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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Tax Laws Amendment (2007 Measures  
No. 4) Bill 2007**

**No.     , 2007**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**



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1     **A Bill for an Act to amend the law relating to**  
2     **taxation, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Tax Laws Amendment (2007*  
6                     *Measures No. 4) Act 2007.*

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 to 6	The day on which this Act receives the Royal Assent.	
3. Schedule 1, Part 7	30 June 2014.	30 June 2014
4. Schedules 2 to 4	The day on which this Act receives the Royal Assent.	
5. Schedule 5, Part 1	The day on which this Act receives the Royal Assent.	
6. Schedule 5, Part 2	Immediately after the commencement of Schedule 1 to the <i>Superannuation Legislation Amendment (Simplification) Act 2007</i> .	15 March 2007
7. Schedule 5, Part 3	The day on which this Act receives the Royal Assent.	
8. Schedule 6	The day on which this Act receives the Royal Assent.	
9. Schedule 7, item 1	The day on which this Act receives the Royal Assent.	
10. Schedule 7, items 2 to 6	1 July 2006.	1 July 2006
11. Schedule 7, items 7 to 104	The day on which this Act receives the Royal Assent.	
12. Schedule 8	The day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.



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**3 Schedule(s)**

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.

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# Schedule 1—New foreign income tax offset rules

## Part 1—Main amendments

### *Income Tax Assessment Act 1997*

#### **1 After Division 768**

Insert:

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

#### **Table of Subdivisions**

Guide to Division 770

770-A Entitlement rules for foreign income tax offsets

770-B Amount of foreign income tax offset

770-C Rules about payment of foreign income tax

770-D Administration

#### **Guide to Division 770**

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

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

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

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

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

1 **770-5 Object**

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

10 **Subdivision 770-A—Entitlement rules for foreign income tax**  
11 **offsets**

12 **Table of sections**

13 **Basic entitlement rule for foreign income tax offset**

14 770-10 Entitlement to foreign income tax offset

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

16 **Basic entitlement rule for foreign income tax offset**

17 **770-10 Entitlement to foreign income tax offset**

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

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

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

32 Note 3: For offshore banking units, the amount of foreign income tax paid in  
33 respect of offshore banking income is reduced: see subsection  
34 121EG(3A) of the *Income Tax Assessment Act 1936*.

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

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

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

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

13                                   *Exception for certain residence-based foreign income taxes*

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

21                                   *Exception for previously complying funds and previously foreign*  
22                                   *funds*

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

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

33                                   *Exception for credit absorption tax and unitary tax*

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

1 **770-15 Meaning of *foreign income tax*, *credit absorption tax* and**  
2 ***unitary tax***

3 (1) ***Foreign income tax*** means tax that:

4 (a) is imposed by a law other than an \*Australian law; and

5 (b) is:

6 (i) tax on income; or

7 (ii) tax on profits or gains, whether of an income or capital  
8 nature; or

9 (iii) any other tax, being a tax that is subject to an agreement  
10 having the force of law under the *International Tax*  
11 *Agreements Act 1953*.

12 (2) ***Credit absorption tax*** means a tax imposed by a law of a foreign  
13 country, or of any part of, or place in, a foreign country to the  
14 extent that the tax would not have been payable if the entity  
15 concerned or another entity had not been entitled to an offset in  
16 respect of the tax under this Division.

17 (3) ***Unitary tax*** means a tax imposed by a law of a foreign country, or  
18 of any part of, or place in, a foreign country, being a law which, for  
19 the purposes of taxing income, profits or gains of a company  
20 derived from sources within that country, takes into account, or is  
21 entitled to take into account, income, losses, outgoings or assets of  
22 the company (or of a company that for the purposes of that law is  
23 treated as being associated with the company) derived, incurred or  
24 situated outside that country, but does not include tax imposed by  
25 that law if that law only takes those matters into account:

26 (a) if such an associated company is a resident of the foreign  
27 country for the purposes of the law of the foreign country; or

28 (b) for the purposes of granting any form of relief in relation to  
29 tax imposed on dividends received by one company from  
30 another company.

1 **Subdivision 770-B—Amount of foreign income tax offset**

2 **Guide to Subdivision 770-B**

3 **770-65 What this Subdivision is about**

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

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

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

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

16 **Table of sections**

17 **Operative provisions**

18	770-70	Amount of foreign income tax offset
19	770-75	Foreign income tax offset limit
20	770-80	Increase in offset limit for tax paid on amounts to which section 23AI or
21		23AK of the <i>Income Tax Assessment Act 1936</i> apply

22 **Operative provisions**

23 **770-70 Amount of foreign income tax offset**

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

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

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

4 **770-75 Foreign income tax offset limit**

5 (1) There is a limit (the *offset limit*) on the amount of your \*tax offset  
6 for a year. If your tax offset exceeds the offset limit, reduce the  
7 offset by the amount of the excess.

8 (2) Your offset limit is the greater of:

9 (a) \$1,000; and

10 (b) this amount:

11 (i) the amount of income tax payable by you for the income  
12 year; *less*

13 (ii) the amount of income tax that would be payable by you  
14 for the income year if the assumptions in subsection (4)  
15 were made.

16 Note 1: If you do not intend to claim a foreign income tax offset of more than  
17 \$1,000 for the year, you do not need to work out the amount under  
18 paragraph (b).

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

21 (3) For the purposes of paragraph (2)(b), work out the amount of  
22 income tax payable by you, or that would be payable by you,  
23 disregarding any \*tax offsets.

24 (4) Assume that:

25 (a) your assessable income did not include:

26 (i) so much of any amount included in your assessable  
27 income as represents an amount in respect of which you  
28 paid \*foreign income tax that counts towards the \*tax  
29 offset for the year; and

30 (ii) any other amounts of \*ordinary income or \*statutory  
31 income from a source other than an \*Australian source;  
32 and

33 (b) you were not entitled to any deductions that:

34 (i) are \*debt deductions that are attributable to an \*overseas  
35 permanent establishment of yours; or

36 (ii) are other deductions that are reasonably related to  
37 income covered by paragraph (a) for that year.

