative provisions

Subdivision 320-A—Preliminary

320-5 Object of Division

(1) The object of this Division is to provide for the taxation of *life insurance companies in a broadly comparable way to other entities that derive similar kinds of income.

(2) To achieve this object, the Division:

(a) identifies certain amounts that are included in the assessable income, or are exempt income, of a *life insurance company; and

(b) identifies certain amounts that a life insurance company can deduct; and

(c) identifies the part of the taxable income of a life insurance company that relates to complying superannuation business and allocates that income to the *complying superannuation class of the company's taxable income; and

(d) allocates the rest of the taxable income to the *ordinary class of the company's taxable income; and

(e) contains other provisions necessary to enable the taxable income of a life insurance company to be worked out.

Note: Section 320-5 of the Income Tax (Transitional Provisions) Act 1997 provides that the tax consequences of certain transfers of assets of a life insurance company that is a friendly society to a complying superannuation fund are to be disregarded.

Subdivision 320-B—What is included in a life insurance company's assessable income

Guide to Subdivision 320-B

320-10 What this Subdivision is about

This Subdivision provides for certain amounts to be included in a life insurance company's assessable income and for certain other amounts to be exempt income.

Table of sections

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320-15	Assessable income—various amounts
320-20	Assessable income—asset transferred from virtual PST assets to segregated exempt assets and subsequently disposed of
320-25	Assessable income—asset transferred from virtual PST assets to segregated exempt assets and subsequently transferred
320-30	Assessable income—special provision for certain income years
320-35	Exempt income
320-40	Exemption of one-third of certain management fees received under contracts made before 1 July 2000
320-45	Tax treatment of gains or losses from CGT events in relation to virtual PST assets

[This is the end of the Guide]

Operative provisions

320-15 Assessable income—various amounts

A *life insurance company's assessable income includes:

(a) the total amount of the *life insurance premiums paid to the company in the income year; and

(b) amounts received or recovered under *contracts of reinsurance to the extent to which they relate to the *risk components of claims paid under *life insurance policies; and

(c) any amount received or recovered that is a refund, or in the nature of a refund, of the life insurance premium paid under a *contract of reinsurance; and

(d) any amount received under a profit-sharing arrangement contained in, or entered into in relation to, a contract of reinsurance; and

(e) if an asset (other than money) is transferred from or to a *virtual PST under subsection 320-180(1) or (2), to a virtual PST under section 320-185 or from a virtual PST under subsection 320-195(2) or (3)—the amount (if any) that is included in the company's assessable income of the income year in which the asset was transferred because of section 320-200; and

(f) the *transfer values of assets transferred from the company's *segregated exempt assets under subsection 320-235(1) or 320-250(2); and

(g) if an asset (other than money) is transferred to the company's segregated exempt assets under subsection 320-235(2) or section 320-240—the amount (if any) that is included in the company's assessable income because of section 320-255; and

(h) if the *value, at the end of the income year, of the company's liabilities under the *net risk components of life insurance policies is less than the value, at the end of the previous income year, of those liabilities—an amount equal to the difference; and

Note: Where the value at the end of the income year exceeds the value at the end of the previous income year, the excess can be deducted: see section 320-85.

(i) amounts included in the company's assessable income under section 275 of the *Income Tax Assessment Act 1936*; and

(j) *specified roll-over amounts paid to the company; and

(k) fees and charges (not otherwise included in the company's assessable income) imposed by the company in respect of life insurance policies; and

(l) if the company is an *RSA provider—*taxable contributions made to *RSAs provided by the company.

320-20 Assessable income—asset transferred from virtual PST assets to segregated exempt assets and subsequently disposed of

If an asset (other than money) that was transferred from a *life insurance company's *virtual PST to its *segregated exempt assets under subsection 320-195(1) is disposed of by the company, the assessable income of the company of the income year in which the disposal occurred includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 320-255 applied at the time of the transfer;

(b) the amount (if any) that would have been included in that assessable income if the asset was an asset of the virtual PST at the time of the disposal.

320-25 Assessable income—asset transferred from virtual PST assets to segregated exempt assets and subsequently transferred

If an asset (other than money) that was transferred from a *life insurance company's *virtual PST to its *segregated exempt assets under subsection 320-195(1) is transferred from those segregated exempt assets under subsection 320-235(1) or section 320-250, the assessable income of the company of the income year in which the transfer of the asset from those segregated exempt assets occurred includes the lesser of the following amounts or, if they are equal, includes one of them:

(a) the amount (if any) that would have been included in that assessable income if section 320-255 applied at the time of the transfer to the segregated exempt assets;

(b) the amount (if any) that would have been included in that assessable income because of section 320-255 if the asset had been an asset of the virtual PST at the time of the transfer from the segregated exempt assets.

320-30 Assessable income—special provision for certain income years

(1) This section applies to a *life insurance company for each of the following income years (each a ***relevant income year***):

(a) the income year in which 1 July 2000 occurs;

(b) the 4 following income years.

(2) If:

(a) the *value of the company's liabilities at the end of 30 June 2000 under its *continuous disability policies (being the value used by the company for the purposes of its return of income);

exceeds

(b) the value of the company's liabilities at the end of 30 June 2000 under the *net risk components of its continuous disability policies as calculated under subsection 320-85(4);

the company's assessable income for each relevant income year includes an amount equal to one-fifth of the excess.

(3) However, if a *life insurance company ceases in a relevant income year to carry on *life insurance business or to have any liabilities under the *net risk components of *continuous disability policies, subsection (2) does not apply for that income year or any future income years but the company's assessable income for that income year includes so much of the excess referred to in subsection (2) as has not been included in the company's assessable income for any previous relevant income years.

320-35 Exempt income

(1) The following amounts received by a *life insurance company are exempt from income tax:

(a) amounts of *ordinary income and *statutory income accrued before 1 July 1988 that were derived from assets that have become *virtual PST assets;

(b) amounts of ordinary income and statutory income derived from *segregated exempt assets, being income that relates to the period during which the assets were segregated exempt assets;

(c) amounts received from the *disposal of units in a *pooled superannuation trust;

(d) if an *Australian/overseas fund or an *overseas fund established by the company derived *foreign establishment amounts—the non-resident proportion of the foreign establishment amounts;

(e) if the company is an *RSA provider—any amounts that, except for the operation of subsections 320-155(3) and (4), would have been taken into account under subsection 320-155(1) in calculating the *RSA component of the *complying superannuation class of the company's taxable income;

(f) if the company is a *friendly society:

(i) amounts received before 1 July 2001 that are exempt from income tax under section 50-1; and

(ii) amounts received on or after that date that are attributable to *income bonds, *funeral policies or *scholarship plans issued before 1 December 1999.

(2) For the purposes of paragraph (1)(d), the ***non-resident proportion*** of the *foreign establishment amounts is the amount worked out using the formula:

$$\text{Foreign establishment amounts} \times \frac{\text{Non-resident foreign establishment policy liabilities}}{\text{All foreign establishment policy liabilities}}$$

where:

all foreign establishment policy liabilities means the total of the policy liabilities (as defined in the *Valuation Standard), calculated by an *actuary, for all *life insurance policies included in the class of *life insurance business to which the company's *Australian/overseas fund or *overseas fund relates that were issued by the permanent establishment of the company in the foreign country.

non-resident foreign establishment policy liabilities means the total of the company's policy liabilities (as defined in the Valuation Standard), calculated by an actuary, for *non-resident life insurance policies.

320-40 Exemption of one-third of certain management fees received under contracts made before 1 July 2000

(1) One-third of a *life insurance company's *specified management fees for the income year in respect of *life insurance policies constituted by contracts made with the company before 1 July 2000 are exempt from income tax.

(2) This section does not apply to amounts that become *specified management fees after 30 June 2005.

(3) There are no *specified management fees in respect of *life insurance policies that, at 30 June 2000, were:

(a) policies under which amounts are to be paid only on the death or disability of a person; or

(b) policies to which both of the following apply:

(i) the policies provide for *participating benefits or *discretionary benefits;

(ii) the policies do not become policies under which the company's liabilities are to be discharged out of its *virtual PST assets or its *segregated exempt assets.

(4) The ***specified management fees*** for the income year in respect of *life insurance policies to which subsection (3) does not apply are so much of the sum of the amounts applicable in respect of the policies under subsections (5), (6) and (7) (the ***applicable amounts***) as does not exceed any fees or charges made by the *life insurance company that the company was entitled to make under the terms of the policies as applying immediately before 1 July 2000.

(5) The ***applicable amount*** for *virtual PST life insurance policies where the company's liabilities under the policies are to be discharged out of its *virtual PST assets is:

(a) the sum of the amounts transferred from the *virtual PST in the income year under subsection 320-180(1) or 320-195(3);

less:

(b) so much of the sum of:

(i) any amounts transferred to the virtual PST in the income year under subsection 320-180(2) or 320-185(1); and

(ii) any of the amounts referred to in paragraph (a) that related to the company's liability to pay amounts on the death or disability of a person;

as does not exceed the amount referred to in paragraph (a).

(6) The ***applicable amount*** for *exempt life insurance policies where the company's liabilities under the policies are to be discharged out of its *segregated exempt assets is:

(a) the total amount transferred from the segregated exempt assets in the income year under subsection 320-235(1) or 320-250(2);

less:

(b) so much of the total amount transferred to the segregated exempt assets in the income year under subsection 320-235(2) or 320-240(1) as does not exceed the amount referred to in paragraph (a).

(7) The ***applicable amount*** for other policies is:

(a) the sum of the *life insurance premiums received in respect of the policies in the income year;

less:

(b) so much of the total of:

(i) the amounts that the company can deduct under section 320-75; and

(ii) the *risk components of claims paid under those policies in the income year;

as does not exceed the amount referred to in paragraph (a).

320-45 Tax treatment of gains or losses from CGT events in relation to virtual PST assets

If a *CGT event happens in respect of a *CGT asset that is a *virtual PST asset of a *life insurance company, Division 10 of Part IX of the *Income Tax Assessment Act 1936* applies for the purpose of working out the amount of any *capital gain or *capital loss that arises from the event.

Subdivision 320-C—Deductions and capital losses

Guide to Subdivision 320-C

320-50 What this Subdivision is about

This Subdivision specifies particular deductions that are available to a life insurance company, specifies particular amounts that a life insurance company cannot deduct and contains provisions relating to a life insurance company's capital losses.

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320-65	Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits
320-70	No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability
320-75	Deduction in respect of other life insurance policies
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320-85	Deduction for increase in value of liabilities under net risk components of life insurance policies
320-90	Deduction where asset transferred from virtual PST assets to segregated exempt assets and subsequently disposed of
320-95	Deduction where asset transferred from virtual PST assets to segregated exempt assets and subsequently transferred
320-100	Deduction for life insurance premiums paid under contracts of reinsurance
320-105	Deduction for assets transferred to segregated exempt assets
320-110	Deduction for interest credited to income bonds
320-115	No deduction for amounts credited to RSAs
320-120	Capital losses from assets other than virtual PST assets or segregated exempt assets
320-125	Capital losses from virtual PST assets

[This is the end of the Guide]

Operative provisions

320-55 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from virtual PST assets

(1) This section applies to a *life insurance company in respect of *life insurance policies where the company's liabilities under the policies are to be discharged out of *virtual PST assets.

(2) The company can deduct:

(a) the amounts of the *life insurance premiums received in respect of the policies that are transferred to its *virtual PST assets in the income year;

less:

(b) so much of those amounts as relate to the company's liability to pay amounts on the death or disability of a person.

(3) The amount of a *life insurance premium that relates to the company's liability mentioned in paragraph (2)(b) is:

(a) if the *life insurance policy states that the whole or a specified part of the premium is payable in respect of such a liability—the whole or that part of the premium, as the case may be; or

(b) if paragraph (a) does not apply:

(i) where the policy provides for *participating benefits or *discretionary benefits—nil; or

(ii) where the policy is an *endowment policy and does not provide for participating benefits or discretionary benefits—10% of the premium; or

(iii) where the policy is a *whole of life policy and does not provide for participating benefits or discretionary benefits—30% of the premium; or

(iv) otherwise—so much of the premium as an *actuary determines to be attributable to the liability.

320-60 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets

A *life insurance company can deduct the amounts of *life insurance premiums transferred in the income year to its *segregated exempt assets under subsection 320-240(3).

320-65 Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits

A *life insurance company can deduct the amounts of *net premiums received in respect of *life insurance policies (other than *virtual PST life insurance policies or *exempt life insurance policies) that provide for *participating benefits or *discretionary benefits.

320-70 No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability

(1) A *life insurance company cannot deduct any part of the amounts of *life insurance premiums received in respect of *life insurance policies under which amounts are to be paid only on the death or disability of a person.

(2) This section does not apply to *life insurance policies that provide for *participating benefits or *discretionary benefits.

320-75 Deduction in respect of other life insurance policies

(1) This section applies to a *life insurance company in respect of *life insurance policies to which sections 320-55, 320-60, 320-65 and 320-70 do not apply.

(2) In respect of policies issued on or after 1 July 2001, the company can deduct, in respect of *life insurance premiums received in the income year, the lesser of the following amounts:

(a) the amounts specified in the policies to be the capital components of those premiums, less any adjustments to be made because of *contracts of reinsurance;

(b) the sum of the *net premiums less so much of the net premiums as an *actuary determines to be attributable to fees and charges.

(3) In respect of policies issued before 1 July 2001, the company can deduct, in respect of *life insurance premiums received in the income year, the sum of the *net premiums less so much of the net premiums as an *actuary determines to be attributable to fees and charges.

(4) In making a determination referred to in paragraph (2)(b) or subsection (3), an *actuary is to have regard to the changes over the income year in the sum of the *net current termination values of the policies and the movements in those values during the income year.

320-80 Deduction for certain claims paid under life insurance policies

(1) A *life insurance company can deduct the amounts paid in respect of the *risk components of claims paid under *life insurance policies during the income year.

(2) The ***risk component*** of a claim paid under a *life insurance policy is:

(a) if:

(i) the policy does not provide for *participating benefits or *discretionary benefits; and

(ii) the policy is not an *exempt life insurance policy; and

(iii) an amount is payable under the policy only on the death or disability of the insured person;

the amount paid under the policy as a result of the occurrence of that event; or

(b) if the policy provides for participating benefits or discretionary benefits or is an exempt life insurance policy—nil; or

(c) otherwise—the amount paid under the policy as a result of the death or disability of the insured person *less* the *current termination value of the policy (calculated by an *actuary) immediately before the death, or the occurrence of the disability, of the person.

(3) Except as provided by subsection (1), a *life insurance company cannot deduct amounts paid in respect of claims under *life insurance policies.

320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies

(1) A *life insurance company can deduct the amount (if any) by which the *value, at the end of the income year, of its liabilities under the *net risk components of *life insurance policies exceeds the value, at the end of the previous income year, of those liabilities.

Note 1: Where the value at the end of the income year is less than the value at the end of the previous income year, the difference is included in assessable income: see paragraph 320-15(h).

Note 2: Section 320-85 of the *Income Tax (Transitional Provisions) Act 1997* makes special provision in respect of the calculation of the value of a life insurance company's liabilities under the net risk components of life insurance policies at the end of the income year immediately preceding the income year in which 1 July 2000 occurs.

(2) A *life insurance company can deduct an amount under this section in respect of a *life insurance policy only if the company can deduct under section 320-80 an amount for the *risk components of claims paid under the policy.

(3) If a *life insurance policy is a *disability policy (other than a *continuous disability policy), the ***value*** at a particular time of the liabilities of the *life insurance company under the *net risk component of the policy is the *current termination value of the component at that time (calculated by an *actuary).

(4) In the case of *life insurance policies other than policies to which subsection (3) applies, the ***value*** at a particular time of the liabilities of the *life insurance company under the *net risk components of the policies is the amount calculated by an *actuary to be:

(a) the sum of the policy liabilities (as defined in the *Valuation Standard) in respect of the net risk components of the policies at that time;

less

(b) the sum of any cumulative losses (as defined in the Valuation Standard) for the net risk components of the policies at that time.

320-90 Deduction where asset transferred from virtual PST assets to segregated exempt assets and subsequently disposed of

If an asset (other than money) that was transferred from a *life insurance company's *virtual PST to its *segregated exempt assets under subsection 320-195(1) is disposed of by the company, the company can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 320-255 applied at the time of the transfer;

(b) the amount (if any) that could have been deducted if the asset was an asset of the virtual PST at the time of the disposal.

320-95 Deduction where asset transferred from virtual PST assets to segregated exempt assets and subsequently transferred

If an asset (other than money) that was transferred from a *life insurance company's *virtual PST to its *segregated exempt assets under subsection 320-195(1) is transferred from the segregated exempt assets under subsection 320-235(1) or section 320-250, the company can deduct the lesser of the following amounts or, if they are equal, can deduct one of them:

(a) the amount (if any) that could have been deducted if section 320-255 applied at the time of the transfer to the segregated exempt assets;

(b) the amount (if any) that could have been deducted because of section 320-255 if the asset had been an asset of the virtual PST at the time of the transfer from the segregated exempt assets.

320-100 Deduction for life insurance premiums paid under contracts of reinsurance

A *life insurance company can deduct amounts paid in the income year as *life insurance premiums under *contracts of reinsurance.

320-105 Deduction for assets transferred to segregated exempt assets

(1) A *life insurance company can deduct the *transfer values of assets transferred in the income year to the company's *segregated exempt assets under subsection 320-235(2) or 320-240(1).

(2) If an asset (other than money) is transferred to a *life insurance company's *segregated exempt assets under subsection 320-235(2) or section 320-240, the company can deduct the amount (if any) that it can deduct because of section 320-255.

320-110 Deduction for interest credited to income bonds

A *life insurance company that is a *friendly society can deduct interest credited in the income year to the holders of *income bonds issued after 30 November 1999 where the interest accrued on or after 1 July 2001.

320-115 No deduction for amounts credited to RSAs

A *life insurance company that is an *RSA provider cannot deduct amounts credited to *RSAs.

320-120 Capital losses from assets other than virtual PST assets or segregated exempt assets

(1) This section applies to assets (***ordinary assets***) of a *life insurance company other than:
- (a) *virtual PST assets; or
- (b) *segregated exempt assets.

(2) In working out a *life insurance company's *net capital gain or *net capital loss for the income year, *capital losses from ordinary assets can be used only to reduce *capital gains from ordinary assets.

(3) If some or all of a *capital loss from an ordinary asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in which the company's *capital gains from ordinary assets exceed the company's capital losses (if any) from ordinary assets.

(4) If the company has 2 or more unapplied *net capital losses from ordinary assets, the company must apply them in the order in which they were made.

320-125 Capital losses from virtual PST assets

(1) In working out a *life insurance company's *net capital gain or *net capital loss for the income year, *capital losses from *virtual PST assets can be used only to reduce *capital gains from virtual PST assets.

(2) If some or all of a *capital loss from a *virtual PST asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in which the company's *capital gains from *virtual PST assets exceed the company's capital losses (if any) from virtual PST assets.

(3) If the company has 2 or more unapplied *net capital losses from *virtual PST assets, the company must apply them in the order in which they were made.

Subdivision 320-D—Classes of taxable income of life insurance companies

Guide to Subdivision 320-D

320-130 What this Subdivision is about

This Subdivision provides for a life insurance company's taxable income to be divided into an ordinary class and a complying superannuation class and explains what is included in each class.

Table of sections

Operative provisions

320-135 Classes of taxable income
320-140 Ordinary class of taxable income
320-145 Complying superannuation class of taxable income

[This is the end of the Guide]

Operative provisions

320-135 Classes of taxable income

The taxable income of a *life insurance company for an income year is divided into 2 classes:

(a) the *ordinary class; and

(b) the *complying superannuation class.

320-140 Ordinary class of taxable income

The ***ordinary class*** is the total taxable income *less* the *complying superannuation class.

320-145 Complying superannuation class of taxable income

The ***complying superannuation class*** is the part of the taxable income that consists of:

(a) if the company is an *RSA provider—the *RSA component; and

(b) if the company has established a *virtual PST—the *virtual PST component; and

(c) in any case—the *specified roll-over component.

Subdivision 320-E—RSA component of complying superannuation class

Guide to Subdivision 320-E

320-150 What this Subdivision is about

> This Subdivision explains how the RSA component of the complying superannuation class of a life insurance company's taxable income is worked out.

Table of sections

Operative provisions

320-155 What is the RSA component

320-160 Taxable income and RSA component in certain cases

[This is the end of the Guide.]

Operative provisions

320-155 What is the RSA component

(1) The ***RSA component*** of the *complying superannuation class of the taxable income for an income year of a *life insurance company that is an *RSA provider is the sum of all amounts (other than contributions that are not *taxable contributions) credited during the income year to *RSAs provided by the company, reduced by any amounts debited from the RSAs other than benefits paid to, or in respect of, the holders of the RSAs.

(2) In calculating the *RSA component, any amount of tax paid in respect of an *RSA is taken not to have been an amount paid from the RSA.

(3) If an *annuity was being paid from an *RSA in respect of the whole of the income year, or the whole of the part of the income year in which the RSA existed, amounts credited to the RSA during the income year are, in calculating the sum referred to in subsection (1), taken not to have been credited.

(4) If an *annuity was being paid from an *RSA in respect of a part, but not the whole, of the portion of the income year in which the RSA existed, amounts worked out using the following formula are, in calculating the sum referred to in subsection (1), taken not to have been credited:

$$\text{Amount credited to RSA} \times \frac{\text{Number of days in the part of the income year in which the annuity was paid}}{\text{Number of days in the income year in which the RSA existed}}$$

320-160 Taxable income and RSA component in certain cases

(1) This section applies if:

(a) a *life insurance company that is an *RSA provider has no taxable income; or

(b) the taxable income of a life insurance company that is an RSA provider does not include any *complying superannuation class; or

(c) the complying superannuation class of the taxable income of a life insurance company that is an RSA provider is less than the *RSA component.

(2) If, apart from this subsection, a *life insurance company that is an *RSA provider has no taxable income or its taxable income is less than the *RSA component:

(a) the company is taken to have both a taxable income and a *tax loss for the income year; and

(b) the taxable income is taken to be equal to the RSA component; and

(c) the tax loss is taken to be the amount that would have been the company's tax loss if the RSA component had not been income derived by the company; and

(d) the *complying superannuation class of the taxable income is taken to be equal to the RSA component; and

(e) the *ordinary class of the company's taxable income is taken to be nil.