## Schedule 1 New foreign income tax offset rules

### Part 1 Main amendments

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

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

#### 7 **770-80 Increase in offset limit for tax paid on amounts to which** 8 **section 23AI or 23AK of the *Income Tax Assessment Act*** 9 **1936 apply**

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

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

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

##### 15 **Rules about when foreign tax is paid**

16 770-130 When foreign income tax is considered paid—taxes paid by someone else  
17 770-135 Foreign income tax paid by CFCs and FIFs on attributed amounts

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

19 770-140 When foreign income tax is considered not paid—anti-avoidance rule

#### 20 **Rules about when foreign tax is paid**

##### 21 **770-130 When foreign income tax is considered paid—taxes paid by** 22 **someone else**

23 (1) This Act applies to you as if you had paid an amount of \*foreign  
24 income tax in respect of an amount (a *taxed amount*) that is all or  
25 part of an amount included in your \*ordinary income or \*statutory  
26 income if you are covered by subsection (2) or (3) for an amount of  
27 foreign income tax paid in respect of the taxed amount.

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



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

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

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

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

24 **770-135 Foreign income tax paid by CFCs and FIFs on attributed**  
25 **amounts**

- 26 (1) This Division applies to an entity as if it had paid an amount of  
27 \*foreign income tax worked out under subsection (7) in respect of  
28 an amount included in its assessable income if:  
29 (a) the amount is included in its assessable income as described  
30 in subsection (2); and  
31 (b) the conditions in subsections (3), (5) and (6) are satisfied.
- 32 (2) An amount is included in an entity's assessable income as  
33 described in this subsection if:  
34 (a) the entity is a company and the amount is included under:  
35 (i) section 456 (a **section 456 case**) of the 1936 Act in  
36 relation to a \*CFC and a statutory accounting period; or  
37 (ii) section 457 (a **section 457 case**) of that Act in relation  
38 to a CFC; or

- 1 (iii) section 529 of that Act in relation to a foreign company  
2 (within the meaning of Part XI of that Act) (a *foreign*  
3 *company case*) in respect of a notional accounting  
4 period (within the meaning of that Part) (a *notional*  
5 *accounting period*); or  
6 (b) the amount is included under section 529 of that Act in  
7 relation to a foreign trust (within the meaning of Part XI of  
8 that Act) (a *foreign trust case*) in respect of a notional  
9 accounting period.

10 Note: Section 456 of the 1936 Act includes, in the assessable income of  
11 certain Australian shareholders, amounts that are attributable to the  
12 profits of an Australian-controlled foreign company.  
13 Section 457 does likewise when a controlled foreign company changes  
14 residence from an unlisted to a listed country or to Australia.  
15 Section 529 includes, in the assessable income of resident taxpayers,  
16 amounts that are attributable to FIF interests held in foreign  
17 companies and in foreign trusts.

18 *Tax paid condition*

- 19 (3) An amount of \*foreign income tax, income tax or \*withholding tax  
20 (the *tax amount*) must have been paid:  
21 (a) for a section 456 case—by the \*CFC in respect of an amount  
22 included in the notional assessable income of the CFC for the  
23 statutory accounting period; or  
24 (b) for a section 457 case—by the CFC; or  
25 (c) for a foreign company case or a foreign trust case—by the  
26 foreign company or foreign trust in respect of an amount  
27 included in its notional income (within the meaning of  
28 Part XI of the 1936 Act) of the notional accounting period.

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

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

35 *Association condition*

- 36 (5) If the entity is a company, it must have an \*attribution percentage  
37 of 10% or more:

- 1 (a) for a section 456 case—in relation to the \*CFC at the end of  
2 the statutory accounting period; or  
3 (b) for a section 457 case—in relation to the CFC at the  
4 residence-change time (within the meaning of section 457 of  
5 the 1936 Act); or  
6 (c) for a foreign company case—at the end of the notional  
7 accounting period.

8 Note: There is no association condition for a foreign trust case.

9 *Calculation method condition for FIFs*

- 10 (6) For a foreign company case and a foreign trust case, the amount  
11 included under section 529 of the 1936 Act must have been  
12 determined by the application of the calculation method set out in  
13 Subdivision D of Division 18 of Part XI of that Act (the  
14 ***calculation method***).

15 *Amount of foreign income tax*

- 16 (7) The amount worked out under this subsection is:  
17 (a) for a section 456 case—the sum of all the tax amounts for the  
18 statutory accounting period multiplied by the company's  
19 \*attribution percentage in relation to the \*CFC at the time  
20 mentioned in paragraph (5)(a); or  
21 (b) for a section 457 case—the sum of all the tax amounts to the  
22 extent they are attributable to the amount included in the  
23 company's assessable income under section 457 of the 1936  
24 Act; or  
25 (c) for a foreign company case or a foreign trust case—an  
26 amount worked out using the following formula:

27 
$$\text{Sum of all of the tax amounts for the notional accounting period} \times \frac{\text{Entity's share of calculated profit}}{\text{FIF's calculated profit}}$$

28 where:

29 ***entity's share of calculated profit*** means the share of the  
30 calculated profit of the foreign company or foreign trust in respect  
31 of the notional accounting period to which the entity is entitled as  
32 determined under the calculation method.

1                    ***FIF's calculated profit*** means the calculated profit of the foreign  
2                    company or foreign trust in respect of the notional accounting  
3                    period as determined under the calculation method.

4                    *Grossing-up of attributed amount*

- 5                    (8) For the purposes of this Act except this section and:  
6                           (a) section 371 of the 1936 Act (for a section 456 case or a  
7                                   section 457 case); or  
8                           (b) section 605 of that Act (for a foreign company case or a  
9                                   foreign trust case);  
10                    the amount included in the entity's assessable income as described  
11                    in subsection (2) is taken to be increased by the amount of tax  
12                    worked out under subsection (7).