(3) If, apart from this subsection, the taxable income of a *life insurance company that is an *RSA provider is equal to or greater than the *RSA component:

(a) the *complying superannuation class of the taxable income is taken to be equal to the RSA component; and

(b) an amount equal to the difference between the RSA component and the amount that would, apart from this subsection, have been the complying superannuation class of the taxable income is to be applied in reducing the *ordinary class of taxable income.

Subdivision 320-F—Virtual PST component of complying superannuation class

Guide to Subdivision 320-F

320-165 What this Subdivision is about

This Subdivision explains:

- how a life insurance company can segregate assets (to be known as a ***virtual PST***) to be used for the sole purpose of discharging its complying superannuation liabilities
- how the virtual PST component of the complying superannuation class of taxable income is worked out.

Table of sections

Operative provisions

320-170 Establishment of virtual PST
320-175 Annual valuations of virtual PST assets
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320-195 Transfer of assets and payment of amounts from a virtual PST otherwise than as a result of an annual valuation
320-200 Consequences of transfer of assets to or from virtual PST
320-205 What is the virtual PST component

[This is the end of the Guide.]

Operative provisions

320-170 Establishment of virtual PST

(1) A *life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its *virtual PST liabilities out of those assets.

Note: Section 320-170 of the *Income Tax (Transitional Provisions) Act 1997* provides that a life insurance company may transfer a part of an asset to a virtual PST before 1 October 2000.

(2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its *virtual PST liabilities immediately before the segregation.

(3) The assets segregated must have, at the time of the segregation, a total *transfer value that does not exceed the sum of:

(a) the company's *virtual PST liabilities at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for tax on unrealised gains in respect of the assets segregated; and

(c) the total amount of any unpaid *PAYG instalments relating to the *virtual PST component of the *complying superannuation class of the company's taxable income for the income year.

(4) A *life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.

(5) If a segregation of assets is made in accordance with the above subsections, the company must use the segregated assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging its *virtual PST liabilities.

(6) The assets from time to time segregated are together to be known as a ***virtual pooled superannuation trust*** or a ***virtual PST*** and each asset from time to time included among the segregated assets is to be known as a ***virtual PST asset***.

(7) In this Subdivision:

(a) a reference to the transfer of an asset to, or from, the *virtual PST:

(i) is a reference to the inclusion of the asset among the segregated assets, or the exclusion of an asset from the segregated assets, as the case may be; and

(ii) includes a reference to the transfer of money to, or from, the virtual PST, as the case may be; and

(b) if an asset transferred to or from the virtual PST is money, a reference to the *transfer value of the asset transferred is a reference to the amount of the money.

320-175 Annual valuations of virtual PST assets

(1) A *life insurance company that has established a *virtual PST must cause the *transfer values of the *virtual PST assets to be calculated as at the following times (***valuation times***):

(a) the end of the income year in which the virtual PST was established;

(b) the end of each later income year.

(2) A calculation for a valuation time is to be made not later than 60 days after that time.

320-180 Consequences of annual valuation

(1) If the total *transfer value of the *virtual PST assets at a valuation time exceeds the sum of:

(a) the company's *virtual PST liabilities at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for tax on unrealised gains in respect of those assets; and

(c) the total amount of any unpaid *PAYG instalments relating to the *virtual PST component of the *complying superannuation class of the company's taxable income for the income year;

the company must, within 30 days after the day on which the valuations of the transfer values of those assets are made, transfer, from the *virtual PST, assets of any kind having a total transfer value equal to the excess.

(2) If the total *transfer value of the *virtual PST assets at a valuation time is less than the sum of:

(a) the company's *virtual PST liabilities at that time; and

(b) any reasonable provision made by the company at that time in its accounts for liability for tax on unrealised gains in respect of those assets; and

(c) the total amount of any unpaid *PAYG instalments relating to the *virtual PST component of the *complying superannuation class of the company's taxable income for the income year;

the company can transfer, to the *virtual PST, assets of any kind that have a total transfer value not exceeding the difference.

(3) A transfer of assets under subsection (1) is taken to have been made in the income year at the end of which the valuation time occurred.

(4) If a transfer of assets under subsection (2) is made within 30 days after the day on which the valuations of the *transfer values of those assets are made, the transfer is taken to have been made in the income year at the end of which the valuation time occurred.

320-185 Transfer of assets to virtual PST otherwise than as a result of an annual valuation

(1) If a *life insurance company determines, at a time other than a valuation time, that the total *transfer value of the *virtual PST assets is less than the sum of:

(a) its *virtual PST liabilities; and

(b) any reasonable provision made by it in its accounts for liability for tax on unrealised gains in respect of those assets; and

(c) the total amount of any unpaid *PAYG instalments relating to the *virtual PST component of the *complying superannuation class of the company's taxable income for the income year;

the company can transfer, to the *virtual PST, assets of any kind having a total transfer value not exceeding the difference.

(2) A *life insurance company can at any time transfer an asset of any kind to a *virtual PST in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.

(3) A *life insurance company can transfer to a *virtual PST in an income year assets of any kind having a total *transfer value not exceeding the total amount of the *life insurance premiums paid to

the company in that income year for the purchase of *virtual PST life insurance policies.

(4) Except as provided by this section and subsection 320-180(2), a *life insurance company cannot transfer an asset to a *virtual PST.

320-190 Virtual PST liabilities

(1) The amount of the *virtual PST liabilities of a *life insurance company is to be worked out in accordance with subsection (2) in respect only of *life insurance policies issued by the company:

(a) that are *virtual PST life insurance policies; and

(b) the liabilities under which are to be discharged out of the company's *virtual PST assets.

(2) The amount of the ***virtual PST liabilities*** of a *life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an *actuary:

(a) for policies providing for *participating benefits or *discretionary benefits:

(i) the values of supporting assets, as defined in the *Valuation Standard; and

(ii) the *policy owners' retained profits;

(b) for other policies—the *current termination values.

320-195 Transfer of assets and payment of amounts from a virtual PST otherwise than as a result of an annual valuation

(1) If:

(a) a *life insurance policy issued by a *life insurance company becomes an *exempt life insurance policy; and

(b) immediately before the policy became an exempt life insurance policy, the policy was a policy referred to in subsection 320-190(1);

the company can transfer from a *virtual PST, to its *segregated exempt assets, assets of any kind whose total *transfer value does not exceed the company's liabilities in respect of the policy.

(2) A *life insurance company can at any time transfer an asset from a *virtual PST in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.

(3) If a *life insurance company:

(a) imposes any fees or charges in respect of *virtual PST assets; or

(b) imposes any fees or charges in respect of *virtual PST life insurance policies other than policies:

(i) that provide death or disability benefits, within the meaning of Part IX of the *Income Tax Assessment Act 1936*, that are *participating benefits; and

(ii) the liabilities under which are to be discharged out of the company's *virtual PST; or

(c) determines, at a time other than a valuation time, that the total *transfer value of the virtual PST assets exceeds the sum of:

(i) the company's *virtual PST liabilities at that time; and

(ii) any reasonable provision made by the company at that time in its accounts for liability for tax on unrealised gains in relation to those assets; and

(iii) the total amount of any unpaid *PAYG instalments relating to the *virtual PST component of the *complying superannuation class of the company's taxable income for the income year;

the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer, from the *virtual PST, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

(4) If:

(a) any liabilities arise for the discharge of which a *life insurance company's *virtual PST is established; or

(b) any expenses are incurred by a life insurance company directly in respect of *virtual PST assets in relation to a period during which the assets are virtual PST assets; or

(c) any *PAYG instalments relating to the *virtual PST components of the *complying superannuation class of a life insurance company's taxable income for the income year are unpaid at the end of the income year;

the life insurance company must pay from the virtual PST any amounts required to discharge the liabilities, amounts equal to the expenses, or amounts equal to the total amount of the unpaid PAYG instalments, as the case may be.

320-200 Consequences of transfer of assets to or from virtual PST

(1) This section applies if:

(a) an asset (other than money) is transferred from a *virtual PST under subsection 320-180(1) or 320-195(2) or (3); or

(b) an asset (other than money) is transferred to a virtual PST under subsection 320-180(2) or section 320-185.

(2) In determining:

(a) for the purposes of this Act (other than Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from, the assessable income of a *life insurance company in respect of the transfer of the asset; or

(b) for the purposes of Parts 3-1 and 3-3:

(i) whether the company made a *capital gain in respect of the transfer of the asset; or

(ii) whether the company made a *capital loss in respect of the transfer of the asset;

the company is taken:

(c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its *market value; and

(d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.

(3) If, apart from this subsection, a *life insurance company could deduct an amount or make a *capital loss as a result of a transfer of an asset to or from its *virtual PST, the deduction or capital loss is disregarded until:

(a) the asset ceases to exist; or

(b) the asset, or a greater than 50% interest in it, is *acquired by an entity other than an entity that is an *associate of the company immediately after the transfer.

320-205 What is the virtual PST component

(1) The ***virtual PST component*** of the *complying superannuation class of a *life insurance company's taxable income for an income

year is the sum of the amounts of the company's assessable income for the income year referred to in subsection (3), reduced by the sum of the amounts of the reductions referred to in subsection (4).

(2) However, if the sum of the amounts of the company's assessable income for the income year referred to in subsection (3) is less than the sum of the amounts of the deductions referred to in subsection (4):

(a) the company cannot apply the difference to reduce the *complying superannuation class of the company's taxable income for the income year; but

(b) the company can apply the difference to reduce any *virtual PST component of the complying superannuation class of the company's taxable income for a later income year.

(3) The amounts of assessable income are:

(a) amounts of *ordinary income and *statutory income derived by the company during the income year from the investment of *virtual PST assets where the amounts relate to the period during which those assets were virtual PST assets; and

(b) the *transfer values of any assets transferred by the company during the income year to the *virtual PST under subsection 320-180(2) or 320-185(1) or (3); and

(c) if an asset (other than money) is transferred from a virtual PST under subsection 320-180(1) or 320-195(2) or (3)—the amount (if any) that is included in the company's assessable income because of section 320-200; and

(d) amounts included in the company's assessable income for the income year under section 275 of the *Income Tax Assessment Act 1936*; and

(e) *specified roll-over amounts paid to the company during the income year for the purchase of *deferred annuities where the *life insurance premiums relating to those annuities have been transferred to a virtual PST under subsection 130-185(3); and

(f) amounts included in the company's assessable income for the income year under section 320-20 or 320-25.

(4) The amounts of the reductions are:

(a) the amounts that the company can deduct in respect of *life insurance premiums under section 320-55; and

(b) any losses (other than *capital losses) made during the income year from the investment of *virtual PST assets where the losses relate to the period during which the assets were virtual PST assets; and

(c) the *transfer values of any assets transferred by the company during the income year from the *virtual PST under subsection 320-180(1) or 320-195(3); and

(d) deductible expenses incurred by the company during the income year directly in respect of virtual PST assets where the expenses relate to the period during which the assets were virtual PST assets; and

(e) the proportion of the amount that the company can deduct under subsection 115-215(6) that is attributable to the trust estate's *net capital gain in respect of virtual PST assets; and

(f) the amounts that the company can deduct under section 320-90 or 320-95.

Subdivision 320-G—Specified roll-over component of complying superannuation class

Guide to Subdivision 320-G

320-210 What this Subdivision is about

This Subdivision explains how the specified roll-over component of the complying superannuation class of a life insurance company's taxable income is worked out.

Table of sections

Operative provision

320-215 What is the specified roll-over component

[This is the end of the Guide.]

Operative provision

320-215 What is the specified roll-over component

The ***specified roll-over component*** of the *complying superannuation class of a *life insurance company's taxable income for an income year consists of the *specified roll-over amounts that:

(a) are included in the company's assessable income for the income year; and

(b) relate to *life insurance policies that provide for *immediate annuities.

Subdivision 320-H—Segregation of assets to discharge exempt life insurance policy liabilities

Guide to Subdivision 320-H

320-220 What this Subdivision is about

> This Subdivision explains how a life insurance company can segregate assets to be used for the sole purpose of discharging its liabilities under life insurance policies where the income derived by the company from those policies is exempt from income tax.

Table of sections

Operative provisions

320-225 Segregation of assets for purpose of discharging exempt life insurance policy liabilities
320-230 Annual valuations of segregated exempt assets
320-235 Consequences of annual valuation
320-240 Transfer of assets to segregated exempt assets otherwise than as a result of annual valuation
320-245 Exempt life insurance policy liabilities
320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of an annual valuation
320-255 Consequences of transfer of assets to or from segregated exempt assets

[This is the end of the Guide.]

Operative provisions

320-225 Segregation of assets for purpose of discharging exempt life insurance policy liabilities

(1) A *life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its *exempt life insurance policy liabilities out of those assets.

Note: Section 320-225 of the *Income Tax (Transitional Provisions) Act 1997* provides that a life insurance company may transfer a part of an asset to its segregated exempt assets before 1 October 2000.

(2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its *exempt life insurance policy liabilities immediately before the segregation.

(3) The assets segregated must have, at the time of the segregation, a total *transfer value that does not exceed the company's *exempt life insurance policy liabilities at that time.

(4) A *life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.

(5) If a segregation of assets is made in accordance with the above subsections, the company must use the *segregated exempt assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging its *exempt life insurance policy liabilities.

(6) In this Subdivision:

(a) a reference to the transfer of an asset to, or from, a *life insurance company's *segregated exempt assets:

(i) is a reference to the inclusion of an asset among the segregated exempt assets, or the exclusion of an asset from the segregated exempt assets, as the case may be; and

(ii) includes a reference to the transfer of money to, or from, those assets, as the case may be; and

(b) if an asset transferred to or from those assets is money, a reference to the *transfer value of the asset transferred is a reference to the amount of the money.

320-230 Annual valuations of segregated exempt assets

(1) A *life insurance company that has segregated any of its assets in accordance with section 320-225 must cause the *transfer values of its *segregated exempt assets to be calculated as at the following times (***valuation times***):

(a) the end of the income year in which the segregation occurred;

(b) the end of each later income year.

(2) A calculation for a valuation time is to be made not later than 60 days after that time.

320-235 Consequences of annual valuation

(1) If the total *transfer value of the company's *segregated exempt assets at a valuation time exceeds its *exempt life insurance policy liabilities at that time, the company must, within 30 days after the day on which the valuations of the transfer values of those assets are made, transfer, from the segregated exempt assets, assets of any kind having a total transfer value equal to the excess.

(2) If the total *transfer value of the company's *segregated exempt assets at a valuation time is less than its *exempt life insurance policy liabilities at that time, the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

(3) A transfer of assets under subsection (1) is taken to have been made in the income year at the end of which the valuation time occurred.

(4) If a transfer of assets under subsection (2) is made within 30 days after the day on which the valuations of the *transfer values of those assets are made, the transfer is taken to have been made in the income year at the end of which the valuation time occurred.

320-240 Transfer of assets to segregated exempt assets otherwise than as a result of annual valuation

(1) If a *life insurance company determines, at a time other than a valuation time, that the total *transfer value of its *segregated exempt assets is less than its *exempt life insurance policy liabilities, the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

(2) A *life insurance company can at any time transfer an asset of any kind to its *segregated exempt assets in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.

(3) A *life insurance company can transfer, to its *segregated exempt assets in an income year, assets of any kind having a total *transfer value not exceeding the total amount of the *life insurance premiums paid to the company in that income year for the purchase of *exempt life insurance policies.

(4) Except as provided by this section and subsections 320-195(1) and 320-235(2), a *life insurance company cannot transfer an asset to its *segregated exempt assets.

320-245 Exempt life insurance policy liabilities

(1) The amount of the *exempt life insurance policy liabilities of a *life insurance company is to be worked out in accordance with subsection (2) in respect only of *life insurance policies issued by the company:

- (a) that are *exempt life insurance policies; and
- (b) the liabilities under which are to be discharged out of the company's *segregated exempt assets.

(2) The amount of the ***exempt life insurance policy liabilities*** of a *life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an *actuary:

- (a) for policies providing for allocated benefits (other than *participating benefits or *discretionary benefits)—the *current termination values;

(b) for policies providing for participating benefits or discretionary benefits:

(i) the values of supporting assets, as defined in the *Valuation Standard; and

(ii) the *policy owner's retained profits;

(c) for other policies—the policy liabilities, as defined in the Valuation Standard.

(3) An *exempt life insurance policy ***provides for allocated benefits*** if:

(a) the policy:

(i) is held by the trustee of a *complying superannuation fund; and

(ii) is a segregated current pension asset (within the meaning of Part IX of the *Income Tax Assessment Act 1936*) of the holder of the policy; and

(iii) provides for an *allocated pension; or

(b) the policy:

(i) is held by a *life insurance company other than the life insurance company that issued the policy; and

(ii) is a *segregated exempt asset of the life insurance company that issued the policy; and

(iii) provides for an allocated pension; or

(c) the policy provides for an *allocated annuity.

320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of an annual valuation

(1) A *life insurance company can at any time transfer an asset from its*segregated exempt assets in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.

(2) If a *life insurance company:

(a) imposes any fees or charges in respect of *segregated exempt assets; or

(b) imposes any fees or charges in respect of *exempt life insurance policies where the liabilities under the policies are to be discharged out of the company's segregated exempt assets; or

(c) determines, at a time other than a valuation time, that the total transfer value of the segregated exempt assets exceeds the company's *exempt life insurance policy liabilities;

the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer from the segregated exempt assets, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

(3) If:

(a) any liabilities arise for the discharge of which a *life insurance company has *segregated exempt assets; or

(b) any expenses are incurred by a life insurance company directly in respect of segregated exempt assets in relation to a period during which the assets are segregated exempt assets;

the life insurance company must pay from the segregated exempt assets any amounts required to discharge the liabilities or amounts equal to the expenses, as the case may be.

320-255 Consequences of transfer of assets to or from segregated exempt assets

(1) This section applies if:

(a) an asset (other than money) is transferred from the company's *segregated exempt assets under subsection 320-235(1) or 320-250(1) or (2); or

(b) an asset (other than money) is transferred to the company's *segregated exempt assets under subsection 320-235(2) or section 320-240.

(2) In determining:

(a) for the purposes of this Act (other than Division 42 and Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from, the assessable income of a *life insurance company in respect of the transfer of the asset; or

(b) for the purposes of Parts 3-1 and 3-3:

(i) whether the company made a *capital gain in respect of the transfer; or

(ii) whether the company made a *capital loss in respect of the transfer;

the company is taken:

(c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its *market value; and

(d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.

(3) If, apart from this subsection, section 320-60 and subsection 320-105(1), a *life insurance company could deduct an amount or apply a *capital loss as a result of the transfer of an asset to its *segregated exempt assets, the deduction or capital loss is disregarded until:

(a) the asset ceases to exist; or

(b) the asset, or a greater than 50% interest in it, is *acquired by an entity other than an entity that is an *associate of the company, immediately after the acquisition.

(4) A *life insurance company cannot deduct an amount or apply a *capital loss as a result of the transfer of an asset from its *segregated exempt assets.

(5) If an asset that is a unit of *plant is transferred from the *segregated exempt assets of a *life insurance company, the company must assume, for the purposes of Division 42, that:

(a) the unit had, at all times during the period beginning when the asset was acquired or constructed by the company and ending immediately before the time of the transfer, been used by the company wholly for the purpose of producing assessable income; and

(b) the company had deducted amounts for depreciation in respect of the asset during that period by using the formula in subsection 42-160(3) or 42-165(2A).

(6) If an asset that is a unit of *plant is transferred to the *segregated exempt assets of a *life insurance company, then, in determining for the purposes of Division 42 whether an amount is included in, or can be deducted from, the company's assessable income as a result of the transfer, the company is taken:

(a) to have, at the time immediately before the transfer, sold the asset for a consideration equal to its *market value at that time; and

(b) to have, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.

(7) If an asset that is a unit of *plant that has been included in the *segregated exempt assets of a *life insurance company since the asset was acquired by the company or the initial segregation of those assets took place is transferred from those assets, then the company must assume for the purposes of Division 42 that:

(a) if the asset's *market value at the time of the transfer is greater than its *notional undeducted cost at that time, the company:

(i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its notional undeducted cost at that time; and

(ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its notional undeducted cost at that time; or

(b) if the asset's market value at the time of the transfer is equal to or less than its notional undeducted cost at that time, the company:

(i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its market value at that time; and

(ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.

(8) If an asset that is a unit of *plant that was previously transferred to the *segregated exempt assets of a *life insurance company is transferred from those assets, then, the company must assume, for the purposes of Division 42 that:

(a) if the asset's *market value at the time of its transfer from those assets is greater than its market value at the time when it was transferred to those assets, the company:

(i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at the time when it was transferred to those assets; and

(ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at the time when it was transferred to those assets; or

(b) if the asset's market value at the time of its transfer from those assets is equal to or less than its market value at the time when it was transferred to those assets, the company:

(i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at that time; and

(ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at that time.

[The next Part is Part 3-45]

Part 3—Income Tax (Transitional Provisions) Act 1997

85 Before section 110-35

Insert:

110-25 Cost base of CGT asset of life insurance company or registered organisation

For the purpose of working out the *capital gain of a *life insurance company or a *registered organisation from a *CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and before 1 July 2000, the *cost base includes indexation only if the company or organisation chooses that the cost base includes indexation.

86 After Division 112

Insert:

Division 114—Indexation of cost base

114-5 When indexation relevant

Indexation is *not* relevant to the *capital gain of a *life insurance company or a *registered organisation from a *CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and before 1 July 2000 unless the company or organisation has chosen that the *cost base include indexation for the purposes of section 110-25 of the *Income Tax Assessment Act 1997*.

Division 115—Discount capital gains and trusts' net capital gains

Table of Subdivisions

115-A Discount capital gains

Subdivision 115-A—Discount capital gains

115-10 Who can make a discount capital gain?