13                    Note:        Section 371 of the 1936 Act records an amount in an attribution  
14                                   account when the amount is included in the assessable income of an  
15                                   attributable taxpayer in relation to a CFC. Section 605 does the same  
16                                   thing for taxpayers with interests in FIFs.

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

### 18                    **770-140 When foreign income tax is considered not paid—** 19                    **anti-avoidance rule**

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

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

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

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

29                                   770-190    Amendment of assessments

1 **770-190 Amendment of assessments**

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

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

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

1

2 **Part 2—FIF income**

3 *Income Tax Assessment Act 1936*

4 **2 After subsection 535(4)**

5 Insert:

6 (4A) Subsection (4) does not prevent the taxpayer from making an  
7 election under subsection (3) in relation to a FIF in relation to a  
8 notional accounting period if the taxpayer also makes a choice  
9 under subsection 559A(1) in relation to the FIF in relation to the  
10 notional accounting period.

11 **3 After section 559**

12 Insert:

13 **559A Choice to work out notional income and notional deductions**  
14 **under Part X**

- 15 (1) The taxpayer may choose to work out the notional income and  
16 notional deductions of the FIF in accordance with subsection (3) if:  
17 (a) the FIF is a foreign company; and  
18 (b) the taxpayer's attribution percentage in relation to the FIF is  
19 10% or more at the end of the relevant period; and  
20 (c) if the taxpayer has previously made a choice under this  
21 subsection in relation to the FIF in relation to a notional  
22 accounting period of the FIF—the taxpayer has made such a  
23 choice in relation to the FIF in relation to every notional  
24 accounting period of the FIF (if any) occurring between:  
25 (i) the end of the notional accounting period of the FIF for  
26 which the taxpayer first made such a choice in relation  
27 to the FIF; and  
28 (ii) the start of the relevant period.
- 29 (2) For the purposes of this section:  
30 (a) treat the FIF as a FIF that is a CFC; and  
31 (b) treat the taxpayer as an attributable taxpayer in relation to the  
32 FIF throughout the relevant period; and

1 (c) treat the relevant period as the statutory accounting period of  
2 the FIF.

3 *Main rule—work out notional income and notional deductions*  
4 *under Part X, etc.*

5 (3) For the purposes of working out the notional income and notional  
6 deductions of the FIF of the relevant period:

7 (a) treat that notional income as the FIF's notional assessable  
8 income worked out under Part X for the relevant period; and

9 (b) treat those notional deductions as the FIF's notional  
10 allowable deductions worked out under Part X for the  
11 relevant period; and

12 (c) if the taxpayer is an AFI entity at a particular time in the  
13 relevant period—treat the FIF as an AFI subsidiary at that  
14 time.

15 (4) In working out the FIF's notional allowable deductions for the  
16 purposes of paragraph (3)(b):

17 (a) disregard sections 429 and 431 (which deal with losses); and

18 (b) instead, include notional deductions (if any) from the  
19 notional income of the FIF of the relevant period worked out  
20 under section 572 (which deals with notional deductions for  
21 calculated losses for prior periods).

22 (5) For the purposes of subsection (3), treat the FIF's commencing day  
23 mentioned in Subdivision C of Division 7 of Part X as the first day  
24 of the period over which, apart from this section, the profits or  
25 gains of a capital nature derived by the FIF during the relevant  
26 period would be determined.

27 *Application of sections 575 to 579*

28 (6) For the purposes of subsection (3), apply sections 575 to 579 in  
29 relation to a taxpayer (the **actual taxpayer**), subject to the rules in  
30 subsections (7) and (8).

31 (7) If the actual taxpayer has made a choice under subsection (1) in  
32 relation to a FIF (the **first-tier FIF**), in working out the first-tier  
33 FIF's notional assessable income for the purposes of  
34 paragraph (3)(a):

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**Part 2** FIF income

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- 1 (a) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which deal  
2 with amounts included in notional assessable income under  
3 Part XI); and  
4 (b) instead, include in that notional assessable income the  
5 first-tier FIF's notional income worked out under  
6 section 576.
- 7 (8) If the taxpayer mentioned in paragraphs (1)(b) and (3)(c) is the  
8 first-tier FIF mentioned in section 576 (because of the effect of  
9 section 576 on this section):
- 10 (a) treat the references in those paragraphs to the taxpayer as  
11 references to the actual taxpayer (and not to the first-tier  
12 FIF); and  
13 (b) if, as a result of paragraph (a), the actual taxpayer has made a  
14 choice under subsection (1) in relation to a FIF (the  
15 **second-tier FIF**)—in working out the second-tier FIF's  
16 notional assessable income for the purposes of  
17 paragraph (3)(a):
- 18 (i) disregard paragraphs 384(2)(ca) and 385(2)(ca) (which  
19 deal with amounts included in notional assessable  
20 income under Part XI); and  
21 (ii) instead, include in that notional assessable income the  
22 second-tier FIF's notional income worked out under  
23 section 579.

24 Note: The actual taxpayer cannot make a choice under subsection (1) in  
25 relation to a third-tier FIF, because the calculation method is not  
26 available in respect of a third-tier FIF (see subparagraph 579(b)(ii)).

27 *Definitions*

28 (9) In this section:

29 **AFI entity** has the same meaning as in section 326.

30 **AFI subsidiary** has the same meaning as in Part X (see  
31 section 326).

32 **attributable taxpayer** has the same meaning as in Part X (see  
33 section 361).

34 **attribution percentage** has the same meaning as in Part X (see  
35 section 362).



1                    *notional allowable deductions* has the same meaning as in Part X  
2                    (see section 382).

3                    *notional assessable income* has the same meaning as in Part X (see  
4                    section 382).

5                    ***Income Tax Assessment Act 1997***

6                    **4 After section 768-530**

7                    Insert:

8                    **768-533 Foreign company that is a FIF using CFC calculation**  
9                    **method—treatment as AFI subsidiary under this**  
10                    **Subdivision**

- 11                    (1) This section applies if:
- 12                            (a) the foreign company is a \*FIF; and
- 13                            (b) the holding company has made a choice under subsection
- 14                                    559A(1) of the *Income Tax Assessment Act 1936* in relation
- 15                                    to the foreign company in respect of a \*notional accounting
- 16                                    period of the foreign company; and
- 17                            (c) because of the choice, the foreign company is treated under
- 18                                    paragraph 559A(3)(c) of that Act as an AFI subsidiary
- 19                                    (within the meaning of that Act) in relation to that holding
- 20                                    company at a particular time.

21                    Note:            If the holding company makes a choice under subsection 559A(1) of

22                                    the *Income Tax Assessment Act 1936*, the notional income and

23                                    notional deductions of the foreign company (in its capacity as a FIF) is

24                                    worked out under the FIF calculation method by reference to its

25                                    notional assessable income and notional allowable deductions under

26                                    Part X of that Act.

- 27                    (2) For the purposes of this Subdivision, treat the foreign company as
- 28                                    an AFI subsidiary in relation to that holding company at that time.

1

2 **Part 3—Transitional**

3 ***Income Tax (Transitional Provisions) Act 1997***

4 **5 Before Division 820**

5 Insert:

6 **Division 770—Foreign income tax offsets and foreign losses**

7 **Table of Subdivisions**

8	770-A	Transitional foreign losses (common rules)
9	770-B	Transitional foreign losses (special rules for consolidated
10		groups)
11	770-C	Transitional foreign losses (special rules for CFCs)
12	770-D	Transitional foreign income tax offsets (common rules)
13	770-E	Transitional foreign income tax offsets (special rules for
14		consolidated groups)

15 **Subdivision 770-A—Transitional foreign losses (common rules)**

16 **Table of sections**

17 **Converting an overall foreign loss into a type of tax loss**

18	770-1	Converting a past foreign loss into a tax loss
19	770-5	Convertible foreign loss
20	770-10	Reducing the amount of an overall foreign loss of a class of assessable
21		foreign income

22 **Utilising transitional foreign losses**

23	770-15	No special rules if convertible foreign losses total less than or equal to
24		\$10,000 or choice made
25	770-20	Starting total for loss parcel
26	770-25	Tax loss has foreign loss component
27	770-30	Deduction limit for foreign loss component
28	770-35	Offset limit to take account of deducted foreign loss component

1 **Converting an overall foreign loss into a type of tax loss**

2 **770-1 Converting a past foreign loss into a tax loss**

3 (1) The *Income Tax Assessment Act 1936* (the **1936 Act**), the *Income*  
4 *Tax Assessment Act 1997* (the **1997 Act**) and this Act operate for  
5 the purposes of the income years mentioned in subsection (3) as if  
6 an entity that has a convertible foreign loss for an earlier income  
7 year under section 770-5 had a tax loss for the earlier year equal to:

8 (a) the amount (if any) that would have been the entity's tax loss  
9 for the earlier year under section 36-10, 165-70, 175-35 or  
10 701-30 of the 1997 Act (about deducting past tax losses);

11 *plus*

12 (b) the amount of the entity's convertible foreign loss for the  
13 earlier year.

14 Note 1: This is instead of an amount of tax loss worked out under  
15 section 36-10, 165-70, 175-35 or 701-30 of the 1997 Act.

16 Note 2: This section does not affect the amount (if any) of an entity's taxable  
17 income for the year. An entity may be taken to have a tax loss for a  
18 year under this section, but also have a taxable income for the year.

19 Note 3: This section has an expanded operation for consolidated groups: see  
20 section 770-90.

21 (2) The earlier year is taken for those purposes to be a loss year for the  
22 entity if the entity would not otherwise have a tax loss for that year.

23 (3) The income years are:

24 (a) the first income year starting on or after the first 1 July that  
25 occurs after the day on which the *Tax Laws Amendment*  
26 *(2007 Measures No. 4) Act 2007* receives the Royal Assent  
27 (the **commencement year**); and

28 (b) later income years.

29 **770-5 Convertible foreign loss**

30 (1) An entity has a loss to which this section applies (a **convertible**  
31 **foreign loss**) for an earlier income year covered by subsection (2)  
32 if:

33 (a) the entity has incurred an overall foreign loss in respect of a  
34 class of assessable foreign income (within the meaning of  
35 former section 160AFD of the 1936 Act) for the earlier year,  
36 reduced to the extent that it has been taken into account under

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1 that former section in reducing the entity's assessable foreign  
2 income of the relevant class for an income year before the  
3 commencement year; and

4 (b) a positive amount remains after reducing the overall foreign  
5 loss under section 770-10.

6 Note 1: For the classes of income, see former subsection 160AFD(8) of the  
7 1936 Act.

8 Note 2: There is a modification to this rule for losses transferred to a head  
9 company of a consolidated group: see subsection 770-80(2).

10 Note 3: Former section 160AFD of the 1936 Act allowed a past foreign loss to  
11 reduce assessable foreign income of the same class.

12 (2) The income year must be one of the most recent 10 income years  
13 ending before the commencement year.

14 (3) The amount of the convertible foreign loss for the earlier year is  
15 the sum of the positive amounts remaining after each overall  
16 foreign loss in respect of a class of assessable foreign income for  
17 the earlier year is reduced under section 770-10.

18 **770-10 Reducing the amount of an overall foreign loss of a class of**  
19 **assessable foreign income**

20 Apply the following method statement to each overall foreign loss  
21 in relation to a class of assessable foreign income of an earlier  
22 income year.

23 *Method statement*

24 *Step 1.* If the entity is a company and the relevant class of  
25 assessable foreign income is the "all other assessable  
26 income" class—reduce the amount applicable under  
27 paragraph 770-5(1)(a) to the extent (if any) that the loss  
28 is attributable to losses or outgoings incurred in gaining  
29 or producing income of a kind that would be the  
30 company's non-assessable non-exempt income if it were  
31 gained or produced in the commencement year.