(1) A *capital gain may also be a *discount capital gain if it is made by:

(a) a *life insurance company (other than a *registered organisation), in relation to a non-exempt modified discount capital gain from a notional CGT event in respect of a *CGT asset where the event occurred during the period starting immediately after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and ending immediately before 1 July 2000; or

(b) a *registered organisation, in relation to a modified discount capital gain from a notional CGT event in respect of a CGT asset where the event occurred during that period.

(2) In paragraph (1)(a), ***non-exempt modified discount capital gain*** and ***notional CGT event*** have the meanings that were given by Division 8 of Part III of the *Income Tax Assessment Act 1936* as in force when the relevant *CGT event occurred.

(3) In paragraph (1)(b), ***modified discount capital gain*** and ***notional CGT event*** have the meanings that were given by Division 8A of Part III of the *Income Tax Assessment Act 1936* as in force when the relevant *CGT event occurred.

87 After Part 3-3

Insert:

Part 3-35—Life Insurance Business

Division 320—Life insurance companies

Table of Subdivisions

320-A Preliminary
320-C Deductions and capital losses
320-F Virtual PST component of complying superannuation class
320-H Segregation of assets for the purpose of discharging exempt life insurance policies

Operative provisions

Subdivision 320-A—Preliminary

320-5 Life insurance companies that are friendly societies

If:

(a) any assets held by the benefit funds of a *life insurance company that is a *friendly society for the purpose of providing superannuation benefits to its members are transferred before 1 July 2001 to a *complying superannuation fund; and

(b) the persons who had interests in those assets immediately before the transfer had substantially the same interests in the assets after the transfer;

the transfer is disregarded for any purposes of the *Income Tax Assessment Act 1997* or the *Income Tax Assessment Act 1936*.

Subdivision 320-C—Deductions and capital losses

320-85 Deduction for increase in value of liabilities under risk components of life insurance policies

In working out the amount that a *life insurance company can deduct, in respect of *life insurance policies that are *disability policies (other than *continuous disability policies) under subsection 320-85(1) of the *Income Tax Assessment Act 1997* for the income year in which 1 July 2000 occurs, the *value of the company's liabilities under the *net risk components of the policies at the end of the previous income year is taken to be the value of the liabilities as at the end of 30 June 2000 relating to those policies that was used by the company for the purposes of its return of income.

Subdivision 320-F—Virtual PST component of complying superannuation class

320-170 Transfer of part of an asset to a virtual PST

(1) This section applies to an asset (an ***approved asset***) of a *life insurance company if:

(a) the asset was *acquired by the company before 1 July 2000; and

(b) the asset is held in an *Australian fund or an *Australian/overseas fund of the company; and

(c) the *market value of the asset at that date exceeds whichever is the lesser of:

(i) $50,000,000; or

(ii) whichever is the greater of 2% of the value of that fund at that date or $5,000,000.

(2) If the *life insurance company wishes to include a part of an approved asset in its *virtual PST before 1 October 2000, the company must, before that date, certify in writing the part (if any) of the asset to be included in the virtual PST.

(3) If the *life insurance company so certifies, the part of the asset stated in the certificate is to be treated as a separate asset of the company.

320-175 Certain transfers of assets to virtual PST to be disregarded

If:

(a) a *life insurance company had a liability before 1 July 2000 under a *life insurance policy; and

(b) the liability or a part of it becomes a liability that is to be discharged out of the company's *virtual PST assets;

then, the transfer of any of the company's assets to the *virtual PST is to be disregarded to the extent to which the assets are transferred to meet the liability or that part of it, as the case may be.

Subdivision 320-H—Segregation of assets for the purpose of discharging exempt life insurance policies

320-225 Transfer of part of an asset to segregated exempt assets

(1) This section applies to an asset (an ***approved asset***) of a *life insurance company if:

(a) the asset was *acquired by the company before 1 July 2000; and

(b) the asset is held in an *Australian fund or an *Australian/overseas fund of the company; and

(c) the *market value of the asset at that date exceeds whichever is the lesser of:

(i) $50,000,000; or

(ii) whichever is the greater of 2% of the value of that fund at that date or $5,000,000.

(2) If the *life insurance company wishes to include a part of an approved asset in its *segregated exempt assets before 1 October 2000, the company must, before that date, certify in writing the part (if any) of the asset to be included in the segregated exempt assets.

(3) If the *life insurance company so certifies, the part of the asset stated in the certificate is to be treated as a separate asset of the company.

320-230 Certain transfers of assets to segregated exempt assets to be disregarded

If:

(a) a *life insurance company had a liability before 1 July 2000 under a *life insurance policy where the income of the company attributable to the liability was exempt from tax before that date; and

(b) the liability or a part of it becomes a liability that is to be discharged out of the company's *segregated exempt assets;

then the transfer of any of the company's assets to the segregated exempt assets is to be disregarded for any purpose of the *Income Tax Assessment Act 1997* to the extent to which the assets are transferred to meet the liability or that part of it, as the case may be.

88 Application of amendments made by this Part

The amendments made by items 85 and 86 apply to assessments for the income year in which 21 September 1999 occurred and later income years.

Part 4—Income Tax Rates Act 1986

89 Subsection 3(1) (definition of *AD/RLA component*)

Repeal the definition, substitute:

> ***AD/RLA component*** has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000.

90 Subsection 3(1)

Insert:

> ***complying superannuation class*** of the taxable income of a life insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

91 Subsection 3(1) (definition of *CS/RA component*)

Repeal the definition, substitute:

> ***CS/RA component***:
> (a) for a life insurance company—has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000; or
> (b) for a registered organisation—has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

92 Subsection 3(1) (definition of *EIB component*)

Repeal the definition, substitute:

> ***EIB component*** has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

93 Subsection 3(1)

Insert:

> ***friendly society*** has the same meaning as in the *Income Tax Assessment Act 1997*.

94 Subsection 3(1) (definition of *general fund component*)

Repeal the definition, substitute:

general fund component has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000.

95 Subsection 3(1) (definition of *life assurance company*)

Repeal the definition.

96 Subsection 3(1)

Insert:

life insurance company has the same meaning as in the *Life Insurance Act 1995*.

97 Subsection 3(1) (definition of *NCS component*)

Repeal the definition, substitute:

NCS component:

(a) for a life insurance company—has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000; and

(b) for a friendly society—has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

98 Subsection 3(1)

Insert:

ordinary class of the taxable income of a life insurance company has the same meaning as in the *Income Tax Assessment Act 1997*.

99 Subsection 3(1) (definition of *registered organisation*)

Repeal the definition, substitute:

registered organisation has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

100 Subsection 3(1) (definition of *RSA category A component*)

Repeal the definition, substitute:

> ***RSA category A component*** has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

101 Subsection 3(1) (definition of *RSA category B component*)

Repeal the definition, substitute:

> ***RSA category B component*** has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

102 Subsection 3(1) (definition of *RSA combined component*)

Repeal the definition, substitute:

> ***RSA combined component*** has the meaning that was given by Division 8A of Part III of the Assessment Act as in force immediately before 1 July 2000.

103 Subsection 3(1) (paragraph (a) of the definition of *RSA component*)

Repeal the paragraph, substitute:

(a) for a life insurance company—has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000; or

104 Subsection 3(1) (paragraph (a) of the definition of *standard component*)

Repeal the paragraph, substitute:

(a) for a life insurance company—has the meaning that was given by Division 8 of Part III of the Assessment Act as in force immediately before 1 July 2000; or

105 Before subsection 23(1)

Insert:

(1A) This section has effect subject to sections 23A, 23B and 23C.

106 Paragraph 23(2)(c)

Omit “assurance”, substitute “insurance”.

107 Subsection 23(3)

Omit “assurance”, substitute “insurance”.

108 Subsection 23(4A)

Omit “assurance” (first occurring), substitute “insurance”.

109 Subparagraph 23(4A)(c)(i)

After “Assessment Act”, insert “as in force immediately before 1 July 2000”.

110 Subsections 23(4B) and (4BA)

Omit “assurance”, substitute “insurance”.

111 After section 23

Insert:

23A Rates of tax payable by life insurance companies

Subject to sections 23B and 23C, the rates of tax in respect of the taxable income of a life insurance company are:

(a) in respect of the ordinary class:

(i) for the 2000-01 year of income—33% for a company that is a friendly society and 34% for any other life insurance company; and

(ii) for all later years of income—30%; and

(b) in respect of the complying superannuation class for the 2000-01 year of income and all later years of income—15%.

23B Special provisions relating to rates of tax payable by life insurance companies other than friendly societies

(1) This section applies to a life insurance company other than a friendly society.

(2) If the 2000-01 year of income of a life insurance company starts before 1 July 2000, the rates of tax in respect of parts of the company's taxable income for the period starting at the start of the company's 2000-01 year of income and ending at the end of 30 June 2000 are as follows:

(a) the part of the CS/RA component equal to the amount that would be the CS/RA component if that period were a year of income—15%;

(b) the part of the AD/RLA component equal to the amount that would be the AD/RLA component if that period were a year of income—39%;

(c) the part of the RSA component of the general fund component equal to the amount that would be that RSA component if that period were a year of income—15%;

(d) the part of the standard component of the general fund component equal to the amount that would be that standard component if that period were a year of income:

(i) if the company is a mutual life assurance company (within the meaning of section 110 of the Assessment Act as in force immediately before 1 July 2000) at the end of the period—39%; or

(ii) in any other case—34%;

(e) the part of the NCS component equal to the amount that would be the NCS component if that period were a year of income—47%.

(3) If the 2000-01 year of income of a life insurance company starts before 1 July 2000, the rates of tax in respect of parts of the company's taxable income for the period starting on 1 July 2000 and ending at the end of the company's 2000-01 year of income are as follows:

(a) the part of the ordinary class equal to the amount that would be the ordinary class if that period were a year of income—34%;

(b) the part of the complying superannuation class equal to the amount that would be the complying superannuation class if that period were a year of income—15%.

(4) If the 2000-01 year of income of a life insurance company starts after 1 July 2000, the rates of tax in respect of parts of the

company's taxable income for the period starting at the start of the company's 1999-2000 year of income and ending at the end of 30 June 2000 are as follows:

(a) the part of the CS/RA component equal to the amount that would be the CS/RA component if that period were a year of income—15%;

(b) the part of the AD/RLA component equal to the amount that would be the AD/RLA component if that period were a year of income—39%;

(c) the part of the RSA component of the general fund component equal to the amount that would be that RSA component if that period were a year of income—15%;

(d) the part of the standard component of the general fund component equal to the amount that would be that standard component if that period were a year of income:

(i) if the company is a mutual life assurance company (within the meaning of section 110 of the Assessment Act as in force immediately before 1 July 2000) at the end of the period—39%; or

(ii) in any other case—36%;

(e) the part of the NCS component equal to the amount that would be the NCS component if that period were a year of income—47%.

(5) If the 2000-01 year of income of a life insurance company starts after 1 July 2000, the rates of tax in respect of parts of the company's taxable income for the period starting on 1 July 2000 and ending at the end of the company's 1999-2000 year of income are as follows:

(a) the part of the ordinary class equal to the amount that would be the ordinary class if that period were a year of income—36%;

(b) the part of the complying superannuation class equal to the amount that would be the complying superannuation class if that period were a year of income—15%.

23C Special provisions relating to rates of tax payable by friendly societies that are life insurance companies

(1) This section applies to a friendly society that is a life insurance company.

(2) If the 2000-01 year of income of a friendly society starts before 1 July 2000, the rates of tax in respect of parts of the society's taxable income for the period starting at the start of the society's 2000-01 year of income and ending at the end of 30 June 2000 are as follows:

(a) the part of the CS/RA component equal to the amount that would be the CS/RA component if that period were a year of income—15%;

(b) the part of the EIB component equal to the amount that would be the EIB component if that period were a year of income—33%;

(c) the part of the RSA category A component equal to the amount that would be that RSA category A component if that period were a year of income—15%;

(d) the part of the RSA category B component equal to the amount that would be that RSA category B component if that period were a year of income—34%;

(e) the part of the NCS component equal to the amount that would be the NCS component if that period were a year of income—47%.

(3) If the 2000-01 year of income of a friendly society starts before 1 July 2000, the rates of tax in respect of parts of the society's taxable income for the period starting on 1 July 2000 and ending at the end of the society's 2000-01 year of income are as follows:

(a) the part of the ordinary class equal to the amount that would be the ordinary class if that period were a year of income—33%;

(b) the part of the complying superannuation class equal to the amount that would be the complying superannuation class if that period were a year of income—15%.

(4) If the 2000-01 year of income of a friendly society starts after 1 July 2000, the rates of tax in respect of parts of the society's taxable income for the period starting at the start of the society's

1999-2000 year of income and ending at the end of 30 June 2000 are as follows:

(a) the part of the CS/RA component equal to the amount that would be the CS/RA component if that period were a year of income—15%;

(b) the part of the EIB component equal to the amount that would be the EIB component if that period were a year of income—33%;

(c) the part of the RSA category A component equal to the amount that would be the RSA category A component if that period were a year of income—15%;

(d) the part of the RSA category B component equal to the amount that would be the RSA category B component if that period were a year of income—36%;

(e) the part of the NCS component equal to the amount that would be the NCS component if that period were a year of income—47%.

(5) If the 2000-01 year of income of a friendly society starts after 1 July 2000, the rates of tax in respect of parts of the society's taxable income for the period starting on 1 July 2000 and ending at the end of the society's 1999-2000 year of income are as follows:

(a) the part of the ordinary class equal to the amount that would be the ordinary class if that period were a year of income—33%;

(b) the part of the complying superannuation class equal to the amount that would be the complying superannuation class if that period were a year of income—15%.

Part 5—Income Tax Act 1986

112 Subsection 3(1) (definition of *registered organisation*)

Repeal the definition.

113 Subsection 5(3)

Omit ", not being a registered organisation,".

Part 6—Taxation Administration Act 1953

114 Subsection 45-120(2A) in Schedule 1 (including the note)

Repeal the subsection and note, substitute:

(2A) The ***instalment income*** of a *life insurance company for a period also includes:

(a) any part of its *statutory income that is reasonably attributable to that period and is included in the *complying superannuation class of its taxable income for the income year that is or includes that period; and

(b) any part of its statutory income (other than *net capital gains) that is included in the *ordinary class of its taxable income for that income year.

115 At the end of section 45-325 in Schedule 1

Add:

(6) If the *base year is the income year immediately preceding the income year in which 1 July 2000 occurred, subsections (4) and (5) apply for the purpose of working out the *base assessment instalment income of a *life insurance company in the same way as they apply for the purpose of working out such a company's *notional tax.

116 Subsection 45-330(3) in Schedule 1

Repeal the subsection, substitute:

Special rule for life insurance companies

(3) The ***adjusted taxable income*** of a *life insurance company for the *base year is worked out as follows:

Method statement

Step 1. Recalculate the *ordinary class of the taxable income for the *base assessment on the basis that the assessable income that relates to the class did not include any *net capital gain.

Step 2.	Add to the step 1 result the *complying superannuation class of the taxable income for the *base assessment.
Step 3.	Add to the step 2 result the deductions for *tax losses used in making the *base assessment.
Step 4.	Reduce the step 3 result by the amount of any tax loss, to the extent that the life insurance company can carry it forward to the next income year.

117 At the end of section 45-370 in Schedule 1

Add:

Special rule for life insurance companies

(3) The ***adjusted assessed taxable income*** of a *life insurance company for the variation year is worked out as follows:

Method statement	
Step 1.	Recalculate the *ordinary class of the taxable income for the variation year on the basis that the assessable income that relates to the class did not include any *net capital gain.
Step 2.	Add to the step 1 result the *complying superannuation class of the taxable income for the variation year.

Schedule 3—Imputation

Part 1—PAYG (Pay As You Go) instalments

Income Tax Assessment Act 1936

1 Section 160APA (after subparagraph (a)(iab) of the definition of *applicable general company tax rate*)

Insert:

(iaba) a payment of a PAYG instalment in respect of a year of income;

(iabb) the application of a PAYG rate variation credit to reduce a person's liability for a PAYG instalment in respect of a year of income;

(iabc) a payment of company tax in respect of a year of income;

(iabd) a claim for a PAYG rate variation credit in respect of a year of income;

2 Section 160APA (after subparagraph (a)(ie) of the definition of *applicable general company tax rate*)

Insert:

(iea) the payment of a refund of a PAYG instalment or company tax in respect of a year of income;

3 Section 160APA (definition of *company tax instalment*)

Repeal the definition, substitute:

company tax instalment means:

(a) an instalment, or other amount, payable under Division 1C of Part VI; or

(b) a PAYG instalment.

4 Section 160APA (definition of *paid*)

Repeal the definition.

5 Section 160APA

Insert:

pay, in relation to a PAYG instalment or company tax, has the meaning given by section 160APBB.

6 Section 160APA

Insert:

PAYG instalment has the same meaning as in the *Income Tax Assessment Act 1997*.

7 Section 160APA

Insert:

PAYG rate variation credit means a credit under section 45-215 in Schedule 1 to the *Taxation Administration Act 1953*.

8 Section 160APA

Insert:

RBA has the same meaning as in Part IIB of the *Taxation Administration Act 1953*.

9 Section 160APA

Insert:

refund, in relation to a company tax instalment or company tax, has the meaning given by section 160APBD.

10 Section 160APA (paragraph (aa) of the definition of *termination time*)

After "a company tax instalment", insert "that is not a PAYG instalment".

11 Section 160APA (after paragraph (aa) of the definition of *termination time*)

Insert:

(ab) in relation to the payment of a company tax instalment that is a PAYG instalment in respect of a year of income—the earlier of:

(i) the time at which the company next claims a PAYG rate variation credit under section 45-215 in Schedule 1 to the *Taxation Administration Act 1953*; or

(ii) the time at which a notice of original company tax assessment is served, or taken to have been served, on the company in respect of that year of income; or

(iii) the time at which the Commissioner next pays the company a refund under section 8AAZLF of the *Taxation Administration Act 1953* in response to a request from the company in the approved form; or

12 After section 160APBA

Insert:

160APBB Paying PAYG instalment or company tax

(1) For the purposes of this Part, a person ***pays*** a PAYG instalment or company tax if and only if:

(a) the person has a liability to pay the instalment or the company tax; and

(b) either:

(i) the person makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the company cannot generate franking credits by making a “voluntary” payment of company tax (that is, paying an amount on account of company tax for which the company is not liable at the time when the payment is made).

(2) Subparagraph (1)(b)(ii) does not apply to the application of a credit allowable under or by virtue of:

(a) Division 18, 18A or 18B of Part III; or

(b) the *International Tax Agreements Act 1953*; or

(c) section 45-30 or 45-215 in Schedule 1 to the *Taxation Administration Act 1953*.

(3) The amount of the PAYG instalment or company tax paid is equal to:

(a) the amount of the liability if it is satisfied in full; or

(b) the amount by which the liability is reduced if it is not satisfied in full.

(4) If:

(a) a surplus in an RBA of a company is applied to satisfy a liability of the company to pay a PAYG instalment in respect of a year of income; and

(b) a credit allowable under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of that year of income is included in the RBA; and

(c) the RBA does not include the liability to pay the PAYG instalment; and

(d) the amount of the credit exceeds the company tax assessed to the company in respect of that year of income;

the amount of the PAYG instalment paid by virtue of the application of the surplus is reduced by the amount of the excess referred to in paragraph (d).

160APBC Application of PAYG rate variation credit

If a company:

(a) is liable to pay a PAYG instalment; and

(b) has a PAYG rate variation credit;

the PAYG rate variation credit must be fully applied to reduce the liability for the PAYG instalment before any other credit or payment can be applied to reduce that liability.

160APBD Refund of company tax instalment or company tax

(1) For the purposes of this Part, a company receives a ***refund*** of a company tax instalment or company tax if and only if:

(a) either:

(i) the company receives an amount as a refund; or

(ii) the Commissioner applies a credit, or an RBA surplus, against a liability or liabilities of the company; and

(b) the refund of the amount, or the application of the credit, represents in whole or in part a return to the company of an amount paid or applied to satisfy the company's liability to pay the company tax instalment or company tax.

(2) The amount of the refund is so much of the amount refunded or applied as represents the return referred to in paragraph (1)(b).

(3) The following are not refunds of a company tax instalment or company tax for the purposes of this Part:

(a) a refund to the extent to which it is referable to a PAYG rate variation credit;

(b) the application of a PAYG rate variation credit against a liability of the company.

13 At the end of section 160APM

Add:

Note: See section 160APME for franking credits for PAYG instalment payments.

14 Subsection 160APMAB(3)

After "refund" (first occurring), insert ", or a PAYG rate variation credit arises,".

15 Subsection 160APMAB(3)

After "refund" (second occurring), insert "or PAYG rate variation credit".

16 Paragraph 160APMD(e)

Repeal the paragraph, substitute:

(e) if the year of income is later than the 1994-95 year of income, but earlier than the 2000-01 year of income—a class C franking credit of the company equal to the adjusted amount in relation to the amount of that payment.

17 After section 160APMD

Insert:

160APME Franking credits for paying PAYG instalments

(1) If, on a particular day, a company pays a PAYG instalment in respect of a year of income, there arises on that day a class C franking credit of the company.

(2) The class C franking credit is equal to the adjusted amount in relation to the amount of the instalment paid.

(3) This section does not apply if the company is a life assurance company.

Note: For the treatment of life assurance companies, see sections 160APVJ to 160APVL.

160APMF Franking credits for applying PAYG rate variation credits to reduce PAYG instalment liabilities

(1) If, on a particular day, a PAYG rate variation credit of a company is applied to reduce the company's liability for a PAYG instalment in respect of a year of income, there arises on that day a class C franking credit of the company.

(2) The class C franking credit is equal to the adjusted amount in relation to the amount by which the company's liability for the PAYG instalment is reduced.

(3) This section does not apply if the company is a life assurance company.

Note: For the treatment of life assurance companies, see sections 160APVJ to 160APVL.

160APMG Franking credits for payments of company tax

(1) If a company pays company tax in respect of a year of income on a particular day, there arises on that day a class C franking credit of the company.

(2) The class C franking credit is equal to the adjusted amount in relation to the amount of the company tax paid.

(3) This section does not apply if the company is a life assurance company.

Note: For the treatment of life assurance companies, see section 160APVM.