32 Note: For other entities, there is no reduction under step 1.

33 *Step 2.* For income years other than the most recent 7 income  
34 years ending before the commencement year—reduce the  
35 result of step 1 by half.

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2  
3

Note: Step 2 is modified for losses transferred to a head company of a consolidated group: see subsection 770-80(3).

4 **Utilising transitional foreign losses**

5 **770-15 No special rules if convertible foreign losses total less than or**  
6 **equal to \$10,000 or choice made**

7 Section 770-30 does not apply in relation to a tax loss an entity is  
8 taken by section 770-1 to have if:

- 9 (a) the amount worked out under section 770-20 (the *starting*  
10 *total*) is less than or equal to \$10,000; or  
11 (b) the entity chooses to reduce one or more tax losses the entity  
12 is taken by section 770-1 to have had so that the starting total  
13 equals \$10,000.

14 **770-20 Starting total for loss parcel**

15 The sum of the convertible foreign losses for each earlier year for  
16 which an entity is taken by section 770-1 to have a tax loss is the  
17 starting total for all of those tax losses taken together (the *loss*  
18 *parcel*).

19 Example: On 1 July 2008, Loss Co determines that it has incurred the following  
20 overall foreign losses:

- 21 • Year ended 30 June 2002: \$5,000 (with no amount of  
22 convertible foreign loss due to the operation of 770-10);  
23 • Year ended 30 June 2004: \$4,000 (with an amount of \$2,000  
24 being a convertible foreign loss);  
25 • Year ended 30 June 2005: \$7,000 (with an amount of \$3,000  
26 being a convertible foreign loss);  
27 • Year ended 30 June 2007: \$8,000 (with the entire amount  
28 being a convertible foreign loss).

29 Loss Co does not have any other domestic tax losses for those income  
30 years (that is, the 2002, 2004, 2005 and 2007 income years are not  
31 loss years).

32 Initially, Loss Co's starting total for the loss parcel is \$13,000, which  
33 consists of the tax losses incurred in the year ended 30 June 2004, the  
34 year ended 30 June 2005 and the year ended 30 June 2007 (there is no  
35 convertible foreign loss incurred in the year ended 30 June 2002  
36 because of section 770-1 and therefore there is no tax loss included in  
37 the loss parcel for that year). The 2004, 2005 and 2007 income years

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1 will then be a new loss year for Loss Co (under subsection 770-1(2)),  
2 because Loss Co did not otherwise incur a tax loss in those years.

3 To avoid the operation of the deduction limit (under section 770-30),  
4 Loss Co chooses under paragraph 770-15(b) to reduce the starting  
5 total for the loss parcel to \$10,000 by not converting \$3,000 of its  
6 convertible foreign losses (which consists of \$2,000 of the 2004 tax  
7 loss and \$1,000 of the 2005 tax loss). Consequently, only the 2005  
8 and 2007 income years are the new loss years for Loss Co.

9 **770-25 Tax loss has foreign loss component**

10 A tax loss an entity is taken to have under section 770-1 has a  
11 separate component (the *foreign loss component*). The amount of  
12 the component is the amount of the convertible foreign loss.

13 **770-30 Deduction limit for foreign loss component**

14 (1) The amount of the foreign loss component of one or more tax  
15 losses in a loss parcel that any entity can deduct in an income year  
16 cannot exceed the amount worked out for the year using the table.  
17

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**Limit on deducting foreign loss component of a tax loss**

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<b>Item</b>	<b>For this income year:</b>	<b>The amount of the component that you can deduct cannot exceed:</b>
1	The commencement year	$\frac{1}{5}$ of the starting total for the loss parcel
2	The first income year ending after the commencement year	The difference between: (a) $\frac{2}{5}$ of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income year mentioned in item 1
3	The second income year ending after the commencement year	The difference between: (a) $\frac{3}{5}$ of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income years mentioned in items 1 and 2
4	The third income year ending after the commencement year	The difference between: (a) $\frac{4}{5}$ of the starting total for the loss parcel; and (b) the amount of the foreign loss component of one or more tax losses in the loss parcel deducted for the income years mentioned in items 1, 2

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**Limit on deducting foreign loss component of a tax loss**

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**Item For this income year: The amount of the component that you can deduct cannot exceed:**

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and 3

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- 1 Note: There may be a reduction of the limit for the head company of a  
2 consolidated group under section 770-100.
- 3 (2) This section does not limit the amount of the foreign loss  
4 component of a tax loss that an entity can deduct in a year later  
5 than the third income year ending after the commencement year.
- 6 Note: For later years, any remaining undeducted tax loss may be deducted to  
7 the extent permitted by the general rules for tax losses.

8 **770-35 Offset limit to take account of deducted foreign loss**  
9 **component**

- 10 (1) This section affects the calculation of your offset limit for an  
11 income year under section 770-75 of the 1997 Act.
- 12 (2) This section applies for an income year if you have deducted an  
13 amount of the foreign loss component of one or more tax losses  
14 (see section 770-25) in the income year.
- 15 (3) In working out the amount referred to in subparagraph  
16 770-75(2)(b)(ii) of the 1997 Act for the year, you must assume (in  
17 addition to the assumptions set out in subsection 770-75(4) of that  
18 Act), that you were not entitled to any deductions covered by  
19 subsection (2).

20 **Subdivision 770-B—Transitional foreign losses (special rules**  
21 **for consolidated groups)**

22 **Table of sections**

23	770-80	Transferred losses taken not to be refreshed for purposes of converting
24		overall foreign loss
25	770-85	Deduction limit not to restrict transfer of losses
26	770-90	Transfer of losses not restricted where part of trial year occurs before
27		commencement year
28	770-95	Foreign loss component and starting total retained after transfer to head
29		company
30	770-100	Limit where foreign loss component utilised by joining entity

1                   770-105 Modified operation of Subdivision 707-C of the 1997 Act for foreign loss

2                                   component

3                   770-110 Application of Subdivision to MEC groups

4                   **770-80 Transferred losses taken not to be refreshed for purposes of**  
5                                   **converting overall foreign loss**

6                   (1) This section applies if:

7                                   (a) a loss is transferred under section 707-120 of the *Income Tax*  
8   *Assessment Act 1997* (the **1997 Act**) from a joining entity to a  
9   head company; and

10                                   (b) the loss is an overall foreign loss in respect of a class of  
11   assessable foreign income (within the meaning of former  
12   section 160AFD of the *Income Tax Assessment Act 1936* (the  
13   **1936 Act**)).

14                   Note:           Former section 160AFD of the 1936 Act allowed a past foreign loss to  
15   reduce assessable foreign income of the same class.

16                   (2) In applying section 770-5, only have regard to the overall foreign  
17                                   loss if the income year in which it was actually incurred  
18                                   (disregarding subsection 707-140(1) of the 1997 Act) was one of  
19                                   the most recent 10 income years ending before the commencement  
20                                   year.

21                   Note:           Section 770-5 is about the amount of an entity's convertible foreign  
22   losses. Section 707-140 deems the head company of a group to have  
23   made a transferred loss in the year in which it is transferred.

24                   (3) A reduction must be made under step 2 of the method statement in  
25                                   section 770-10 if the overall foreign loss was actually incurred  
26                                   (disregarding subsection 707-140(1) of that Act) in an income year  
27                                   other than the most recent 7 income years ending before the  
28                                   commencement year.

29                   Note:           Section 770-10 is about reducing an entity's past foreign losses to  
30   arrive at the entity's convertible foreign loss for past years.

31                   **770-85 Deduction limit not to restrict transfer of losses**

32                                   Section 770-30 (deduction limit for foreign loss component) does  
33                                   not limit the transfer, under Subdivision 707-A of the 1997 Act, of  
34                                   a tax loss that has a foreign loss component.



1 **770-90 Transfer of losses not restricted where part of trial year**  
2 **occurs before commencement year**

3 Section 770-1 operates in relation to a trial year in the same way it  
4 operates in relation to the income years mentioned in subsection  
5 770-1(3) if:

- 6 (a) a tax loss has a foreign loss component; and  
7 (b) it is necessary to determine whether an entity could utilise the  
8 tax loss for an income year consisting of the trial year; and  
9 (c) part of the trial year occurs before the start of the  
10 commencement year mentioned in subsection 770-1(3).

11 **770-95 Foreign loss component and starting total retained after**  
12 **transfer to head company**

13 Where a tax loss having a foreign loss component is transferred  
14 under Subdivision 707-A of the 1997 Act to a head company:

- 15 (a) the tax loss has the same amount of foreign loss component  
16 after the transfer as it had immediately before the transfer;  
17 and  
18 (b) the starting total for the loss parcel to which the tax loss  
19 belongs (see section 770-20) is the same after the transfer as  
20 it was immediately before the transfer; and  
21 (c) for the purposes of section 770-30, the amount of the foreign  
22 loss component of one or more of the tax losses in the parcel  
23 that any entity has deducted for an income year is the same  
24 after the transfer as immediately before the transfer.

25 Note 1: This section ensures a tax loss retains its foreign loss component,  
26 starting total and deduction history even though the head company is  
27 taken after the transfer to have made the loss for the income year in  
28 which the transfer occurs.

29 Note 2: Section 770-30 sets a limit on how much of an entity's past foreign  
30 losses may be deducted in each of the first 4 years after the  
31 commencement of this section.

32 **770-100 Limit where foreign loss component utilised by joining**  
33 **entity**

- 34 (1) This section applies where one or more tax losses having a foreign  
35 loss component are transferred under Subdivision 707-A of the  
36 1997 Act to the head company of a consolidated group.

1 (2) The limit under subsection 770-30(1) of the amount of the foreign  
2 loss component of the tax losses that the transferee can deduct for  
3 an income year (the *deduction year*) mentioned in an item in the  
4 table in that subsection is reduced by the amount (if any) worked  
5 out under subsection (3).

6 (3) The amount of the reduction is the sum of each amount of the  
7 foreign loss component that has been deducted by other entities in  
8 respect of a non-membership period mentioned in section 701-30  
9 of the 1997 Act, or income year, ending before the end of the  
10 deduction year.

11 Note: Section 701-30 of the 1997 Act sets out how an entity that is not a  
12 subsidiary member of a consolidated group for all of an income year  
13 calculates its tax liability or tax loss for the periods (called  
14 non-membership periods) when it is not a member of a group.

15 **770-105 Modified operation of Subdivision 707-C of the 1997 Act for**  
16 **foreign loss component**

17 (1) This section affects the way in which one or more tax losses in a  
18 bundle of losses transferred under Subdivision 707-A of the 1997  
19 Act can be utilised by the transferee in an income year if:

20 (a) one or more of the tax losses has a foreign loss component  
21 (regardless whether at the time of transfer the bundle  
22 included a tax loss having a foreign loss component or an  
23 overall foreign loss in respect of a class of income (within the  
24 meaning of former section 160AFD of the 1936 Act)); and

25 (b) section 770-30 limits the amount of the foreign loss  
26 component that the transferee can deduct in the income year.

27 (2) Subdivision 707-C of the 1997 Act does not limit the utilisation of  
28 the foreign loss component for the income year.

29 Note: This means that the available fraction does not apply to the foreign  
30 loss component of a tax loss in the first 4 years after commencement.  
31 Instead, the deduction limit in section 770-30 applies.

32 (3) For the purposes of working out under Subdivision 707-C of the  
33 1997 Act how much of the tax losses in the bundle the transferee  
34 can utilise in the income year, section 707-310 of the 1997 Act has  
35 effect as if the first reference in paragraph (3)(b) of that section to  
36 the transferee's losses included a reference to the sum of the  
37 amounts of the foreign loss components for all loss parcels in the  
38 income year.