18 After section 160APYBA

Insert:

160APYBAA Refunds for 2000-01 year of income and later years of income

(1) If:

(a) a class C franking credit of a company arises under section 160APME, 160APMF or 160APMG in respect of a PAYG instalment or company tax; and

(b) on a particular day, the company receives a refund of the PAYG instalment or the company tax; and

(c) the amount refunded is not attributable to a reduction of company tax covered by section 160APZ;

a class C franking debit of the company arises on that day.

(2) The class C franking debit is equal to the adjusted amount in relation to the amount of the refund.

(3) This section does not apply if the company is a life assurance company.

Note: For the treatment of life assurance companies, see section 160AQCNCD.

160APYBAB PAYG rate variation credits

(1) If, on a particular day, a company claims a PAYG rate variation credit in respect of a year of income under section 45-215 in Schedule 1 to the *Taxation Administration Act 1953*, there arises on that day a class C franking debit of the company.

(2) The class C franking debit is equal to the adjusted amount in relation to the amount of the PAYG rate variation credit.

(3) This section does not apply if the company is a life assurance company.

Note: For the treatment of life assurance companies, see section 160AQCNCE.

19 After subparagraph 160APYBB(b)(ii)

Insert:

(iia) a liability for a PAYG instalment; or

20 After subsection 160AQDAA(2)

Insert:

(2A) An estimated class C debit in relation to a PAYG instalment must relate to a PAYG rate variation credit in relation to the instalment.

21 After subsection 160AQJC(1)

Insert:

(1A) If:

(a) during a franking year (the ***first franking year***) a company pays one or more PAYG instalments in respect of a year of income; and

(b) at a particular time during the next franking year (the ***second franking year***), a PAYG rate variation credit for the company arises in relation to the instalment or one or more of the instalments; and

(c) the company would have had a class C franking deficit, or an increased class C franking deficit, at the end of the first franking year assuming that the PAYG rate variation credit, together with any previous PAYG rate variation credit in respect of the year of income, had arisen on the last day of the first franking year;

a class C deficit deferral amount (defined in subsection (2)) arises in relation to the company and the PAYG rate variation credit.

22 Subsection 160AQJC(2)

After “(1)(c)”, insert “or (1A)(c)”.

23 Subsection 160AQJC(3)

After “refund” (wherever occurring), insert “or PAYG rate variation credit”.

24 Subsection 160AQJC(3)

After “refunds”, insert “or PAYG rate variation credits”.

25 Section 160AREA

After "refund" (first occurring), insert "or PAYG rate variation credit".

26 Section 160AREA

After "refund" (second occurring), insert "or claiming the PAYG rate variation credit".

27 At the end of section 160ARYC

Add:

(2) A company is liable to pay, by way of penalty, additional tax equal to 30% of the class C deficit deferral tax that is payable by the company in relation to a PAYG rate variation credit if the class C deficit deferral amount that arises under subsection 160AQJC(2) in relation to the PAYG rate variation credit is greater than the amount worked out using the formula:

$$0.1 \times \left[\begin{array}{c}\text{Total of class C}\\ \text{franking credits}\\ \text{that arose in the}\\ \text{first franking year}\end{array} - \begin{array}{c}\text{The adjusted amount in}\\ \text{relation to PAYG rate}\\ \text{variation credits referred}\\ \text{to in paragraph}\\ \text{160AQJC(1A)(c)}\end{array} \right]$$

28 Paragraph 160ARX(3)(a)

Repeal the paragraph, substitute:

(a) the class C franking deficit of a company at the end of a franking year is more than 10% of the difference between:

(i) the total of the class C franking credits arising during the franking year; and

(ii) the total of the class C franking debits arising under section 160APYBAB during the franking year; and

29 Application of amendments

The amendments made by this Part (other than item 16) apply to the 2000-01 year of income and later years of income.

Part 2—Life assurance companies

Income Tax Assessment Act 1936

30 Subsection 6(1)

Insert:

> ***insurance funds*** has the same meaning as ***the insurance funds*** had in Division 8 of Part III (as in force immediately before 1 July 2000).

31 Subsection 6(1)

Insert:

> ***mutual life assurance company*** has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

32 Subsection 6(1)

Insert:

> ***ordinary class*** has the same meaning as in the *Income Tax Assessment Act 1997*.

33 Subsection 6(1)

Insert:

> ***shareholders' funds*** has the same meaning as in the *Life Insurance Act 1995*.

34 Subsection 46(1) (definition of *life assurance company*)

Repeal the definition.

35 Subsection 46(1) (definition of *standard component*)

Repeal the definition.

36 Subsection 46(1) (definition of *the insurance funds*)

Repeal the definition.

37 Subsection 46(1A)

Repeal the subsection, substitute:

(1A) A reference in this section to the ***taxable income*** of a year of income of a shareholder that is a life assurance company is a reference to that part of the life assurance company's taxable income that is attributable to shareholders' funds income of the life assurance company for that year of income.

38 Subsection 46(6AA)

Repeal the subsection, substitute:

(6AA) For the purposes of subsections (2) and (3), the ***average rate of tax*** payable for a year of tax by a shareholder that is a life assurance company is the rate of tax applicable under sections 23A and 23B of the *Income Tax Rates Act 1986* for the year of income in respect of the ordinary class of the life assurance company's taxable income.

39 Subsection 46(10)

Repeal the subsection, substitute:

(10) If:

(a) a dividend is paid by the company to a shareholder that is a life assurance company; and

(b) the assets of the life assurance company from which the dividend was derived were included in the insurance funds of the life assurance company at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

the life assurance company is not entitled to a rebate under this section in its assessment in respect of the dividend unless at all times when those assets were included in the insurance funds of the life assurance company during that period they were held on behalf of the life assurance company's shareholders.

40 Subsection 46A(1) (definition of *life assurance company*)

Repeal the definition.

41 Subsection 46A(1) (definition of *standard component*)

Repeal the definition.

42 Subsection 46A(1) (definition of *the insurance funds*)

Repeal the definition.

43 Subsection 46A(6A)

Repeal the subsection, substitute:

(6A) If:

(a) the shareholder mentioned in subsection (5) or (6) is a life assurance company; and

(b) the sum mentioned in paragraph (5)(a), or the net income derived from dividends mentioned in paragraph (5)(b) or subsection (6), is greater than that part of the life assurance company's taxable income in respect of the relevant year that is attributable to shareholders' funds income of the year of income;

the reference to the sum or the net income is taken instead to be a reference to the amount of that part of the life assurance company's taxable income in respect of the relevant year that is attributable to shareholders' funds income of the year of income.

44 Subsection 46A(8AA)

Repeal the subsection, substitute:

(8AA) For the purposes of subsections (5) and (6), the ***average rate of tax*** payable for a year of tax by a shareholder that is a life assurance company is the rate of tax applicable under sections 23A and 23B of the *Income Tax Rates Act 1986* for the year of income in respect of the ordinary class of the life assurance company's taxable income.

45 Subsection 46A(17)

Repeal the subsection, substitute:

(17) If:

(a) a dividend is paid by the company to a shareholder that is a life assurance company; and

(b) the assets of the life assurance company from which the dividend was derived were included in the insurance funds of the life assurance company at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

the life assurance company is not entitled to a rebate under this section in its assessment in respect of the dividend unless at all times when those assets were included in the insurance funds of the life assurance company during that period they were held on behalf of the life assurance company's shareholders.

46 Section 160APA (definition of *AD/RLA component*)

Repeal the definition, substitute:

AD/RLA component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

47 Section 160APA (after paragraph (bc) of the definition of *applicable general company tax rate*)

Insert:

(bd) in relation to the amount of a class C franking credit or franking debit calculated in respect of a payment of a company tax instalment or company tax, or the application of a PAYG variation credit, in respect of a year of income under any of the following provisions:

(i) section 160APVJ;

(ii) section 160APVK;

(iii) section 160APVL;

(iv) section 160APVM;

(v) section 160AQCNCF;

(vi) section 160AQCNCG;

(vii) section 160AQCNCH;

(viii) section 160AQCNCI;

the general company tax rate for the year of tax to which the year of income relates;

(be) in relation to the amount of a class A franking credit or franking debit calculated in respect of a payment of a company tax instalment or company tax, or the application of a PAYG variation credit, in respect of a year of income under any of the following provisions:

(i) section 160AQCNCF;

(ii) section 160AQCNCG;

(iii) section 160AQCNCH;

(iv) section 160AQCNCI;

39%;

(bf) in relation to an amount calculated in respect of an assessment of company tax in respect of a year of income for the purposes of section 160AQCNCC—the general company tax rate for the year of tax to which the year of income relates;

(bg) in relation to the amount of a class C franking credit or franking debit calculated in respect of an amended assessment of company tax in respect of a year of income for the purposes of section 160AQCNCD, 160AQCNCH or 160AQCNCI—the general company tax rate for the year of tax to which the year of income relates;

(bh) in relation to the amount of a class A franking credit or franking debit calculated in respect of an amended assessment of company tax in respect of a year of income for the purposes of section 160AQCNCD, 160AQCNCH or 160AQCNCI—39%;

48 Section 160APA (definition of *CS/RA component*)

Repeal the definition, substitute:

CS/RA component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

49 Section 160APA (definition of *general fund component*)

Repeal the definition, substitute:

general fund component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

50 Section 160APA (definition of *insurance funds*)

Repeal the definition.

51 Section 160APA (definition of *life assurance company*)

Repeal the definition.

52 Section 160APA (definition of *mutual life assurance company*)

Repeal the definition.

53 Section 160APA (definition of *NCS component*)

Repeal the definition, substitute:

NCS component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

54 Section 160APA

Insert:

shareholders' funds income, in relation to a year of income, means income that is:

(a) derived in that year of income; and

(b) included in the shareholders' funds of the company on or before the day on which the company's company tax in respect of that year of income is assessed.

55 Section 160APA (definition of *standard component*)

Repeal the definition, substitute:

standard component has the same meaning as in Division 8 of Part III (as in force immediately before 1 July 2000).

56 Before section 160APC

Insert:

160APBE Life assurance company's company tax assessed

For the purposes of this Part, a life assurance company's ***company tax is assessed*** in respect of a year of income if a notice of an original company tax assessment is served, or taken to have been served, on the company in respect of that year of income.

57 Section 160APHB

Repeal the section, substitute:

160APHB Life assurance companies—application of rebates against components of taxable income

(1) This section applies in working out any of the following for the purposes of this Part:

(a) how much of the company tax assessed to a life assurance company in respect of a year of income is attributable to shareholders' funds income for a year of income;

(b) how much of an amount of a reduction or increase in the company tax of a life assurance company in respect of a year of income is attributable to shareholders' funds income for the year of income.

(2) Rebates of tax (other than rebates under section 46 or 46A) are taken to be applied against components of taxable income in the following order:

(a) taxable income referable to income other than shareholders' funds income;

(b) taxable income referable to shareholders' funds income.

58 Subdivision B of Division 2 of Part IIIAA (heading)

Repeal the heading, substitute:

Subdivision B—General provisions on franking credits

59 Section 160APKB

Repeal the section.

60 Subsection 160APP(5)

Repeal the subsection, substitute:

(5) If:

(a) the dividend is paid to a shareholder that is a life assurance company; and

(b) the assets of the life assurance company from which the dividend was derived were included in the insurance funds of the life assurance company at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

no franking credit arises under subsection (1), (1A) or (1B) in relation to the dividend unless at all times when those assets were included in the insurance funds of the life assurance company during that period they were held on behalf of the life assurance company's shareholders.

61 Subsection 160APPA(9)

Repeal the subsection, substitute:

(9) If:

(a) the second company is a life assurance company; and

(b) the assets of the life assurance company from which the dividend was derived were included in the insurance funds of the life assurance company at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

no franking credit arises under subsection (1) or (2) in relation to the dividend unless at all times when those assets were included in the insurance funds of the life assurance company during that period they were held on behalf of the life assurance company's shareholders.

62 Subsection 160APQ(3)

Repeal the subsection, substitute:

(3) If:

(a) the company is a life assurance company; and

(b) the assets of the life assurance company to which the trust amount or partnership amount is attributable were included in the insurance funds of the life assurance company at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the franking credit would arise but for this subsection; and

(ii) ends at the time when the franking credit would arise but for this subsection;

no franking credit arises under subsection (1), (1A) or (2) in relation to the trust amount or partnership amount unless at all times when those assets were included in the insurance funds of the life assurance company during that period they were held on behalf of the life assurance company's shareholders.

63 Before Subdivision C of Division 2 of Part IIIAA

Insert:

Subdivision BA—Franking credits of life assurance companies where relevant year of income is no later than 1999-2000

160APVAA Application

This Subdivision applies to a company tax instalment, company tax or a refund in respect of a year of income that is no later than the 1999-2000 year of income.

64 After paragraph 160APVA(3A)(b)

Insert:

and (c) section 160AQCNCH (transitional provision for late balancing life assurance company for 1999-2000 year of income) does not apply to the class C franking debit;

65 Before subsection 160APVBA(1)

Insert:

(1A) This section does not apply to a franking debit if section 160AQCNCH (transitional provision for late balancing life assurance company for 1999-2000 year of income) applies to the franking debit.

66 Before subsection 160APVD(1)

Insert:

(1A) This section does not apply to a franking debit if section 160AQCNCH (transitional provision for late balancing life assurance company for 1999-2000 year of income) applies to the franking debit.

67 After section 160APVH

Insert:

Subdivision BB—Franking credits of life assurance companies where relevant year of income is later than 1999-2000

160APVI Application

This Subdivision applies to a company tax instalment, company tax, refund or PAYG rate variation credit in respect of the 2000-01 year of income or a later year of income.

160APVJ PAYG instalment payment, or application of PAYG rate variation credit, before assessment

(1) If:

(a) on a particular day:

(i) a life assurance company pays a PAYG instalment in respect of a year of income; or

(ii) a PAYG rate variation credit of a life assurance company is applied to reduce the company's liability for a PAYG instalment in respect of a year of income; and

(b) the company's company tax in respect of that year of income has not been assessed on or before that day;

there arises on that day, a class C franking credit of the company equal to the adjusted amount in relation to the provisional franking component of the amount paid or applied.

(2) The ***provisional franking component*** of the amount paid or applied is so much of the amount paid or applied as is attributable to income that the company estimates will be shareholders' funds income for that year of income.

Note 1: At the time the life assurance company's company tax is assessed, the actual allocation of income to the relevant funds will be known. At that point, the franking credit that arises under this section is reversed by a franking debit under section 160AQCNCB and replaced with a franking credit under section 160APVK.

Note 2: Section 160AQCNCC imposes a penalty for overestimating the tax paid that is attributable to income that is likely to be allocated to shareholders' funds.

160APVK Franking credit on assessment for earlier PAYG instalment payment

(1) If:

(a) a class C franking credit of a life assurance company arises under section 160APVJ in relation to a payment of a PAYG instalment in respect of a year of income; and

(b) the company's company tax in respect of the year of income is assessed on a day (the ***assessment day***) that occurs on or after the day on which the class C franking credit arises; and

(c) section 160AQCNCG (transitional provision for early balancing life assurance company for 2000-01 year of income) does not apply to the class C franking credit;

there arises on the assessment day a class C franking credit of the company equal to the adjusted amount in relation to the final franking component of the amount paid or applied.

(2) The ***final franking component*** of the amount paid or applied is so much of the amount paid or applied as is attributable to shareholders' funds income for that year of income.

160APVL PAYG instalment payment after assessment

(1) If:

(a) on a particular day a life assurance company pays a PAYG instalment in respect of a year of income; and

(b) the company's company tax in respect of the year of income has been assessed before that day; and

(c) section 160AQCNCG (transitional provision for early balancing life assurance company for 2000-01 year of income) does not apply to the amount paid or applied;

there arises on that day, a class C franking credit of the company equal to the adjusted amount in relation to the franking component of the amount paid or applied.

(2) The ***franking component*** of the amount paid or applied is so much of the amount paid or applied as is attributable to shareholders' funds income for that year of income.

160APVM Payment of company tax after assessment

(1) If:

(a) on a particular day, a life assurance company pays company tax in respect of a year of income; and

(b) section 160AQCNCG (transitional provision for early balancing life assurance company for 2000-01 year of income) does not apply to the payment;

there arises on that day a class C franking credit of the company equal to the adjusted amount in relation to the franking component of the amount paid.

(2) The ***franking component*** of the amount paid is so much of the amount paid as is attributable to shareholders' funds income for that year of income.

160APVN Reversing subsection 160AQCNCE(1) franking debit on assessment

If:

(a) a class C franking debit of a life assurance company arises under subsection 160AQCNCE(1) because a company becomes entitled to a PAYG rate variation credit in respect of a year of income; and

(b) the company's company tax in respect of the year of income is assessed on a day (the ***assessment day***) that occurs on or after the day on which the class C franking debit arises;

there arises on the assessment day, a class C franking credit of the company equal to the amount of the class C franking debit.

160APVO Substituted franking credit for payment of excess foreign tax credit

(1) If a class C franking credit of a life assurance company arises on a particular day under section 160APQB in respect of the 2000-01

year of income or a later year of income because of an amount paid by the company, there arises on that day:

(a) a class C franking debit of the company equal to the amount of that class C franking credit; and

(b) a class C franking credit of the company equal to the adjusted amount in relation to the franking component of the amount paid.

Paragraph (b) does not apply if section 160AQCNCG (transitional provision for early balancing life assurance company for 2000-01 year of income) applies to the class C franking credit.

(2) The ***franking component*** of the amount paid is so much of the amount paid as is attributable to shareholders' funds income for that year of income.

68 Subdivision C of Division 2 of Part IIIAA (heading)

Repeal the heading, substitute:

Subdivision C—General provisions on franking debits

69 Subsection 160AQCA(3)

Repeal the subsection, substitute:

(3) If:

(a) a class C franking credit of a life assurance company arises under section 160APP or 160APQ at a particular time (the ***crediting time***) during a year of income of the company; and

(b) at any time after the crediting time and during the year of income:

(i) if section 160APP applied—the asset of the company from which the dividend referred to in subsection (1B) of that section was derived; or

(ii) if section 160APQ applied—the asset of the company to which the trust amount or partnership amount referred to in subsection (2) of that section is attributable;

is both part of the insurance funds of the company and not held on behalf of the company's shareholders;

a class C franking debit of the company equal to the class C franking credit arises on the first day on which paragraph (b) applies to the asset.

70 After section 160AQCC

Insert:

Subdivision CA—Franking debits of life assurance companies where relevant year of income is no later than 1999-2000

160AQCCAA Application

This Subdivision applies to a company tax instalment, company tax or a refund in respect of a year of income that is no later than the 1999-2000 year of income.

71 After paragraph 160AQCCA(3A)(b)

Insert:

and (c) section 160AQCNCF (transitional provision for late balancing life assurance company for 1999-2000 year of income) does not apply to the class C franking credit;

72 Before subsection 160AQCK(1)

Insert:

(1A) This section does not apply to a franking credit if section 160AQCNCF (transitional provision for late balancing life assurance company for 1999-2000 year of income) applies to the franking credit.

73 Before subsection 160AQCL(1)

Insert:

(1A) This section does not apply to a franking credit if section 160AQCNCF (transitional provision for late balancing life assurance company for 1999-2000 year of income) applies to the franking credit.

74 After subsection 160AQCN(2AA)

Insert:

(2AAA) Paragraphs (2AA)(b), (c) and (e) do not apply to a franking credit if section 160AQCNCH (transitional provision for late balancing life assurance company for 1999-2000 year of income) applies to the franking credit.

75 Before Subdivision D of Division 2 of Part IIIAA

Insert:

Subdivision CA—Franking debits of life assurance companies where relevant year of income is later than 1999-2000

160AQCNCA Application

This Subdivision applies to a company tax instalment, company tax, refund or PAYG rate variation credit in respect of the 2000-01 year of income or a later year of income.

160AQCNCB Reversing section 160APVJ franking credits on assessment

If:

(a) a class C franking credit of a life assurance company arises under section 160APVJ because of:

(i) a payment by the company of an amount in respect of a PAYG instalment in respect of the year of income; or

(ii) the application of a PAYG rate variation credit in respect of a PAYG instalment in respect of the year of income; and

(b) the company's company tax in respect of the year of income is assessed on a day (the ***assessment day)*** that occurs on or after the day on which the class C franking credit arises;

there arises on the assessment day, a class C franking debit of the company equal to the amount of the class C franking credit.

160AQCNCC Penalty for overestimating income attracting franking credits

(1) A class C franking debit of a life assurance company arises under this subsection if:

(a) class C franking credits of the company (the ***provisional franking credits***) arise under subparagraph 160APVJ(1)(a)(i) in relation to the payment of PAYG instalments in respect of a year of income; and

(b) class C franking credits of the company (the ***final franking credits***) of the company arise under section 160APVK in relation to the payment of those PAYG instalments; and

(c) the sum of the provisional franking credits is more than 110% of the amount of the sum of the final franking credits.

The amount of the debit is equal to the difference between the sum of the provisional franking credits and the sum of the final franking credits.

(2) A class C franking debit of a life assurance company arises under this subsection if:

(a) class C franking credits of the company (the ***provisional franking credits***) arise under subparagraph 160APVJ(1)(a)(i) in relation to the payment of PAYG instalments in respect of a year of income; and

(b) when the company's company tax in respect of the year of income is assessed, no class C franking credits of the company arise under section 160APVK in relation to the payment of the PAYG instalments.

The amount of the debit is equal to the amount of the provisional franking credit.

(3) Subsections (1) and (2) do not apply to a company's 2000-01 year of income if it starts before 1 July 2000.

(4) The Commissioner may, in the Commissioner's discretion, determine that:

(a) the franking debit is not to arise under this section; or

(b) the amount of the franking debit that arises under this section is to be reduced to the amount specified in the determination.

(5) For the purposes of the application of subsection 33(1) of the *Acts Interpretation Act 1901* to the power to make a determination under subsection (4), nothing in this Act prevents the exercise of the power at a time before the franking debit arises.

160AQCNCD Refunds, and amended assessments, for 2000-01 and later years of income

Refund

(1) If:

(a) a class C franking credit of a company arises under section 160APVJ, 160APVK, 160APVL or 160APVM because of:

(i) a payment of a PAYG instalment in respect of a year of income; or

(ii) the application of a PAYG rate variation credit to reduce the company's liability for a PAYG instalment in respect of a year of income; or

(iii) the payment by the company of an amount of company tax in respect of a year of income; and

(b) the company receives a refund of the amount paid or applied on a day (the ***refund day***) that occurs on or after the day on which the company's company tax in respect of that year of income is assessed; and

(c) the amount refunded or applied is not attributable to a reduction of company tax covered by subsection (3); and

(d) section 160AQCNCI (transitional provision for early balancing life assurance company for 2000-01 year of income) does not apply to the refund;

a class C franking debit of the company arises on the refund day.

Amount of class C franking debit

(2) The amount of the class C franking debit that arises under subsection (1) is equal to the adjusted amount in relation to so much of the amount refunded as represents a return to the company of an amount paid or applied to satisfy the company's liability to pay:

(a) a company tax instalment; or

(b) company tax;

in respect of shareholders' funds income for that year of income.

Amended assessment

(3) If a class C franking debit of a life assurance company arises on a particular day under section 160APZ in relation to the 2000-01 year of income or a later year of income because of a reduction in the company's company tax, there arises on that day:

(a) a class C franking credit of the company equal to the amount of that class C franking debit; and

(b) a class C franking debit of the company equal to the adjusted amount in relation to so much of the reduction as represents a return to the company of an amount paid or applied to satisfy the company's liability to pay:

(i) a company tax instalment; or

(ii) company tax;

in respect of shareholders' funds income for that year of income.

A class C franking debit does not arise under paragraph (b) if section 160AQCNCI (transitional provision for early balancing life assurance company for 2000-01 year of income) applies to the reduction.

160AQCNCE PAYG rate variation credits arising before assessment

(1) If:

(a) on a particular day, a life assurance company claims a PAYG rate variation credit in respect of a year of income under section 45-215 in Schedule 1 to the *Taxation Administration Act 1953*; and

(b) the company's company tax in respect of that year of income has not been assessed on or before that day;

there arises on that day a class C franking debit of the company equal to the adjusted amount in relation to the provisional franking component of the PAYG rate variation credit.

(2) The ***provisional franking component*** of the PAYG rate variation credit is so much of the credit as is referable to an amount paid or applied to the extent to which the amount paid or applied gave rise to franking credits of the company.

Subdivision CB—Transitional provisions (life assurance companies)

160AQCNCF Late balancing life assurance company (1999-2000 year of income)

When franking credits and debits arise under this section

(1) Franking debits and credits of a life assurance company arise under this section in relation to the 1999-2000 year of income if:

(a) the company's 1999-2000 year of income ends on or after 1 July 2000; and

(b) some of the company tax payable by the company in respect of that year of income is attributable to taxable income derived on or after 1 July 2000; and

(c) one of the items in the following table is satisfied:

Circumstances in which this section applies

	General description	This item is satisfied if ...
1	Assessment after section 160APM credit	(a) a class C franking credit of the company arose under section 160APM because of an amount the company paid under section 221AZK in respect of the year of income; and (b) the company's company tax in respect of the year of income is assessed on a day (the ***adjustment day***) that occurs on or after the day on which the class C franking credit arose.
2	Section 160APM credit after assessment	(a) on a particular day (the ***adjustment day***), a class C franking credit of the company arises under section 160APM because an amount the company pays under section 221AZK in respect of the year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.

Circumstances in which this section applies		
	General description	**This item is satisfied if ...**
3	Assessment after section 160APMAA credit	(a) a class C franking credit of the company arose under section 160APMAA because of an amount the company paid under subsection 221AZR(1) in respect of the year of income; and (b) the company's company tax in respect of the year of income is assessed on a day (the ***adjustment day***) that occurs on or after the day on which the class C franking credit arose.
4	Section 160APMAA credit after assessment	(a) on a particular day (the ***adjustment day***), a class C franking credit of the company arises under section 160APMAA because of an amount the company pays under subsection 221AZR(1) in respect of the year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.
5	Section 160APMD credit after assessment	(a) on a particular day (the ***adjustment day***), a class C franking credit of the company arises under section 160APMD because of an amount of company tax the company pays in respect of a year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.
6	Substituted franking credit for payment of excess foreign tax credit	on a particular day (the ***adjustment day***), a class C franking credit of the company arises under section 160APQB in relation to the year of income because of an amount paid by the company.

Pre 1 July 2000 and post 1 July 2000 proportions

(2) For the purposes of this section:

(a) the ***pre 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for the 1999-2000 year of income that is referable to taxable income derived before 1 July 2000}}{\text{Company tax for the 1999-2000 year of income}}$$

(b) the ***post 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for the 1999-2000 year of income that is referable to taxable income derived on or after 1 July 2000}}{\text{Company tax for the 1999-2000 year of income}}$$

Treatment of amount derived before 1 July 2000

(3) On the adjustment day:

(a) a class A franking credit of the company arises in relation to the pre 1 July 2000 proportion of the amount paid; and

(b) a class C franking debit of the company arises in relation to the pre 1 July 2000 proportion of the amount paid.

(4) The amount of the class A franking credit referred to in paragraph (3)(a) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$0.2 \times \text{Pre 1 July 2000 proportion} \times \text{Amount paid} \times \left[\frac{\text{Company tax referable to pre 1 July 2000 income} - \text{General component of company tax referable to pre 1 July 2000 income}}{\text{Company tax referable to pre 1 July 2000 income}}\right]$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

general component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the general component and referable to taxable income derived before 1 July 2000.

(5) The amount of the class C franking debit referred to in paragraph (3)(b) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$\text{Pre 1 July 2000 proportion} \times \text{Amount paid} \times \left[\frac{\text{Company tax referable to pre 1 July 2000 income} - \text{Standard component of company tax referable to pre 1 July 2000 income}}{\text{Company tax referable to pre 1 July 2000 income}} \right]$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

standard component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the standard component and referable to taxable income derived before 1 July 2000.

Treatment of amount derived on or after 1 July 2000

(6) On the adjustment day, there also arises:

(a) a class C franking debit of the company equal to the adjusted amount in relation to the post 1 July 2000 proportion of the amount paid; and

(b) a class C franking credit of the company equal to the adjusted amount in relation to the final franking component of the post 1 July 2000 proportion of the amount paid.

(7) The ***final franking component*** of the post 1 July 2000 proportion of the amount paid is so much of that proportion of the amount paid as is attributable to shareholders' funds income for that year of income that is derived on or after 1 July 2000.

160AQCNCG Early balancing life assurance company (2000-01 year of income)

When franking credits arise under this section

(1) Franking credits of a life assurance company arise under this section in relation to the 2000-01 year of income if:

(a) the company's 2000-01 year of income starts before 1 July 2000; and

(b) some of the company tax payable by the company in respect of the 2000-01 year of income is referable to taxable income derived before 1 July 2000; and

(c) one of the items in the following table is satisfied:

Circumstances in which this section applies

Item	General description	This item is satisfied if ...
1	Assessment after payment of PAYG instalment, that gave rise to franking credits	(a) a class C franking credit of the company arose under section 160APVJ because of a payment by the company of an amount in respect of a PAYG instalment in respect of the year of income; and (b) the company's company tax in respect of the year of income is assessed on a day (the ***adjustment day***) that occurs on or after the day on which the class C franking credit arose.
2	Payment of PAYG instalment after assessment	(a) on a particular day (the ***adjustment day***), the company pays a PAYG instalment in respect of the year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.
3	Company tax payment after assessment	(a) on a particular day (the ***adjustment day***), the company pays an amount in respect of company tax that the company is liable to pay in respect of the year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.

Circumstances in which this section applies

Item	General description	This item is satisfied if ...
4	Substituted franking credit for payment of excess foreign tax credit	on a particular day (the ***adjustment day***), a class C franking credit of the company arises under section 160APQB in relation to the year of income because of an amount paid by the company.

Pre 1 July 2000 and post 1 July 2000 proportions

(2) For the purposes of this section:

(a) the ***pre 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000 - 01 year of income that is referable to taxable income derived before 1 July 2000}}{\text{Company tax for 2000 - 01 year of income}}$$

(b) the ***post 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000 - 01 year of income that is referable to taxable income derived on or after 1 July 2000}}{\text{Company tax for 2000 - 01 year of income}}$$

Franking credits for tax on income derived before 1 July 2000

(3) On the adjustment day:

(a) a class A franking credit of the company arises in relation to the pre 1 July 2000 proportion of the amount paid or applied; and

(b) a class C franking credit of the company arises in relation to the pre 1 July 2000 proportion of the amount paid or applied.

(4) The amount of the class A franking credit referred to in paragraph (3)(a) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$0.2 \times \begin{array}{c}\text{Amount}\\\text{paid}\end{array} \times \begin{array}{c}\text{Pre 1 July}\\\text{2000}\\\text{proportion}\end{array} \times \left(\frac{\begin{array}{c}\text{Company tax}\\\text{referable to}\\\text{pre 1 July}\\\text{2000 income}\end{array} - \begin{array}{c}\text{General fund}\\\text{component}\\\text{of company}\\\text{tax referable}\\\text{to pre 1 July}\\\text{2000 income}\end{array}}{\begin{array}{c}\text{Company tax referable to}\\\text{pre 1 July 2000 income}\end{array}} \right)$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

general fund component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the general fund component and referable to taxable income derived before 1 July 2000.

(5) The amount of the class C franking credit referred to in paragraph (3)(b) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$\begin{array}{c}\text{Amount}\\\text{paid}\end{array} \times \begin{array}{c}\text{Pre 1 July 2000}\\\text{proportion}\end{array} \times \frac{\begin{array}{c}\text{Standard component of}\\\text{company tax}\\\text{referable to pre}\\\text{1 July 2000 income}\end{array}}{\begin{array}{c}\text{Company tax referable to}\\\text{pre 1 July 2000 income}\end{array}}$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

standard component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the standard component and referable to taxable income derived before 1 July 2000.

Franking credits for tax on income derived on or after 1 July 2000

(6) On the adjustment day, there also arises a class C franking credit of the company equal to the adjusted amount in relation to the final franking component of the post 1 July 2000 proportion of the amount paid.

(7) The ***final franking component*** of the post 1 July 2000 proportion of the amount paid is so much of that proportion of the amount as is attributable to shareholders' funds income for that year of income that is derived on or after 1 July 2000.

160AQCNCH Late balancing life assurance company (refunds and amended assessments for 1999-2000 year of income)

When franking debits and credits arise under this section

(1) Franking debits and credits of a life assurance company arise under this section if:

(a) the company's 1999-2000 year of income ends on or after 1 July 2000; and

(b) some of the company tax payable by the company in respect of that year of income is referable to taxable income derived on or after 1 July 2000; and

(c) one of the items in the following table is satisfied:

Circumstances in which this section applies

Item	General description	This item is satisfied if ...
1	Assessment after refund	(a) a class C franking debit of the company arose under section 160APY or 160APYA in relation to the refund of a company tax instalment in respect of the year of income; and (b) the company's company tax in respect of the year of income is assessed on a day (the ***adjustment day***) that occurs on or after the day on which the class C franking debit arose.

Circumstances in which this section applies		
Item	**General description**	**This item is satisfied if ...**
2	Refund after assessment	(a) on a particular day (the ***adjustment day***) a class C franking debit of the company arises under section 160APY or 160APYA in relation to the refund of a company tax instalment in respect of the year of income; and (b) the company's company tax in respect of the year of income has been assessed before the adjustment day.
3	Amended assessment	on a particular day (the ***adjustment day***), a class C franking debit of the company arises under section 160APZ in relation to the amount of a reduction in the company's company tax.

Pre 1 July 2000 and post 1 July 2000 proportions

(2) For the purposes of this section:

(a) the ***pre 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000-01 year of income that is referable to taxable income derived before 1 July 2000}}{\text{Company tax for 2000-01 year of income}}$$

(b) the ***post 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000-01 year of income that is referable to taxable income derived on or after 1 July 2000}}{\text{Company tax for 2000-01 year of income}}$$

Franking debit in respect of refund of tax on income derived before 1 July 2000

(3) On the adjustment day:

(a) a class A franking debit of the company arises in relation to the pre 1 July 2000 proportion of the amount of the refund or reduction; and

(b) a class C franking credit of the company arises in relation to the pre 1 July 2000 proportion of the amount of the refund or reduction.

(4) The amount of the class A franking debit referred to in paragraph (3)(a) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$0.2 \times \begin{array}{c}\text{Amount}\\\text{of}\\\text{refund}\\\text{or}\\\text{reduction}\end{array} \times \begin{array}{c}\text{Pre 1 July}\\\text{2000}\\\text{proportion}\end{array} \times \left(\frac{\begin{array}{c}\text{Company tax}\\\text{referable to}\\\text{pre 1 July}\\\text{2000}\\\text{income}\end{array} - \begin{array}{c}\text{General}\\\text{fund}\\\text{component}\\\text{of company}\\\text{tax}\\\text{referable}\\\text{to pre 1}\\\text{July 2000}\\\text{income}\end{array}}{\begin{array}{c}\text{Company tax referable to}\\\text{pre 1 July 2000 income}\end{array}} \right)$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

general fund component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the general fund component and referable to taxable income derived before 1 July 2000.

(5) The amount of the class C franking credit referred to in paragraph (3)(b) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$\text{Amount of refund or reduction} \times \text{Pre 1 July 2000 proportion} \times \left[\frac{\text{Company tax referable to pre 1 July 2000 income} - \text{Standard component of company tax referable to pre 1 July 2000 income}}{\text{Company tax referable to pre 1 July 2000 income}} \right]$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

standard component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the standard component and referable to taxable income derived before 1 July 2000.

Franking debits for refund of tax on income derived on or after 1 July 2000

(6) On the adjustment day, there also arises:

(a) a class C franking credit of the company equal to the adjusted amount in relation to the post 1 July 2000 proportion of the amount of the refund or reduction; and

(b) a class C franking debit of the company equal to the adjusted amount in relation to the franking component of the post 1 July 2000 proportion of the amount of the refund or reduction.

(7) The ***franking component*** of the post 1 July 2000 proportion of the amount of the refund or reduction is so much of that proportion of that amount as is attributable to shareholders' funds income for that year of income that is derived on or after 1 July 2000.

160AQCNCI Early balancing life assurance company (refunds and amended assessments for 2000-01 year of income)

When franking debits arise under this section

(1) Franking debits of a life assurance company arise under this section if:

(a) the company's 2000-01 year of income starts before 1 July 2000; and

(b) some of the income tax payable by the company in respect of the year of income is referable to taxable income derived before 1 July 2000; and

(c) one of the items in the following table is satisfied:

Circumstances in which this section applies		
Item	**General description**	**This item is satisfied if ...**
1	Refund after assessment	the company receives a refund of a PAYG instalment, or a refund of company tax, in respect of the year of income on a day (the ***adjustment day***) that occurs on or after the day on which the company's company tax in respect of that year of income is assessed.
2	Amended assessment	a class C franking debit of the company arises under section 160APZ in respect of the amount of a reduction in the company's company tax on a day (the ***adjustment day***) that occurs on or after the day on which the company's company tax in respect of that year of income is assessed.

Pre 1 July 2000 and post 1 July 2000 proportions

(2) For the purposes of this section:

(a) the ***pre 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000-01 year of income that is referable to taxable income derived before 1 July 2000}}{\text{Company tax for 2000-01 year of income}}$$

(b) the ***post 1 July 2000 proportion*** is:

$$\frac{\text{Company tax for 2000-01 year of income that is referable to taxable income derived on or after 1 July 2000}}{\text{Company tax for 2000-01 year of income}}$$

Franking debit for refund of tax on income derived before 1 July 2000

(3) On the adjustment day:

(a) a class A franking debit of the company arises in relation to the pre 1 July 2000 proportion of the amount of the refund or reduction; and

(b) a class C franking debit of the company arises in relation to the pre 1 July 2000 proportion of the amount of the refund or reduction.

(4) The amount of the class A franking debit referred to in paragraph (3)(a) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$0.2 \times \text{Amount of refund or reduction} \times \text{Pre 1 July 2000 proportion} \times \left(\frac{\text{Company tax referable to pre 1 July 2000 income} - \text{General fund component of company tax referable to pre 1 July 2000 income}}{\text{Company tax referable to pre 1 July 2000 income}}\right)$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

general fund component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the general fund component and referable to taxable income derived before 1 July 2000.

(5) The amount of the class C franking debit referred to in paragraph (3)(b) is equal to the adjusted amount in relation to the amount calculated using the formula:

$$\text{Amount of refund or reduction} \times \text{Pre 1 July 2000 proportion} \times \frac{\text{Standard component of company tax referable to pre 1 July 2000 income}}{\text{Company tax referable to pre 1 July 2000 income}}$$

where:

company tax referable to pre 1 July 2000 income is the company tax assessed to the company in respect of the year of income to the extent to which it is referable to taxable income derived before 1 July 2000.

standard component of company tax referable to pre 1 July 2000 income is so much of the company tax assessed to the company in respect of the year of income as is attributable to the standard component and referable to taxable income derived before 1 July 2000.

Franking debits for refund of tax on income derived on or after 1 July 2000

(6) On the adjustment day, there also arises a class C franking debit of the company equal to the adjusted amount in relation to the franking component of the post 1 July 2000 proportion of the amount of the refund or reduction.

(7) The ***franking component*** of the post 1 July 2000 proportion of the amount of the refund or reduction is so much of that proportion of that amount as is attributable to shareholders' funds income for that year of income that is derived on or after 1 July 2000.

160AQCNCJ Early balancing life assurance company (special timing rule for deficit tax, deficit deferral tax and franking additional tax for 2000-01 year of income)

(1) If:

(a) a franking credit or debit of a life assurance company arises on the day on which the company's company tax in respect of the 2000-01 year of income is assessed; and

(b) the credit or debit arises in relation to an amount paid by the company, or the application of an amount of a PAYG rate variation credit, in respect of a PAYG instalment; and

(c) the amount was paid or applied during the 2000-01 year of income; and

(d) the year of income starts before 1 July 2000;

the debit or credit is taken to have arisen on the last day of the 2000-01 year of income for the purposes of the deficit tax, deficit deferral tax and franking additional tax provisions.

(2) The ***deficit tax, deficit deferral tax and franking additional tax provisions*** are:

(a) Subdivision B of Division 5 of this Part; and

(b) Subdivision BA of Division 5 of this Part; and

(c) sections 160ARX, 160ARYA and 160ARYL.

76 Subsection 160AQCNF(8)

Repeal the subsection, substitute:

(8) No franking credit arises under subsection (1) or (2) in relation to an exempted dividend if:

(a) the exempted dividend is paid to:

(i) a former exempting company; or

(ii) an exempting company;

that is a life assurance company; and

(b) the assets of the company from which the dividend was derived were included in the insurance funds of the company at any time during the period that:

(i) starts at the beginning of the year of income of the company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

unless at all times when those assets were included in the insurance funds of the company during that period they were held on behalf of the company's shareholders.

77 Subsection 160AQT(1C)

Repeal the subsection, substitute:

(1C) If:

(a) a shareholder in a company is a life assurance company; and

(b) a class C franked dividend is paid by the company to the life assurance company in a year of income; and

(c) the life assurance company is a qualified person in relation to the dividend for the purposes of Division 1A; and

(d) the dividend is not exempt income of the life assurance company; and

(e) the dividend was not paid as part of a dividend stripping operation; and

(f) at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

the assets of the life assurance company from which the dividend was derived were both:

(iii) included in the insurance funds of the life assurance company; and

(iv) not held on behalf of the life assurance company's shareholders;

the assessable income of the life assurance company of the year of income includes the amount worked out using the formula:

$$\text{Franked amount} \times \frac{\text{Company tax rate}}{1 - \text{Company tax rate}}$$

where:

company tax rate means the applicable general company tax rate.

franked amount means the class C franked amount of the dividend.

78 Subsection 160AQT(4)

Repeal the subsection, substitute:

(4) In determining for the purposes of this section whether a dividend is exempt income, disregard:

(a) sections 282B and 297B of this Act; and

(b) paragraph 320-15(1)(b) and subparagraph 320-15(1)(f)(ii) of the *Income Tax Assessment Act 1997*.

79 Subsection 160AQU(2)

Repeal the subsection, substitute:

(2) For the purposes of subsection (1), in determining the amount included under section 160AQT in the assessable income of a shareholder, disregard:

(a) sections 282B and 297B of this Act; and

(b) paragraph 320-15(1)(b) and subparagraph 320-15(1)(f)(ii) of the *Income Tax Assessment Act 1997*.

80 Section 160AQWA

Repeal the section, substitute:

In determining a taxpayer's entitlement to a rebate under section 160AQX, assume that:

(a) sections 282B and 297B of this Act; and

(b) paragraph 320-15(1)(b) and subparagraph 320-15(1)(f)(ii) of the *Income Tax Assessment Act 1997*;

had not been enacted.

81 Paragraph 160AQZB(1)(c)

Repeal the paragraph, substitute:

(c) an amount attributable to the relevant dividend:

(i) is included in the assessable income of the holder of the interest; or

(ii) would have been included in the assessable income of the holder of the interest if paragraph 320-15(1)(b) and subparagraph 320-15(1)(f)(ii) of the *Income Tax Assessment Act 1997* had not been enacted;

82 Paragraph 160AQZC(1)(c)

Repeal the paragraph, substitute:

(c) an amount attributable to the relevant dividend:

(i) is included in the assessable income of the holder of the interest; or

(ii) would have been included in the assessable income of the holder of the interest if paragraph 320-15(1)(b) and subparagraph 320-15(1)(f)(ii) of the *Income Tax Assessment Act 1997* had not been enacted;

83 Paragraph 160ASEP(1)(i)

Repeal the paragraph, substitute:

(i) if the shareholder is a life assurance company—at any time during the period that:

(i) starts at the beginning of the year of income of the life assurance company in which the dividend was paid; and

(ii) ends at the time when the dividend was paid;

the assets of the life assurance company from which the dividend was derived were both:

(iii) included in the insurance funds of the life assurance company; and

(iv) not held on behalf of the life assurance company's shareholders;

84 Application of amendments

(1) The amendments made by items 33 to 44 (inclusive), 60, 61, 62, 69, 76, 77 and 83 apply to dividends paid on or after 1 July 2000.