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1                   Note:       This affects the limit that Subdivision 707-C of that Act sets on  
2                                    utilising other tax losses in the bundle (because that limit depends on  
3                                    the transferee's income and gains remaining after utilisation of losses  
4                                    that have not been transferred under Subdivision 707-A of that Act):  
5                                    see subsection 707-310(3) of that Act.

6       **770-110 Application of Subdivision to MEC groups**

7                   This Subdivision has effect in relation to a MEC group in the same  
8                   way in which it has effect in relation to a consolidated group.

9       **Subdivision 770-C—Transitional foreign losses (special rules**  
10       **for CFCs)**

11       **Table of sections**

12	770-160	Converting a past CFC loss
13	770-165	Convertible CFC loss
14	770-170	Reducing the amount of a CFC loss of a class of notional assessable income

15       **770-160 Converting a past CFC loss**

16                   (1) The *Income Tax Assessment Act 1936* (the **1936 Act**) operates for  
17                   the purposes of the statutory accounting periods mentioned in  
18                   subsection (2) as if an eligible CFC (within the meaning of  
19                   Division 7 of Part X of that Act) (an **eligible CFC**) that has a  
20                   convertible CFC loss for an earlier statutory accounting period  
21                   under section 770-165 has a loss for the earlier period equal to the  
22                   amount of the convertible CFC loss.

23                   Note:       Part X of the 1936 Act deals with the attribution of the income of a  
24                                    CFC to attributable taxpayers.

25                   (2) The statutory accounting periods are:  
26                   (a) the first statutory accounting period starting on or after the  
27                   first 1 July that occurs after the day on which the *Tax Laws*  
28                   *Amendment (2007 Measures No. 4) Act 2007* receives the  
29                   Royal Assent (the **commencement period**); and  
30                   (b) later statutory accounting periods.

1 **770-165 Convertible CFC loss**

- 2 (1) An eligible CFC has a loss to which this section applies (a  
3 **convertible CFC loss**) for an earlier statutory accounting period  
4 covered by subsection (2) if:  
5 (a) the eligible CFC has a loss under section 426 of the 1936 Act  
6 for the earlier period in relation to notional assessable income  
7 of a class, reduced to the extent that it has been previously  
8 taken into account under section 431 of the 1936 Act in  
9 respect of a statutory accounting period before the  
10 commencement period; and  
11 (b) a positive amount remains after reducing the loss under  
12 section 770-170.

13 Note: For the classes of notional assessable income, see former subsection  
14 424(1) of the 1936 Act.

- 15 (2) The statutory accounting period must be one of the most recent 10  
16 statutory accounting periods ending before the commencement  
17 period.  
18 (3) The amount of the convertible CFC loss for the earlier period is the  
19 sum of the positive amounts remaining after each loss in relation to  
20 notional assessable income of a class for the earlier period is  
21 reduced under section 770-170.

22 **770-170 Reducing the amount of a CFC loss of a class of notional**  
23 **assessable income**

24 Apply the following method statement to each loss in relation to  
25 notional assessable income of a class for the earlier statutory  
26 accounting period.

27 *Method statement*

28 *Step 1.* Reduce the amount applicable under paragraph  
29 770-165(1)(a) to the extent (if any) that the loss relates to  
30 the “all other amounts” class of notional assessable  
31 income, except to the extent (if any) that the loss is  
32 attributable to losses or outgoings incurred in gaining or  
33 producing income of a kind that would be the company’s  
34 notional assessable income or sometimes-exempt income.

1 *Step 2.* For statutory accounting periods other than the most  
2 recent 7 statutory accounting periods ending before the  
3 commencement period—reduce the result of step 1 by  
4 half.

5 **Subdivision 770-D—Transitional foreign income tax offsets**  
6 **(common rules)**

7 **Table of sections**

8	770-220	Converting excess foreign tax credits into pre-commencement excess
9		foreign income tax
10	770-225	Pre-commencement excess foreign income tax generated for a company by
11		excess foreign tax credits relating to other income
12	770-230	Increase in the foreign income tax offset

13 **770-220 Converting excess foreign tax credits into**  
14 **pre-commencement excess foreign income tax**

- 15 (1) You have pre-commencement excess foreign income tax from an  
16 income year if:
- 17 (a) you have excess foreign tax credits in relation to a class of  
18 foreign income from an earlier income year under former  
19 section 160AFE of the *Income Tax Assessment Act 1936* (the  
20 **1936 Act**); and
  - 21 (b) the earlier income year is one of the most recent 5 income  
22 years ending before the first income year starting on or after  
23 the first 1 July that occurs after the day on which the *Tax*  
24 *Laws Amendment (2007 Measures No. 4) Act 2007* receives  
25 the Royal Assent; and
  - 26 (c) the credits have not already been applied under former  
27 section 160AFE of the 1936 Act.

28 Note: For the classes of income, see former subsections 160AF(7) and  
29 160AFE(5) of the 1936 Act.

30 Former section 160AFE of the 1936 Act determined whether an entity  
31 had excess foreign tax credits for an income year and whether it could  
32 use them to increase the foreign tax credit amount in a later income  
33 year. Under the former foreign tax credit system, the excess credits  
34 were worked out and, where applicable, applied to increase the foreign  
35 tax credit amount in relation to each of the classes of income listed in  
36 former subsection 160AF(7).

**Schedule 1** New foreign income tax offset rules

**Part 3** Transitional

1 (2) The amount of your pre-commencement excess foreign income tax  
2 from an income year is the sum of the amounts set out in the table  
3 in subsection (3) for that year.