(2) The amendments made by items 78 to 82 (inclusive) apply to income derived on or after 1 July 2000.

Part 3—Conversion of franking account balances

Income Tax Assessment Act 1936

85 After paragraph 160ATA(1)(a)

Insert:

(aa) then, if the company is a life assurance company, the company's class A franking account balance (if any) at the start of that day is converted under section 160ATC to reflect the new company tax rate and transferred to the class C franking account;

86 After section 160ATB

Insert:

160ATC Conversion of balance of class A franking to reflect the new company tax rate and transfer to the class C franking account

(1) If a company that is a life assurance company has a class A franking surplus at the start of 1 July 2000:

(a) a class A franking debit of the company arises equal to that surplus; and

(b) a class C franking credit of the company arises equal to the amount of the class A franking debit multiplied by the conversion factor in subsection (3).

(2) If a company that is a life assurance company has a class A franking deficit at the start of 1 July 2000:

(a) a class A franking credit of the company arises equal to that deficit; and

(b) a class C franking debit of the company arises equal to the amount of the class A franking credit multiplied by the conversion factor in subsection (3).

(3) The conversion factor is:

$$\frac{39}{61} \times \frac{66}{34}$$

87 Subparagraphs 160ATD(1)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) is not a franking credit arising under section 160APL (carry-forward of franking surplus); and

(iii) is not a franking debit arising under section 160APX (under-franking of a dividend), 160AQB (payment of a franked dividend), 160AQCB, 160AQCBA, 160AQCNA or 160AQCNB (dividend streaming or franking credit trading arrangements), 160AQCC (on-market share buy back arrangements) or 160AQCNC (private company distributions treated as dividends);

88 Subsection 160ATD(1) (table item 1)

Omit "and the company is not a life assurance company".

89 Subsection 160ATD(1) (table item 2)

Omit "and the company is not a life assurance company".

90 Paragraphs 160ATD(2)(b) and (c)

Repeal the paragraphs.

91 After section 160ATD

Insert:

160ATDA Special treatment of some franking credits and debits arising before 1 July 2000

(1) If:

(a) any of the events specified in the event column of the following table occurred in relation to a company before 1 July 2000; and

(b) the event:

(i) was not a franking credit arising under section 160APL (carry-forward of franking surplus); and

(ii) was not a franking debit arising under section 160APX (under-franking of a dividend), 160AQB (payment of a franked dividend), 160AQCB, 160AQCBA, 160AQCNA or 160AQCNB (dividend streaming or franking credit trading arrangements), 160AQCC (on-market share buy back arrangements) or 160AQCNC (private company distributions treated as dividends);

the adjustments specified in the adjustment column for that item are taken to have been made to the company's franking accounts immediately after the event occurred:

Credits and debits arising before 1 July 2000

Item	Event	Adjustments
1	a class C franking credit of a company arose under this Part and the amount of the credit reflected an applicable general company tax rate of 34%	(a) a class C franking debit equal to the amount of the class C franking credit; and (b) a class C franking credit equal to the amount worked out using the formula: $\text{Amount of the class C franking credit} \times \frac{34}{66} \times \frac{64}{36}$
2	a class C franking debit of a company arose under this Part and the amount of the debit reflected an applicable general company tax rate of 34%	(a) a class C franking credit equal to the amount of the class C franking debit; and (b) a class C franking debit equal to the amount worked out using the formula: $\text{Amount of the class C franking debit} \times \frac{34}{66} \times \frac{64}{36}$
3	a venture capital credit of a PDF arose under this Part and the amount of the credit reflected an applicable general company tax rate of 34%	(a) a venture capital debit of the PDF equal to the amount of the venture capital credit; and (b) a venture capital credit of the PDF equal to the amount worked out using the formula: $\text{Amount of the venture capital credit} \times \frac{34}{66} \times \frac{64}{36}$

Credits and debits arising before 1 July 2000		
Item	**Event**	**Adjustments**
4	a venture capital debit of a PDF arose under this Part and the amount of the debit reflected an applicable general company tax rate of 34%	(a) a venture capital credit of the PDF equal to the amount of the venture capital debit; and (b) a venture capital debit equal to the amount worked out using the formula: $\text{Amount of the venture capital debit} \times \frac{34}{66} \times \frac{64}{36}$

(2) The amount of a credit or debit ***reflects an applicable general company tax rate of 34%*** if:

(a) the applicable general company tax rate used to calculate the amount of the credit or debit is 34%; or

(b) the debit arises under subsection 160AQC(3) or section 160ASEI and the application for the estimated debit was lodged on or after 9 June 2000; or

(c) the credit or debit is equal to the amount of an earlier debit or credit and the earlier debit or credit reflected an applicable general company tax rate of 34%.

Note 1: Paragraph (a)—the applicable general company tax rate will always be involved in the calculation of a credit or debit if an “adjusted amount” is used in the calculation.

Note 2: Paragraph (c) covers provisions such as sections 160APV, 160APVB, 160APVF, 160AQCA, 160AQCCB and 160AQCM.

92 Section 160ATE

Repeal the section.

93 Paragraph 160ATF(1)(a)

Repeal the paragraph, substitute:

(a) a company pays a number of dividends under a resolution made before 1 July 2000; and

(aa) before 1 July 2000, the dividends are declared under section 160AQF to be:

(i) if the company is not a life assurance company—class C franked; or

(ii) if the company is a life assurance company—class C franked, class A franked or both class C franked and class A franked; and

94 Paragraph 160ATF(2)(c)

Repeal the paragraph, substitute:

(c) the consequences provided for in the following table occur if the company does not make a declaration under section 160AQF or 160ASEL in relation to the second series dividends before the reckoning day for the second series dividends:

Default declaration for second series dividends

	If ...	**the company is taken to have declared that ...**	**under ...**
1	the first series dividends were class C franked but not class A franked	each dividend in the second series is a class C franked dividend to the extent of the same percentage as in the original declaration	subsection 160AQF(1AAA)
2	(a) the company is a life assurance company; and (b) the first series dividends were class A franked but not class C franked	each dividend in the second series is a class C franked dividend to the extent of the same percentage as in the original declaration	subsection 160AQF(1AAA)
3	(a) the company is a life assurance company; and (b) the first series dividends were both class C franked and class A franked	each dividend in the second series is a class C franked dividend to the extent of the sum of: (a) the percentage specified in the original declaration as the extent to which the dividend was class C franked; and (b) the percentage specified in the original declaration as the extent to which the dividend was class A franked	subsection 160AQF(1AAA)

Default declaration for second series dividends			
	If ...	**the company is taken to have declared that ...**	**under ...**
4	the first series dividends were also franked with a venture capital franked amount	each dividend in the second series is a venture capital dividend to the extent of the same percentage as in the original declaration	section 160ASEL

95 Subsection 160ATG(1)

Repeal the subsection, substitute:

(1) This section deals with the situation in which:

(a) on or after 1 July 2000, a company pays a dividend or a number of dividends under a resolution made before 1 July 2000; and

(b) before 1 July 2000, the dividend or dividends are declared under section 160AQF to be:

(i) if the company is not a life assurance company—class C franked; or

(ii) if the company is a life assurance company—class C franked, class A franked or both class C franked and class A franked; and

(c) section 160ATF does not apply to the dividend or dividends.

96 Subsection 160ATH(3)

Repeal the subsection, substitute:

(3) If the company is a life assurance company at the beginning of the reckoning day for the current dividend, the component ***EFA*** in the formula in subsection 160AQE(3) is worked out using the following formula:

$$\left(\begin{array}{c}\text{Class A franked}\\ \text{amount}\end{array} \times \frac{39}{61} \times \frac{66}{34}\right) + \left(\begin{array}{c}\text{Class C franked}\\ \text{amount}\end{array} \times \frac{36}{64} \times \frac{66}{34}\right)$$

where:

class A franked amount is the amount (if any) that is the class A franked amount of the earlier dividend.

class C franked amount is the amount (if any) that is the class C franked amount of the earlier dividend.

97 Section 160ATI

Repeal the section.

Part 4—Thresholds for franking credit trading rules

Income Tax Assessment Act 1936

98 Section 160APHT

Repeal the section, substitute:

160APHT Individual taxpayers qualified as small shareholders

(1) A taxpayer is a ***qualified person*** in relation to all dividends paid during a year of income on shares that the taxpayer held or held an interest in if:

(a) the taxpayer is an individual; and

(b) the total of the amounts of the rebates to which the taxpayer would be entitled under sections 160AQU, 160AQX and 160AQZ in respect of the year of income if the taxpayer were a qualified person in relation to each of those dividends does not exceed $5000.

(2) A taxpayer is ***not a qualified person*** under subsection (1) in relation to a dividend if the taxpayer or an associate of the taxpayer:

(a) has made; or

(b) is under an obligation to make; or

(c) is likely to make;

a related payment in respect of the dividend or a distribution attributable to the dividend.

99 Subdivision BB of Division 7 of Part IIIAA

Repeal the Subdivision.

100 Application of amendments

The amendments made by this Part apply to assessments for the 1999-2000 year of income and later years of income.

Schedule 4—CGT: Capital payments for trust interests

Income Tax Assessment Act 1997

1 At the end of subsection 104-70(1)

Add:

Note 1: Subsections 104-70(2) and (7) can affect the calculation of the non-assessable part.

Note 2: Section 104-71 can reduce the non-assessable part if the trustee has claimed the general discount or the small business 50% reduction.

2 Subsection 104-70(4)

Omit "(adjusted by subsections (7) and (7A))".

3 Subsection 104-70(4) (note)

Repeal the note, substitute:

Note 1: You cannot make a capital loss.

Note 2: Your capital gain might be reduced if you are the trustee of a fixed trust: see section 104-72.

4 Subsection 104-70(7A)

Repeal the subsection.

5 After section 104-70

Insert:

104-71 Effect on non-assessable part if trustee claimed general discount or small business reduction

When this section applies

(1) If:

(a) *CGT event E4 happens because of a payment to you (the ***actual payment***); and

(b) you are taken to have a *capital gain under paragraph 115-215(3)(b) or (c) (***your notional gain***) in respect of a corresponding trust gain (the ***trust gain***); and

(c) all or some of the non-assessable part under section 104-70 of the actual payment is attributable to proceeds from the trust gain;

follow the steps in this section to determine whether the non-assessable part (the ***original non-assessable part***) of the actual payment is reduced.

Work out the maximum non-assessable part of a notional payment to you of your notional gain

(2) First, work out what would have been under section 104-70 the non-assessable part (the ***maximum non-assessable part***) of a payment if:

(a) the whole of the payment had been attributable to proceeds from the trust gain; and

(b) the payment had been the only payment to you, by the trustee, of an amount so attributable; and

(c) the amount of the payment had been:

(i) if the trustee did *not* include indexation in the *cost base of the *CGT asset in working out the trust gain—the amount of your notional gain under paragraph 115-215(3)(b) or (c); or

(ii) if the trustee *did* include indexation in the *cost base—what would have been the amount of your notional gain if the trustee had worked out the trust gain without indexation.

Note: If more than one beneficiary is presently entitled to a share of the income of the relevant trust estate, the notional gain for each beneficiary will be only so much of the trust gain (calculated without indexation) as that beneficiary is presently entitled to.

Example: A trust has a trust gain of $10,000 which is reduced to $5,000 under subsection 102-5(1) by the general concession. David, the sole beneficiary of the trust, includes that $5,000 in his assessable income under Division 6 of Part III (trust income) of the *Income Tax Assessment Act 1936*.

If David had received a capital payment of $10,000 from the proceeds of the trust gain, the non-assessable part under section 104-70 would have been $5,000: the $10,000 reduced by the $5,000 already included in David's assessable income. That non-assessable part is the maximum non-assessable part.

Work out the concession amount for your notional gain

(3) Next, work out the total (the ***concession amount***) of:

(a) the amount (if any) by which the choice of indexation reduced your notional gain from what it would have been without the indexation; and

(b) the amount (if any) by which your notional gain was reduced under step 3 of the method statement in subsection 102-5(1) (discount capital gains); and

(c) the amount (if any) by which your notional gain was reduced under paragraph 115-215(4)(b) (small business 50% reduction).

(If none of those amounts exists, the ***concession amount*** is nil.)

Note: For a company, the concession amount will be nil unless the company is eligible for the small business 50% reduction.

Example: David is taken to have a notional gain of $10,000 under paragraph 115-215(3)(b). David applies $2,000 worth of losses leaving a gain of $8,000. That gain is reduced by $4,000 because of the general discount of 50%, leaving a gain of $4,000. David's concession amount is $4,000.

Working out the maximum excluded amount

(4) Then, compare the maximum non-assessable part with the concession amount:

(a) if the maximum non-assessable part is greater:

(i) the difference is the ***maximum excluded amount***; and

(ii) subsection (5) applies; but

(b) otherwise, the original non-assessable part is not reduced by this section.

Note: The ***maximum excluded amount*** is the maximum amount by which non-assessable parts of payments attributable to proceeds from the trust gain can be reduced.

Example: David's maximum excluded amount is $1,000 ($5,000 - $4,000).

Is the concession amount used up?

(5) Compare the original non-assessable part of the actual payment with the concession amount:

(a) if the original non-assessable part is greater, subsection (6) applies to reduce it; but

(b) otherwise, the original non-assessable part is not reduced.

Note: If the original non-assessable part of this payment is not reduced, you may be able to reduce the non-assessable part of a later payment that is attributable to the proceeds from the same trust gain.

Example: David receives an actual payment of $9,500 with an original non-assessable part of $4,500. This amount is greater than the concession amount of $4,000, so subsection (6) reduces the original non-assessable part.

Amount of reduction

(6) The original non-assessable part of the actual payment is reduced by the lesser of:

(a) the amount by which the original non-assessable part of the actual payment exceeds the concession amount; and

(b) the maximum excluded amount.

Example: David's original non-assessable part of $4,500 exceeds the concession amount of $4,000 by $500. This is less than the maximum excluded amount of $1,000. David therefore reduces his original non-assessable by $500 and includes only $4,000 as a non-assessable part under section 104-70.

Effect of previous payments from proceeds of the trust gain

(7) Subsections (5) and (6) apply differently if before the actual payment, the trustee made:

(a) a payment to you to which section 104-70 applied and all or some of the non-assessable part of which was attributable to proceeds from the trust gain (whether or not the non-assessable part was reduced by subsection (6) of this section); or

(b) 2 or more payments of that kind.

Reducing the concession amount if you have received previous payments

(8) The concession amount is reduced (but not below 0) by the non-assessable part of each previous payment of that kind (as reduced under subsection (6), if it was reduced).

Example: David receives another payment that is attributable to the proceeds from the same trust gain.

In applying this section to the second payment, he therefore reduces his concession amount of $4,000 to nil because of the $4,000 non-assessable part (as reduced under subsection (6)) of the first payment.

Reducing the maximum excluded amount if you have reduced previous non-assessable parts

(9) The maximum excluded amount is reduced (but not below 0) by the amount (if any) by which the non-assessable part of each previous payment was reduced by subsection (6). If the maximum excluded amount is reduced to 0, the original non-assessable part of the actual payment is not reduced.

Example: In applying this section to David's second payment, the maximum excluded amount of $1,000 is reduced by $500 (the amount by which the original non-assessable part of the first payment was reduced under subsection (6)). His maximum excluded amount becomes $500.

104-72 Reducing your capital gain under CGT event E4 if you are a trustee

(1) A *capital gain you make under subsection 104-70(4) is reduced if:

(a) you are the trustee of another trust that is a *fixed trust; and

(b) you are taken to have a *capital gain under paragraph 115-215(3)(b) or (c) (***your notional gain***) in respect of a corresponding trust gain (the ***trust gain***); and

(c) all or some (the ***attributable amount***) of the total of the non-assessable parts referred to in subsection 104-70(4) is attributable to proceeds from the trust gain.

(2) The *capital gain is reduced (but not below 0) by the lesser of:

(a) your notional gain; and

(b) the attributable amount.

Effect of previous reduction under this section

(3) Subsection (2) applies differently if, because of your notional gain, this section has previously reduced a *capital gain you made under subsection 104-70(4) because of payments made to you by the trustee in an earlier income year in respect of your unit or interest.

(4) Subsection (2) applies as if your notional gain were reduced by the amount of each such previous reduction.

6 Application of amendments

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Schedule 5—Scrip for scrip roll-over

Income Tax Assessment Act 1997

1 At the end of subsection 104-25(5)

Add:

Note 4: A capital gain on the repayment of certain debt given to an ultimate holding company is disregarded where an entity obtains a roll-over under Subdivision 124-M for interests acquired or cancelled: see section 124-784.

2 At the end of section 104-230

Add:

(10) A *capital gain is disregarded for a *share in a company or an interest in a trust to the extent that, had you *acquired it on or after 20 September 1985, you could have chosen a roll-over for the other *CGT event under Subdivision 124-M (scrip for scrip roll-over).

Example: Bill owns a unit in a trust that he acquired before 20 September 1985. He exchanges the unit for a unit in another trust worth $60 and $40 cash. He makes a capital gain of $50 because of CGT event K6.

Had the unit been acquired after 20 September 1985, Bill would have been entitled to a partial roll-over of the capital gain under Subdivision 124-M to the extent that his capital proceeds constituted a replacement unit.

Bill can therefore disregard $^{60}/_{100}$ of the $50 gain ($30). The cost base of Bill's replacement unit is reduced by this amount. Bill must include the remaining $20 of the CGT event K6 gain in the calculation of his net capital gain or loss for the year.

3 After section 112-50

Insert:

112-53 Scrip for scrip roll-over

Scrip for scrip roll-over

Item	In this situation:	Element affected:	See section:
1	Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and there is a significant or common stakeholder under an arrangement	First element of cost base and reduced cost base	124-782
2	Equity or debt is acquired by an ultimate holding company under that arrangement from a member of its wholly-owned group	First element of cost base and reduced cost base	124-784
3	You exchange an interest you acquired before 20 September 1985 for an interest in another entity	The total cost base and reduced cost base	124-800

4 Section 124-780

Repeal the section, substitute:

124-780 Replacement of shares

(1) There is a roll-over if:

(a) an entity (the ***original interest holder***) exchanges:

(i) a *share (the entity's ***original interest***) in a company (the ***original entity***) for a share (the holder's ***replacement interest***) in another company; or

(ii) an option, right or similar interest (also the holder's ***original interest***) issued by the original entity that gives the holder an entitlement to acquire a share in the original entity for a similar interest (also the holder's ***replacement interest***) in another company; and

(b) the exchange is in consequence of a single *arrangement that satisfies subsection (2); and

(c) the conditions in subsection (3) are satisfied; and

(d) if subsection (4) applies, the conditions in subsection (5) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest includes something other than its replacement interest: see section 124-790.

Example 1: You can get a roll-over if you exchange your shares in one entity for shares in another entity or if you exchange options in one entity for options in another entity. You cannot get a roll-over if you exchange options for shares.

Example 2: Examples of arrangements that could be involved include:

- a company takeover, whether or not it is regulated by the Corporations Law, resulting in a company owning 80% or more of another company's shares.
- a scheme of arrangement governed by the Corporations Law that involves a cancellation of some interests in an original entity resulting in another entity owning 80% or more of the interests in the original entity.

Conditions for arrangement

(2) The *arrangement must:

(a) result in:

(i) a company (the ***acquiring entity***) that is not a member of a *wholly-owned group becoming the owner of 80% or more of the *voting shares in the original entity; or

(ii) a company (also an ***acquiring entity***) that is a member of such a group increasing the percentage of voting shares that it owns in the original entity, and that company or members of the group becoming the owner of 80% or more of those shares; and

(b) be one in which at least all owners of *voting shares in the original entity (except a company referred to in paragraph (a)) could participate; and

(c) be one in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity.

Note 1: The 80% or more requirement is satisfied if the acquiring entity ends up owning at least 80% of the voting shares in the original entity. This may include shares held before the arrangement started.

Note 2: Participation will be on substantially the same terms if, for example, matters such as those referred to in subsections 619(2) and (3) of the

Corporations Law affect the capital proceeds that each participant can receive.

Conditions for roll-over

(3) The conditions are:

(a) the original interest holder *acquired its original interest on or after 20 September 1985; and

(b) apart from the roll-over, it would make a *capital gain from a *CGT event happening in relation to its original interest; and

(c) its replacement interest is in a company (the ***replacement entity***) that is:

(i) the company referred to in subparagraph (2)(a)(i); or

(ii) in any other case—the *ultimate holding company of the *wholly-owned group; and

(d) the original interest holder chooses to obtain the roll-over or, if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over; and

(e) if that section applies, the original interest holder informs the replacement entity in writing of the *cost base of its original interest worked out just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

Further roll-over conditions in certain cases

(4) The conditions specified in subsection (5) must be satisfied if the original interest holder and an acquiring entity did not deal with each other at *arm's length and:

(a) neither the original entity nor the replacement entity had at least 300 *members just before the *arrangement started; or

(b) the original interest holder, the original entity and an acquiring entity were all members of the same *linked group just before that time.

Note: There are some cases where a company will not be regarded as having 300 members: see section 124-810.

(5) The conditions are:

(a) the market value of the original interest holder's *capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and

(b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

CUFS

(6) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

Note: A Chess Unit of Foreign Security is an interest, traded on the Australian Stock Exchange, in a foreign share, unit or interest.

(7) A company is the ***ultimate holding company*** of a *wholly-owned group if it is not a *100% subsidiary of another company in the group.

124-781 Replacement of trust interests

(1) There is a roll-over if:

(a) an entity (also the ***original interest holder***) exchanges:

(i) a unit or other interest (also the holder's ***original interest***) in a trust (also the ***original entity***) for a unit or other interest (also the holder's ***replacement interest***) in another trust (also the ***acquiring entity***); or

(ii) an option, right or similar interest (also the holder's ***original interest***) issued by the original entity that gives the holder an entitlement to acquire a unit or other interest in the original entity for a similar interest (also the holder's ***replacement interest***) in another trust (also the ***acquiring entity***); and

(b) entities have *fixed entitlements to all of the income and capital of the original entity and the acquiring entity; and

(c) the exchange is in consequence of an *arrangement that satisfies subsection (2); and

(d) the conditions in subsections (3) and (4) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest includes something other than its replacement interest: see section 124-790.

Conditions for arrangement

(2) The *arrangement must:

(a) result in the acquiring entity owning 80% or more of the *trust voting interests in the original entity or, if there are none, 80% or more of the units or other interests in the original entity; and

(b) be one in which at least all owners of trust voting interests (or of units or other interests) in the original entity (except the acquiring entity) could participate; and

(c) be one in which participation was available on substantially the same terms for all of the owners of interests or units of a particular type in the original entity.

Conditions for roll-over

(3) The conditions are:

(a) the original interest holder *acquired its original interest on or after 20 September 1985; and

(b) apart from the roll-over, it would make a *capital gain from a *CGT event happening in relation to its original interest; and

(c) it chooses to obtain the roll-over or, if section 124-782 applies to it for the *arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over; and

(d) if that section applies to it, it informs that trustee in writing of the *cost base of its original interest as at the time just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

Further roll-over conditions in certain cases

(4) These conditions must be satisfied if the original interest holder and the trustee of the acquiring entity did not deal with each other at *arm's length and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the *arrangement started:

(a) the market value of the original interest holder's *capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and

(b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

Note: There are some cases where a trust will not be regarded as having 300 beneficiaries: see section 124-810.

CUFS

(5) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

Note: A Chess Unit of Foreign Security is an interest, traded on the Australian Stock Exchange, in a foreign share, unit or interest.

Meaning of trust voting interest

(6) A ***trust voting interest*** in a trust is an interest in the trust that confers rights of the same or a similar kind as the rights conferred by a *voting share in a company.

124-782 Transfer or allocation of cost base of shares acquired by acquiring entity etc.

Transfer of cost base

(1) The *cost base of an original interest *acquired by an acquiring entity under the *arrangement from an original interest holder becomes the first element of the cost base and *reduced cost base of the acquiring entity for the interest if:

(a) the original interest holder obtains a roll-over; and

(b) the holder is a *significant stakeholder or a *common stakeholder for the arrangement.

Note 1: For other interests, for example, interests for which the roll-over is not chosen, the cost base will be worked out under the ordinary cost base rules in Divisions 110 and 112.

Note 2: There is a special rule to determine the cost base of equity or debt given to an ultimate holding company by an acquiring entity under an arrangement: see section 124-784.

Allocation of cost base in cancellation case

(2) The *cost base and *reduced cost base of any interests (the ***new interests***) issued by the original entity to an acquiring entity under the *arrangement is worked out under subsection (3) if:

(a) original interests of an original interest holder are cancelled under the arrangement; and

(b) the holder obtains a roll-over for the cancellation; and

(c) the holder is a *significant stakeholder or a *common stakeholder for the arrangement.

(3) The first element of the *cost base and *reduced cost base of the new interests of an acquiring entity is that part of the cost base of the cancelled interests as can be reasonably allocated to the new interests, having regard to:

(a) the nature of the *arrangement; and

(b) the number, type and relative market values of the cancelled interests and the new interests; and

(c) any other relevant matters.

Example: Robert Co has 3 shareholders: Antill Co with 300 shares, Rachael Co 400 shares and Margaret Co 300 shares. The cost base of each share is $1 and market value is $2. Margaret Co is owned by two shareholders, John and Paul, who each have 50 shares. The market value of each share is $20.

Under an arrangement, Robert Co cancels the shares of Antill Co and Rachael Co. They receive 30 and 40 shares respectively in Margaret Co, which becomes the sole shareholder in Robert Co. The market value of Antill Co's and Rachael Co's shares in Margaret Co is equivalent to the market value of their cancelled shares in Robert Co.

Robert Co also issues 700 shares to Margaret Co, reflecting the $1,400 total market value of the shares issued by Margaret Co to Antill Co and Rachael Co. Before and after the arrangement, Margaret Co's shares in Robert Co were worth $2 each.

It is necessary to reasonably allocate the cost bases of the cancelled shares (700 x $1) to the 700 shares issued by Robert Co to Margaret Co. In this case, an allocation of $1 per share would be reasonable.

Note: If no new shares are issued by Robert Co, the cost base of the original shares that Margaret Co holds would not be adjusted.

(4) The amount allocated to a new interest under subsection (3) must not be more than its market value just after the arrangement was completed.

124-783 Meaning of *significant stakeholder*, *common stakeholder*, *significant stake* and *common stake*

Significant stakeholder

(1) An original interest holder is a ***significant stakeholder*** for an *arrangement if it had:

(a) a *significant stake in the original entity just before the arrangement started; and

(b) a significant stake in the replacement entity just after the arrangement was completed.

(2) Also, if an original interest holder is an acquiring entity, any other original interest holder is a ***significant stakeholder*** for an *arrangement if it:

(a) had a *significant stake in the original entity just before the *arrangement started; and

(b) is an *associate of the replacement entity just after the arrangement was completed.

Certain companies and trusts not required to trace interests

Common stakeholder

(3) An original interest holder is a ***common stakeholder*** for an *arrangement if it had:

(a) a *common stake in the original entity just before the arrangement started; and

(b) a common stake in the replacement entity just after the arrangement was completed.

(4) If an acquiring entity for an *arrangement is an original interest holder, each other original interest holder that has a replacement interest is a ***common stakeholder*** for the arrangement.

(5) No original interest holder is a ***common stakeholder*** for an *arrangement if either the original entity or the replacement entity had at least 300 *members (for a company) or 300 beneficiaries (for a trust) just before the arrangement started.

Significant stake

(6) An entity has a ***significant stake*** in a company at a time if the entity, or the entity and the entity's *associates between them:

(a) have at that time *shares carrying 30% or more of the voting rights in the company; or

(b) have at that time the right to receive for their own benefit 30% or more of any *dividends that the company may pay; or

(c) have at that time the right to receive for their own benefit 30% or more of any distribution of capital of the company.

Note: The tests are applied to interests held directly by an entity and its associates.

Example: There are 4 shareholders in YZT Company: Sonja has 60%, Mario has 20%, Peter has 10% and Dave has 10%.

Sonja, Mario and Peter are associates. They each have a significant stake in YZT because, on an associate inclusive basis, they each have a 90% stake in YZT. Dave does not have a significant stake because his total stake, on an associate inclusive basis, is 10%.

(7) An entity has a ***significant stake*** in a trust at a time if the entity, or the entity and the entity's *associates between them, had at that time the right to receive for their own benefit 30% or more of any distribution to beneficiaries of the trust of income or capital of the trust.

(8) No original interest holder has a ***significant stake*** in a company that has at least 300 *members or a trust that has at least 300 beneficiaries if it is reasonable for the company or the trustee of the trust to conclude that this is the case on the information available to it.

Note: There are some cases where a company or trust will not be regarded as having 300 members or beneficiaries: see section 124-810.

Common stake

(9) If the original entity and the acquiring entity are companies, an entity, or 2 or more entities, have a ***common stake*** in the original entity just before the *arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their *associates, between them:

(a) had 80% or more of:

(i) the voting rights in the original entity just before the arrangement started; and

(ii) the voting rights in the replacement entity just after the arrangement was completed; or

(b) had the right to receive for their own benefit 80% or more of:

(i) any *dividends that the original entity may pay just before the arrangement started; and

(ii) any dividends that the replacement entity may pay just after the arrangement was completed; or

(c) had the right to receive for their own benefit 80% or more of:

(i) any distribution of capital of the original entity just before the arrangement started; and

(ii) any distribution of capital of the replacement entity just after the arrangement was completed.

(10) If the original entity and the acquiring entity are trusts, an entity, or 2 or more entities, have a ***common stake*** in the original entity just before the *arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their *associates, between them:

(a) had, just before the arrangement started, the right to receive for their own benefit 80% or more of any distribution to beneficiaries of the original entity of income or capital of the original entity; and

(b) had, just after the arrangement was completed, the right to receive for their own benefit 80% or more of any distribution to beneficiaries of the replacement entity of income or capital of that entity.

124-784 Cost base of equity or debt given by acquiring entity to ultimate holding company

Purpose

(1) This section allocates an appropriate *cost base to equity issued, or new debt owed, by an acquiring entity under the *arrangement to the *ultimate holding company where the cost base of an original interest was transferred or allocated under section 124-782 because the original interest holder is a *significant stakeholder or a *common stakeholder for the arrangement.

Allocation of cost base

(2) The first element of the *cost base of the equity or debt for the *ultimate holding company is that part of the cost base of the original interest transferred or allocated under section 124-782 as:

(a) may be reasonably allocated to the equity or debt; and

(b) is not more than the market value of the equity or debt just after the arrangement was completed.

No capital gain on debt repayment

(3) Any *capital gain of the *ultimate holding company from the repayment of new debt owed by an acquiring entity under the *arrangement is disregarded to the extent that it relates to the difference between the part of the *cost base transferred or allocated under section 124-782 and the market value of the debt just after the arrangement was completed.

Note: If the debt is assigned or exchanged, there may be a capital gain.

5 Subsection 124-790(1)

Repeal the subsection, substitute:

(1) The original interest holder can obtain only a partial roll-over if its *capital proceeds for its original interest includes something (the ***ineligible proceeds***) other than its replacement interest. There is no roll-over for that part (the ***ineligible part***) of its original interest for which it received ineligible proceeds.

6 Subsection 124-790(3)

Repeal the subsection.

7 Subsection 124-795(1)

Omit “the acquiring entity”, substitute “the replacement entity”.

8 Subsection 124-795(3)

Repeal the subsection, substitute:

(3) You cannot obtain the roll-over for the *CGT event happening in relation to the exchange of your original interest if you can choose a roll-over under Division 122 or Subdivision 124-G for that event.

Note: Division 122 deals with the disposal of assets to a wholly-owned company, and Subdivision 124-G deals with company reorganisation.

9 At the end of section 124-795

Add:

(4) Unless a condition in subsection (5) is satisfied, you cannot obtain the roll-over for an original interest in an original entity that is a company if:

(a) just before the *arrangement started, the original entity:

(i) was not an Australian resident; and

(ii) did not have at least 300 *members; and

(b) just after the arrangement was completed:

(i) if the acquiring entity is not a member of a *wholly-owned group at that time—the acquiring entity was not an Australian resident and *acquired an interest of the kind referred to in paragraph 124-780(1)(a) in the original entity as a result of the arrangement; or

(ii) if it was a member of such a group at that time—a member of that group was not an Australian resident and acquired an interest of the kind referred to in paragraph 124-780(1)(a) in the original entity as a result of the arrangement.

Note: There are some cases where a company will not be regarded as having 300 members: see section 124-810.

(5) You can obtain the roll-over for the original interest if:

(a) if the acquiring entity was not a member of a *wholly-owned group just after the *arrangement was completed—the acquiring entity had at least 300 *members just before the arrangement started; or

(b) if it was a member of such a group just after the arrangement was completed:

(i) the *ultimate holding company of the group had at least 300 members just before the arrangement started; and

(ii) the ultimate holding company was not an Australian resident just after the arrangement was completed.

10 Section 124-800

Repeal the section, substitute:

124-800 Interest received for pre-CGT interest

(1) If, in consequence of the *arrangement, you exchange an interest that you *acquired before 20 September 1985 for an interest in the replacement entity, the first element of the *cost base and *reduced cost base of the interest in the replacement entity is its market value just after you acquired it.

(2) The *cost base and *reduced cost base of the interest in the replacement entity is reduced if all or part of a *capital gain from *CGT event K6 happening is disregarded because of subsection 104-230(10). The amount of the reduction is the amount of the *capital gain you disregard under that subsection.

Note 1: The full list of CGT events is in section 104-5.

Note 2: Subsection 104-230(10) provides that a capital gain from CGT event K6 is disregarded to the extent that you could have chosen a roll-over under this Subdivision if your original interest had been post-CGT.

11 Section 124-805

Repeal the section.

12 Subsections 124-810(1) and (2)

Omit "paragraph 124-780(4)(a)", substitute "this Subdivision".

13 Section 136-10 (table item A1)

Omit "8", substitute "9".

14 Section 136-10 (table item C2)

Omit "8", substitute "9".

15 Section 136-10 (table item E1)

Omit "8", substitute "9".

16 Section 136-10 (table item E2)

Omit "8", substitute "9".

17 Section 136-10 (table item E3)

Omit "8", substitute "9".

18 Section 136-10 (table item E4)

After “6”, insert “, 9”.

19 Section 136-10 (table item E5)

Omit “8”, substitute “9”.

20 Section 136-10 (table item E6)

Omit “8”, substitute “9”.

21 Section 136-10 (table item E7)

Omit “8”, substitute “9”.

22 Section 136-10 (table item E8)

After “4”, insert “, 9”.

23 Section 136-10 (table item G1)

After “8”, insert “, 9”.

24 Section 136-10 (table item G2)

After “8”, insert “, 9”.

25 Section 136-10 (table item G3)

After “8”, insert “, 9”.

26 Section 136-10 (table item H1)

Omit “8”, substitute “9”.

27 Section 136-10 (table item H2)

Omit “8”, substitute “9”.

28 Section 136-10 (table item K3)

Omit “8”, substitute “9”.

29 Section 136-10 (table item K4)

Omit “8”, substitute “9”.

30 Section 136-25 (table item 9)

Repeal the item, substitute:

9	A *share, option, right or similar interest in a company or a unit, option, right or similar interest in a trust you *acquire where: (a) you choose a scrip for scrip roll-over under Subdivision 124-M for your acquisition of the interest; and (b) your original interest had the necessary connection with Australia; and (c) you are not an Australian resident at the time you acquire it; and (d) the company is an Australian resident, or the trust is a *resident trust for CGT purposes, at that time

31 Transitional

If you obtain a roll-over under Subdivision 124-M for a CGT event that happened before the day on which this Act received the Royal Assent, the requirement to inform a replacement entity about the cost base of your original interest must be complied with within 28 days after that day.

Income Tax Assessment Act 1936

32 Subsection 396(3)

After “category 8”, insert “or 9”.

33 Subsection 406(3)

After “category 8”, insert “or 9”.

34 Application of amendments

(1) Subject to subitem (2), the amendments made by this Schedule apply to CGT events happening on or after 10 December 1999.

(2) The amendment made by item 9 applies to CGT events happening on or after 13 April 2000.

Schedule 6—Technical amendment relating to excess deductions for mining or exploration expenditure

Income Tax Assessment Act 1997

1 Section 330-335

Omit "Subdivision 300-A or 300-C", substitute "Subdivision 330-A or 330-C".

2 Application of amendment

The amendment made by this Schedule applies to assessments for the 1999-2000 income year and later income years.

Schedule 7—PAYG instalments: anti-avoidance rules

Taxation Administration Act 1953

1 Subsection 8AAB(5) (after table item 17G)

Insert:

17H	45-600 and 45-620 in Schedule 1	*Taxation Administration Act 1953*

2 Section 45-5 in Schedule 1

Repeal the section, substitute:

45-5 Object of this Part

(1) The object of this Part is to ensure the efficient collection of:

(a) income tax; and

(b) Medicare levy; and

(c) amounts of liabilities to the Commonwealth under Chapter 5A of the *Higher Education Funding Act 1988*; and

(d) amounts of liabilities to the Commonwealth under Part 2B.3 of the *Social Security Act 1991*; and

(e) amounts of liabilities to the Commonwealth under Division 6 of Part 4A of the *Student Assistance Act 1973*;

through the application of the principles set out in the rest of this section.

(2) As you earn *instalment income, you pay instalments after the end of each *instalment quarter worked out on the basis of your instalment income for that quarter. (There are limited exceptions to this).

(3) The total of your instalments for an income year is as close as possible to the total of your liabilities for the income year that are covered by subsection (1), except so far as the amounts of those liabilities are attributable to a *net capital gain. (The exception does not apply to the entities listed in subsections 45-120(2) and (2A).)

(4) Consequently, the additional amounts you have to pay to discharge those liabilities, after an assessment of your income tax for the income year is made, are as low as possible.

(5) The amount of each of your instalments for an income year is the same proportion (as nearly as possible, subject to the principles in subsections (3) and (4)) of the total of those instalments as your *instalment income for that *instalment quarter is of your total instalment income for the income year.

(6) When instalments are payable, and how their amount is calculated, are the same for different kinds of entities, except as expressly provided.

Note: Subdivision 45-P penalises an entity whose tax position, so far as it relates to PAYG instalments and related matters, is altered by a scheme that is inconsistent with the object of this Part.

3 At the end of Division 45 in Schedule 1

Add:

Subdivision 45-P—Anti-avoidance rules

Table of sections

45-595	Object of this Subdivision
45-600	General interest charge on tax benefit relating to instalments
45-605	When do you get a *tax benefit* from a scheme?
45-610	What is your *tax position* for an income year?
45-615	What is your *hypothetical tax position* for an income year?
45-620	Amount on which GIC is payable, and period for which it is payable
45-625	Credit if you also got a tax detriment from the scheme
45-630	When do you get a *tax detriment* from a scheme?
45-635	No tax benefit or detriment results from choice for which income tax law expressly provides
45-640	Commissioner may remit general interest charge in special cases

45-595 Object of this Subdivision

(1) The object of this Subdivision is to penalise an entity whose *tax position, so far as it relates to *PAYG instalments (and related credits and *general interest charge), is altered by a *scheme that is inconsistent with:

(a) the purposes and objects of this Part ; or

(b) the purposes and objects of any relevant provisions of this Part;

(whether those purposes and objects are stated expressly or not).

(2) This Subdivision is *not* intended to apply to a straightforward use of structural features of this Part if that use is consistent with the purposes and objects mentioned in subsection (1).

(3) This Subdivision is to be interpreted and applied accordingly.

45-600 General interest charge on tax benefit relating to instalments

(1) You are liable to pay the *general interest charge under section 45-620 if:

(a) you get a *tax benefit from a *scheme; and

(b) the tax benefit relates to a *component of your *tax position for an income year, and that component is covered by section 45-610; and

(c) having regard to the matters referred to in subsection (3), it would be concluded that an entity that entered into or carried out the scheme (or part of it) did so for the sole or dominant purpose of:

(i) an entity (whether you, that entity or another entity) getting one or more tax benefits from the scheme; or

(ii) 2 or more entities (whether or not including you or that entity) each getting one or more tax benefits from the scheme.

(2) It does not matter:

(a) whether or not you entered into or carried out the *scheme (or part of it); or

(b) whether the entity that entered into or carried out the scheme (or part of it) did so alone or together with one or more others; or

(c) whether the scheme (or any part of it) was entered into or carried out inside or outside Australia; or

(d) whether or not the *tax benefit you got is of the same kind as a tax benefit mentioned in paragraph (1)(c).

Matters to be considered in determining purpose of scheme

(3) In considering an entity's purpose in entering into or carrying out a *scheme (or part of one), have regard to these matters:

(a) the manner in which the scheme or part was entered into or carried out;

(b) the form and substance of the scheme, including:

(i) the legal rights and obligations involved in the scheme; and

(ii) the economic and commercial substance of the scheme;

(c) the purposes and objects of this Part and of any relevant provisions of this Part (whether those purposes and objects are stated expressly or not);

(d) the timing of the scheme;

(e) the period over which the scheme was entered into and carried out;

(f) the effect that this Act would have in relation to the scheme apart from this Subdivision;

(g) any change in your financial position that has resulted from the scheme, or may reasonably be expected to result from it;

(h) any change that has resulted from the scheme, or may reasonably be expected to result from it, in the financial position of an entity that has or had a connection or dealing with you, whether the connection or dealing is or was of a family, business or other nature;

(i) any other consequence for you, or for such an entity, of the scheme having been entered into or carried out;

(j) the nature of the connection between you and such an entity, including the question whether the dealing is or was at *arm's length.

GIC is payable on each of 2 or more tax benefits

(4) If you get 2 or more *tax benefits from the *scheme, this section has a separate application to each of them.

45-605 When do you get a *tax benefit* from a scheme?

(1) This section describes how to work out whether you get a ***tax benefit*** from a *scheme and, if so, the amount of the tax benefit.

(2) First, determine your actual *tax position for an income year (apart from this Subdivision).

(3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).

(4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *lower* than the amount of that component of the *hypothetical tax position, the difference between the 2 amounts is a ***tax benefit*** that you get from the *scheme.

Note 1: The difference between the 2 amounts is *not* a tax benefit to the extent that it is attributable to certain things for which the income tax law expressly provides. See section 45-635.

Note 2: An entity may get 2 or more tax benefits from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-610 What is your *tax position* for an income year?

Your ***tax position*** for an income year consists of a number of ***components***. The table sets out each component, and how to work out the amount of the component.

Components of your tax position that relate to PAYG instalments and credits

Item	Each of these is a *component*:	The amount of that component is:
1	Your instalment for each *instalment quarter in the income year is a ***quarterly instalment component***.	The amount worked out as follows: (a) if you are liable to pay an instalment for that instalment quarter—the amount of the instalment; or (b) if for any reason you are not liable to pay an instalment for that instalment quarter—nil (even if you are an *annual payer); or (c) if you are entitled to claim a credit for that instalment quarter under section 45-420 (because the instalment for that quarter is to be worked out on the basis of your estimated benchmark tax)—the amount of the credit (expressed as a negative amount).

Components of your tax position that relate to PAYG instalments and credits		
Item	**Each of these is a *component*:**	**The amount of that component is:**
2	Your annual instalment for the income year is the ***annual instalment component***.	The amount worked out as follows: (a) if you are liable to pay an annual instalment for the income year—the amount of the instalment; or (b) if for any reason you are not liable to pay an annual instalment for the income year—nil (even if you are a *quarterly payer).
3	A ***variation credit component*** is a credit arising under section 45-215 because the amount of your instalment for an *instalment quarter in the income year is to be worked out using an instalment rate you chose under section 45-205.	The amount worked out as follows: (a) if you are entitled to the credit—the amount of the credit (expressed as a negative amount); or (b) otherwise—nil.
4	A ***variation GIC component*** is the *general interest charge you are liable to pay under: (a) subsection 45-230(2) (varied instalment rate); or (b) subsection 45-232(2) (estimated benchmark tax); or (c) subsection 45-235(2) or (3) (annual instalment); because of how your instalment for an *instalment quarter in the income year, or for the income year, was worked out.	The amount worked out as follows: (a) if you are liable to pay the charge—the amount of the charge; or (b) otherwise—nil.

Example: A scheme results in X Pty Ltd being able to choose to be an annual payer for the 2000-01 income year.

The following table shows the actual tax position of X Pty Ltd for that year, and also its hypothetical tax position as defined in section 45-615. X Pty Ltd has got 4 tax benefits from the scheme: one for each of the 4 instalment quarters.

2000-01 income year		
For this component:	**The amount of that component of the actual tax position is:**	**The amount of that component of the hypothetical tax position is:**
Quarterly instalment component for first instalment quarter	nil	$3,000
Quarterly instalment component for second instalment quarter	nil	$4,000
Quarterly instalment component for third instalment quarter	nil	$3,000
Quarterly instalment component for fourth instalment quarter	nil	$2,000
Annual instalment component	$12,000	nil

45-615 What is your *hypothetical tax position* for an income year?

Your ***hypothetical tax position*** for an income year is what would have been, or what could reasonably be expected to have been, your *tax position for the income year if the *scheme had not been entered into or carried out.

45-620 Amount on which GIC is payable, and period for which it is payable

(1) You are liable to pay the *general interest charge on twice the *tax benefit mentioned in paragraph 45-600(1)(a).

Note 1: To the extent that you also got a tax detriment from the scheme, you get a credit: see section 45-625.

Note 2: In special circumstances the Commissioner can remit some or all of the general interest charge: see section 45-640.

(2) You are liable to pay the charge for each day in the period that:

(a) started at the beginning of the day by which your instalment for the period mentioned in the applicable item of the table in section 45-610 was due to be paid, or would have been due to be paid if you had been liable to pay an instalment for that period; and

(b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

(3) The Commissioner must give you written notice of the *general interest charge to which you are liable under subsection (1). You must pay the charge within 14 days after the notice is given to you.

(4) If any of the *general interest charge to which you are liable under subsection (1) remains unpaid at the end of the 14 days referred to in subsection (3), you are also liable to pay the general interest charge on the unpaid amount for each day in the period that:

(a) starts at the end of those 14 days; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the unpaid amount;

(ii) general interest charge on the unpaid amount.

45-625 Credit if you also got a tax detriment from the scheme

(1) You are entitled to a credit if:

(a) you are liable to pay *general interest charge under section 45-620 because you got one or more *tax benefits from the *scheme; and

(b) the Commissioner is satisfied that:

(i) you got a *tax detriment from the scheme; and

(ii) the tax detriment relates to a *component of your *tax position for an income year, and that component is covered by section 45-610.

(It does not matter whether that income year is the same as the one referred to in section 45-600.)

Note: How the credit is applied is set out in Division 3 of Part IIB.

(2) The credit is equal to the *general interest charge on twice the amount of the *tax detriment for each day in the period that:

(a) started at the beginning of the day by which your instalment for the period mentioned in the item of the table in section 45-610 that applies for the purposes of working out the amount of the tax detriment:

(i) was due to be paid; or

(ii) would have been due to be paid if you had been liable to pay an instalment for that period; and

(b) finishes at the end of the day on which your assessed tax for the income year is due to be paid.

(3) However, the credit cannot exceed the total *general interest charge you are liable to pay under section 45-620 because you got one or more *tax benefits from the *scheme.

Credit for each of 2 or more tax detriments

(4) If you get 2 or more *tax detriments from the scheme, subsections (1) and (2) have a separate application to each of them. However, the total of the credits cannot exceed the total *general interest charge referred to in subsection (3).

45-630 When do you get a *tax detriment* from a scheme?

(1) This section describes how to work out whether you get a ***tax detriment*** from a *scheme and, if so, the amount of the tax detriment.

(2) First, determine your actual *tax position for an income year (apart from this Subdivision).

(3) Next, determine your *hypothetical tax position for the same income year (apart from this Subdivision).

(4) Then compare each *component of the 2 positions. If the amount of that component of the actual *tax position is *higher* than the amount of that component of the *hypothetical tax position, the difference between the 2 amounts is a ***tax detriment*** that you get from the *scheme.

Example: In the fact situation in the example in section 45-610, X Pty Ltd gets a tax detriment from the scheme for the annual instalment component of its tax position for the income year.

Note 1: The difference between the 2 amounts is *not* a tax detriment to the extent that it is attributable to certain things for which the income law expressly provides. See section 45-635.

Note 2: An entity may get 2 or more tax detriments from the same scheme. One reason is that the scheme may affect 2 or more components of the entity's tax position for an income year. Another reason is that the scheme may affect the tax position for 2 or more income years.

45-635 No tax benefit or detriment results from choice for which income tax law expressly provides

Choice under the income tax law generally

(1) The difference between the 2 amounts referred to in subsection 45-605(4) or 45-630(4) is *not* a *tax benefit or *tax detriment if there would have been no difference between the 2 amounts but for one or more matters covered by subsection (3).

(2) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (3).

(3) This subsection covers:

(a) an entity making an agreement, choice, declaration, election or selection; or

(b) an entity giving a notice or exercising an option;

for which this Act expressly provides. However, this subsection does *not* cover an entity doing such a thing under:

(c) Subdivision 126-B (about CGT roll-overs involving companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or

(d) Subdivision 170-B of that Act (about transferring a net capital loss between companies in the same wholly-owned group).

Matters excluded in applying subsection (1) or (2)

(4) Subsection (1) or (2) does not apply to a matter covered by subsection (3) if an entity entered into or carried out the *scheme (or part of it) for the sole or dominant purpose of creating a

circumstance or state of affairs whose existence is necessary for the entity referred to in subsection (3):

(a) to make the agreement, choice, declaration, election or selection; or

(b) to give the notice or exercise the option.

Choice under some CGT provisions

(5) The difference between the 2 amounts is *not* a *tax benefit or *tax detriment if:

(a) there would have been no difference between the 2 amounts but for one or more matters covered by subsection (7); and

(b) the *scheme consisted wholly of that matter or those matters.

(6) Also, the difference between the 2 amounts is *not* a *tax benefit or *tax detriment to the extent that the difference between the 2 amounts would have been less but for one or more matters covered by subsection (7), but only if the *scheme consisted wholly of that matter or those matters.

(7) This subsection covers:

(a) a choice made under Subdivision 126-B (about CGT roll-overs involving companies in the same wholly-owned group) of the *Income Tax Assessment Act 1997*; or

(b) an agreement made under Subdivision 170-B of that Act (about transferring a net capital loss between companies in the same wholly-owned group);

45-640 Commissioner may remit general interest charge in special cases

(1) The Commissioner may, if he or she is satisfied that because special circumstances exist it would be fair and reasonable to do so, remit the whole or any part of any *general interest charge payable under section 45-620.

(2) If the Commissioner does so, section 45-625 (about credits for tax detriments from schemes) applies, and is taken always to have applied, as if the remitted amount had never been payable.

Schedule 8—Technical corrections relating to deducting prepayments

Income Tax Assessment Act 1936

1 Subsection 82KZL(1) (paragraph (a) of the definition of *pre-RBT obligation*)

Omit "before", substitute "at or before".

2 Subparagraph 82KZM(1)(aa)(i)

After "small business taxpayer", insert "for the year of income".

3 Subsection 82KZMA(1)

Omit "an income year", substitute "a year of income".

4 Paragraph 82KZMA(2)(b)

After "small business taxpayer", insert "for the year of income".

5 Subsection 82KZMB(5) (table item 2)

Omit "Year of income including 21 September 2000", substitute "Year of income following the item 1 year".

6 Subsection 82KZMB(5) (table item 3)

Omit "Year of income including 21 September 2001", substitute "Year of income following the item 2 year".

7 Subsection 82KZMB(5) (table item 4)

Omit "Year of income including 21 September 2002", substitute "Year of income following the item 3 year".

8 Subsection 82KZMC(5)

Omit "Total number of days of eligible service period", substitute "Number of days of eligible service period after expenditure year".

New Business Tax System (Integrity and Other Measures) Act 1999

9 Division 2 of Part 1 of Schedule 7 (heading)

Repeal the heading, substitute:

Division 2—Expenditure in years of income starting after last year of transitional relief

10 Subitem 12(2) of Schedule 7

Repeal the subitem, substitute:

(2) The amendments made by Division 2 of Part 1 apply in relation to expenditure incurred by a taxpayer in a year of income after the taxpayer's year of income mentioned in item 4 of the table in subsection 82KZMB(5) of the *Income Tax Assessment Act 1936*.

11 Application of amendments

The amendments made by this Schedule apply to:

(a) expenditure incurred by a taxpayer after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and

(b) the taxpayer's assessments for the year of income including that day and for later years of income.

Schedule 9—Consequential amendment of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

actuary means a Fellow or Accredited Member of the Institute of Actuaries of Australia.

2 Subsection 995-1(1)

Insert:

allocated annuity means an *immediate annuity that satisfies the requirements of subregulation 1.05(4) of the Superannuation Industry (Supervision) Regulations.

3 Subsection 995-1(1)

Insert:

allocated pension means a *current pension that satisfies the requirements of subregulation 1.06(4) of the Superannuation Industry (Supervision) Regulations.

4 Subsection 995-1(1)

Insert:

annuity includes:

(a) an annuity, within the meaning of the *Superannuation Industry (Supervision) Act 1993*; or

(b) a pension, within the meaning of the *Retirement Savings Accounts Act 1997*.

5 Subsection 995-1(1)

Insert:

annual instalment component of your *tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

6 Subsection 995-1(1)

Insert:

Australian fund has the meaning given by section 74 of the *Life Insurance Act 1995*.

7 Subsection 995-1(1)

Insert:

Australian/overseas fund has the meaning given by section 74 of the *Life Insurance Act 1995*.

8 Subsection 995-1(1)

Insert:

complying superannuation class of the taxable income of a *life insurance company has the meaning given by section 320-145.

9 Subsection 995-1(1)

Insert:

component of your *tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

10 Subsection 995-1(1)

Insert:

constitutionally protected fund has the same meaning as in Part IX of the *Income Tax Assessment Act 1936*.

11 Subsection 995-1(1)

Insert:

continuous disability policy means a *disability policy:

(a) that, by its terms, is to be of more than 3 years' duration; and

(b) the terms of which do not permit alteration, at the instance of the *life insurance company concerned, of the benefits provided by the contract or the *life insurance premiums payable under the contract.

12 Subsection 995-1(1)

Insert:

contract of reinsurance means a contract of reinsurance in respect of *life insurance policies other than:

(a) the parts of *virtual PST life insurance policies in respect of which the liabilities of the company that issued the policies are to be discharged out of a *virtual PST; and

(b) policies that are *exempt life insurance policies.

13 Subsection 995-1(1)

Insert:

current pension means a pension that has begun to be paid.

14 Subsection 995-1(1)

Insert:

current termination value of a *life insurance policy, or of the *net risk component of a life insurance policy, has the meaning given in the *Solvency Standard.

15 Subsection 995-1(1)

Insert:

deferred annuity means an *annuity that is not presently payable.

16 Subsection 995-1(1)

Insert:

disability policy means a *life insurance policy under which a benefit is payable in the event of:

(a) the death, by accident or by some other cause stated in the contract, of the person whose life is insured (the ***insured***); or

(b) injury to, or disability of, the insured as a result of accident or sickness; or

(c) the insured being found to have a stated condition or disease;

but does not include a contract of consumer credit insurance within the meaning of the *Insurance Contracts Act 1984*.

17 Subsection 995-1(1)

Insert:

discretionary benefits means investment account benefits (as defined by section 14 of the *Life Insurance Act 1995*) that are regarded as non-participating benefits for the purposes of that Act solely because of the operation of Prudential Rules No. 22 in force under section 252 of that Act.

18 Subsection 995-1(1)

Insert:

endowment policy has the same meaning as in Part IX of the *Income Tax Assessment Act 1936*.

19 Subsection 995-1(1)

Insert:

excluded virtual PST life insurance policy means a *life insurance policy that:

(a) provides only for death and disability benefits (other than *participating benefits) within the meaning of Part IX of the *Income Tax Assessment Act 1936*; or

(b) is an *exempt life insurance policy.

20 Subsection 995-1(1)

Insert:

exempt life insurance policy means a *life insurance policy:

(a) that is held by the trustee of a *complying superannuation fund and is a segregated current pension asset (within the meaning of Part IX of the *Income Tax Assessment Act 1936*); or

(b) that is held by the trustee of a *PST and is a *segregated exempt superannuation asset (within the meaning of Part IX of that Act); or

(c) that is held by the trustee of a *constitutionally protected fund; or

(d) that provides for an *immediate annuity; or

(e) that:

(i) is held by a *life insurance company other than the life insurance company that issued the policy; and

(ii) is a *segregated exempt asset of the life insurance company that holds the policy.

21 Subsection 995-1(1)

Insert:

exempt life insurance policy liabilities of a *life insurance company means liabilities of the company under the *life insurance policies referred to in subsection 320-245(1).

22 Subsection 995-1(1)

Insert:

foreign establishment amounts means *ordinary income and *statutory income derived in the course of the carrying on by the company of a business in a foreign country at or through a permanent establishment of the company in that country where the amounts:

(a) were derived from assets belonging to the permanent establishment; and

(b) were derived from sources in that foreign country or from another foreign country.

23 Subsection 995-1(1)

Insert:

funeral policy means a *life insurance policy issued by a *friendly society for the sole purpose of providing benefits to pay for the funeral of the insured person.

24 Subsection 995-1(1) (definition of *general company tax rate*)

Omit “life assurance”, substitute “life insurance”.

25 Subsection 995-1(1)

Insert:

hypothetical tax position has the meaning given by section 45-615 in Schedule 1 to the *Taxation Administration Act 1953*.

26 Subsection 995-1(1)

Insert:

immediate annuity means an *annuity that is presently payable.

27 Subsection 995-1(1)

Insert:

income bond means a *life insurance policy issued by a *friendly society under which bonuses are regularly distributed.

28 Subsection 995-1(1)

Insert:

life insurance business means:

(a) a business to the extent that it consists of issuing *life insurance policies; and

(b) any business that relates to a business to which paragraph (a) applies.

29 Subsection 995-1(1) (definition of *life insurance entity*)

Repeal the definition.

30 Subsection 995-1(1) (definition of *life insurance policy*)

Repeal the definition, substitute:

life insurance policy has the meaning given to the expression ***life policy*** in the *Life Insurance Act 1995* but includes:

(a) a contract made in the course of carrying on business that is *life insurance business because of a declaration in force under section 12A or 12B of that Act; and

(b) a sinking fund policy within the meaning of that Act.

31 Subsection 995-1(1)

Insert:

life insurance premium includes consideration received or receivable in respect of the grant of, or the undertaking of liabilities in respect of, an *annuity.

32 Subsection 995-1(1) (definition of *loss company*)

Repeal the definition, substitute:

loss company:

(a) at a particular time, has the meaning given by section 165-115R or 165-115S; and

(b) in relation to a transfer of a *tax loss or a *net capital loss has the meaning given by section 170-10 or 170-110.

33 Subsection 995-1(1)

Insert:

net current termination value of a *life insurance policy means so much of the *current termination value of the policy as relates to the part of the policy that is not reinsured under a *contract of reinsurance.

34 Subsection 995-1(1)

Insert:

net premium for a *life insurance policy means the amount of the *life insurance premium for the policy less the part (if any) of that premium that is reinsured under a *contract of reinsurance.

35 Subsection 995-1(1)

Insert:

net risk component of a *life insurance policy means the risk component in respect of the part of the policy that has not been reinsured under a *contract of reinsurance.

36 Subsection 995-1(1)

Insert:

non-resident life insurance policy means a *life insurance policy that:

(a) was issued by the company in the course of carrying on a business at or through the permanent establishment of the company in the foreign country; and

(b) is held by an entity that is neither an *associate of the company nor a Part X Australian resident (within the meaning of Part X of the *Income Tax Assessment Act 1936*).

37 Subsection 995-1(1)

Insert:

notional undeducted cost of an asset means its *undeducted cost reduced by the amounts assumed under subsection 320-255(6) to have been deducted for depreciation.

38 Subsection 995-1(1)

Insert:

ordinary class of the taxable income of a *life insurance company has the meaning given by section 320-140.

39 Subsection 995-1(1)

Insert:

overseas fund has the meaning given by section 74 of the *Life Insurance Act 1995*.

40 Subsection 995-1(1)

Insert:

participating benefit has the meaning given by section 15 of the *Life Insurance Act 1995*.

41 Subsection 995-1(1)

Insert:

policy owners' retained profits for *life insurance policies means Australian policy owners' retained profits, or overseas policy owners' retained profits, as defined by section 61 of the *Life Insurance Act 1995*, in relation to the statutory fund (within the meaning of section 29 of that Act) to which the business of issuing the policies relates.

42 Subsection 995-1(1)

Insert:

quarterly instalment component has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

43 Subsection 995-1(1)

Insert:

risk component of a claim paid under a *life insurance policy has the meaning given by section 320-80.

44 Subsection 995-1(1)

Insert:

RSA component of the *complying superannuation class of the taxable income of a *life insurance company has the meaning given by section 320-155.

45 Subsection 995-1(1)

Insert:

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

46 Subsection 995-1(1)

Insert:

scholarship plan means a *life insurance policy issued by a *friendly society for the sole purpose of providing benefits to help in the education of nominated beneficiaries.

47 Subsection 995-1(1)

Insert:

segregated exempt assets of a *life insurance company means assets from time to time segregated by the company under Subdivision 320-H, whether segregated at the time of the initial segregation or included at a later time.

48 Subsection 995-1(1) (definition of *SGIO*)

Repeal the definition.

49 Subsection 995-1(1)

Insert:

Solvency Standard means:

(a) for a *life insurance company other than a *friendly society—Actuarial Standard 2.02 made by the Life Insurance Actuarial Standards Board for the purposes of section 65 of the *Life Insurance Act 1995*; or

(b) for a life insurance company that is a friendly society—Actuarial Standard (Friendly Societies) 2.01 made by the Life Insurance Actuarial Standards Board for the purposes of section 65 of the *Life Insurance Act 1995*.

50 Subsection 995-1(1)

Insert:

specified management fees has the meaning given by subsection 320-40(4).

51 Subsection 995-1(1)

Insert:

specified roll-over amount of a *life insurance company means so much of an amount paid to the company as constitutes a roll-over of some or all of the untaxed element of the post-June 83 component (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) of an *eligible termination payment.

52 Subsection 995-1(1)

Insert:

specified roll-over component of the *complying superannuation class of the taxable income of a *life insurance company has the meaning given by section 320-215.

53 Subsection 995-1(1)

Insert:

taxable contributions has the meaning given by Division 2 of Part IX of the *Income Tax Assessment Act 1936*.

54 Subsection 995-1(1)

Insert:

tax benefit has the meaning given by section 45-605 in Schedule 1 to the *Taxation Administration Act 1953*.

55 Subsection 995-1(1)

Insert:

tax detriment has the meaning given by section 45-624 in Schedule 1 to the *Taxation Administration Act 1953*.

56 Subsection 995-1(1)

Insert:

tax position has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

57 Subsection 995-1(1) (definition of *test period*)

Repeal the definition, substitute:

test period has the meaning given by sections 165-165, 166-5, 166-20, 166-40 and 166-170.

58 Subsection 995-1(1) (definition of *test time*)

Repeal the definition, substitute:

test time has the meaning given by sections 58-10, 165-13, 165-15, 165-35, 165-40, 165-45, 165-115A, 165-115C, 165-115D, 165-115K, 165-115L, 165-115M, 165-126, 165-129, 165-132, 166-5, 166-20, 166-40, 166-80 and 166-85.

59 Subsection 995-1(1)

Insert:

trading stock loss has the meaning given by subsection 165-115A(1B).

60 Subsection 995-1(1)

Insert:

transfer value of an asset means the amount that could be expected to be received from the disposal of the asset in an open market after deducting any costs expected to be incurred in respect of the disposal.

61 Subsection 995-1(1) (definition of *trust voting interest*)

Omit “section 124-805”, substitute “section 124-781”.

62 Subsection 995-1(1)

Insert:

ultimate holding company of a *wholly-owned group has the meaning given by section 124-780.

63 Subsection 995-1(1)

Insert:

Valuation Standard means:

(a) for a *life insurance company other than a *friendly society—Actuarial Standard 1.02 made by the Life Insurance Actuarial Standards Board for the purposes of section 114 of the *Life Insurance Act 1995*; or

(b) for a life insurance company that is a friendly society—Actuarial Standard (Friendly Societies) 1.01 made by the Life Insurance Actuarial Standards Board for the purposes of section 114 of the *Life Insurance Act 1995*

64 Subsection 995-1(1)

Insert:

value of the liabilities of a *life insurance company under the *risk components of *life insurance policies means the value worked out under section 320-85.

65 Subsection 995-1(1)

Insert:

variation credit component has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

66 Subsection 995-1(1)

Insert:

variation GIC component has the meaning given by section 45-610 in Schedule 1 to the *Taxation Administration Act 1953*.

67 Subsection 995-1(1)

Insert:

virtual pooled superannuation trust has the meaning given by subsection 320-170(6).

68 Subsection 995-1(1)

Insert:

virtual PST means a *virtual pooled superannuation trust.

69 Subsection 995-1(1)

Insert:

virtual PST asset has the meaning given by subsection 320-170(6).

70 Subsection 995-1(1)

Insert:

virtual PST component of the *complying superannuation class of the taxable income of a *life insurance company has the meaning given by section 320-205.

71 Subsection 995-1(1)

Insert:

virtual PST liabilities of a *life insurance company means liabilities of the company under *life insurance policies referred to in subsection 320-190(1).

72 Subsection 995-1(1)

Insert:

virtual PST life insurance policy means a *life insurance policy that:

(a) is held by:

(i) the trustee of a fund that is a *complying superannuation fund or a *complying approved deposit fund; or

(ii) the trustee of a *pooled superannuation trust; or

(b) is held by an individual and provides for a *deferred annuity that was purchased out of an *eligible termination payment; or

(c) is held by another life insurance company and is a *virtual PST asset of that company;

and is not an *excluded virtual PST life insurance policy.

73 Subsection 995-1(1)

Insert:

whole of life policy has the same meaning as in Part IX of the *Income Tax Assessment Act 1936*.