4 (3) Column 2 of the following table specifies the class of income to  
5 which the excess foreign tax credits covered by subsection (1)  
6 relate. Column 3 sets the amount of pre-commencement excess  
7 foreign income tax from that income year generated by those  
8 excess foreign tax credits.  
9

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**Conversion of excess foreign tax credits into pre-commencement excess foreign income tax for an income year**

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<b>Item</b>	<b>Excess foreign tax credits covered by subsection (1) relating to this class of income referred to in former subsection 160AF(7) of the 1936 Act</b>	<b>Pre-commencement excess foreign income tax generated</b>
1	Passive income	The amount of those excess foreign tax credits
2	Offshore banking income	The amount of those excess foreign tax credits multiplied by the eligible fraction (within the meaning of section 121EG of the 1936 Act)
3	An amount included in assessable income under section 305-70 of the 1997 Act (which is about the assessability of lump sums received from foreign superannuation funds)	The amount of those excess foreign tax credits
4	Other income	(a) For a company—the amount of those excess foreign tax credits, as reduced under section 770-225; or (b) For an entity other than a company—the amount of those excess foreign tax credits

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10 Note: Section 121EG of the 1936 Act applies the eligible fraction to  
11 assessable OB income, allowable OB deductions and foreign income  
12 tax paid on assessable OB income.

1 **770-225 Pre-commencement excess foreign income tax generated for**  
2 **a company by excess foreign tax credits relating to other**  
3 **income**

4 Reduce the amount of the excess foreign tax credits to the extent (if  
5 any) that they are attributable to foreign tax paid in respect of  
6 amounts that would be your non-assessable non-exempt income if  
7 they were derived in the commencement year.

8 **770-230 Increase in the foreign income tax offset**

- 9 (1) This section affects the amount of your tax offset under  
10 section 770-70 of the *Income Tax Assessment Act 1997* (the **1997**  
11 **Act**).

12 Note: That section determines how much tax offset you can claim for  
13 foreign income tax you have paid.

- 14 (2) Your tax offset for an income year (the **current year**) is increased  
15 in accordance with this section if:

16 (a) the amount of your tax offset worked out under  
17 section 770-70 of the 1997 Act falls short of your offset limit  
18 under section 770-75 of that Act; and

19 (b) you have pre-commencement excess foreign income tax (see  
20 section 770-220) from an earlier year of income that is one of  
21 the most recent 5 income years ending before the current  
22 year.

- 23 (3) Increase your tax offset for the current year by adding your  
24 pre-commencement excess foreign income tax covered by  
25 paragraph (2)(b) to the amount of your tax offset worked out under  
26 section 770-70 of the 1997 Act.

- 27 (4) Only increase the offset to the extent of the shortfall worked out  
28 under paragraph (2)(a).

- 29 (5) You no longer have the pre-commencement excess foreign income  
30 tax to the extent that it has been used to increase your offset limit.

31 **Subdivision 770-E—Transitional foreign income tax offsets**  
32 **(special rules for consolidated groups)**

33 **Table of sections**

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1	770-285	Objects of this Subdivision
2	770-290	Transferring subsidiary member's pre-commencement excess foreign
3		income tax to head company
4	770-295	Where entity not subsidiary member for whole of income year
5	770-300	Pre-commencement excess foreign income tax lost on joining consolidated
6		group
7	770-305	Exit history rule does not treat leaving entity as having pre-commencement
8		excess foreign income tax
9	770-310	Application of Subdivision to MEC groups

10 **770-285 Objects of this Subdivision**

11 The main objects of this Subdivision are:

- 12 (a) to allow the head company of a consolidated group to apply,  
13 in relation to an income year, pre-commencement excess  
14 foreign income tax of an entity (the *joining entity*) that  
15 becomes a subsidiary member of the group at a time (the  
16 *joining time*) if:  
17 (i) the income year starts at or after the joining time; and  
18 (ii) that pre-commencement excess foreign income tax is  
19 from an income year ending before the joining time; and  
20 (b) to prevent the joining entity from applying  
21 pre-commencement excess foreign income tax mentioned in  
22 subparagraph (a)(ii) to increase its own tax offset under  
23 Division 770 of the *Income Tax Assessment Act 1997* (the  
24 *1997 Act*).

25 **770-290 Transferring subsidiary member's pre-commencement**  
26 **excess foreign income tax to head company**

- 27 (1) This section operates for the purposes of section 770-220 in  
28 relation to an income year if:  
29 (a) an entity (the *joining entity*) becomes a subsidiary member of  
30 a consolidated group at a time (the *joining time*); and  
31 (b) the joining time is before or at the start of that income year;  
32 and  
33 (c) the joining entity has pre-commencement excess foreign  
34 income tax (the *transferred foreign income tax*) from an  
35 earlier income year.  
36 (2) For those purposes:
-



- 1 (a) the head company of the group is taken to have the  
2 transferred foreign income tax; and  
3 (b) if, apart from paragraph (a), the head company has  
4 pre-commencement excess foreign income tax from the  
5 earlier year—the transferred foreign income tax is taken to be  
6 included in that pre-commencement excess foreign income  
7 tax.
- 8 (3) Subsection (2) also has effect for the purposes of a subsequent  
9 operation of this section.

10 **770-295 Where entity not subsidiary member for whole of income**  
11 **year**

- 12 (1) This section operates if:  
13 (a) an entity (the *joining entity*) is a subsidiary member of a  
14 consolidated group for some but not all of an income year  
15 (the *joining year*); and  
16 (b) there are one or more periods in the joining year (each of  
17 which is a *non-membership period*) during which the entity  
18 is not a subsidiary member of any consolidated group.
- 19 Note: Section 701-30 of the 1997 Act treats each non-membership period as  
20 a separate income year for some purposes.
- 21 (2) Subsection (3) has effect for the purposes of section 701-30 of the  
22 1997 Act in relation to the joining entity.
- 23 (3) In working out amounts for the joining entity under subsection  
24 701-30(3) of the 1997 Act in relation to each non-membership  
25 period, assume that, if the joining year starts at the same time as  
26 the earliest of those non-membership periods, section 770-230  
27 operates in relation to the joining entity for that non-membership  
28 period.

29 **770-300 Pre-commencement excess foreign income tax lost on**  
30 **joining consolidated group**

- 31 (1) For the purposes of section 770-220 in relation to an income year  
32 ending after the time an entity becomes a subsidiary member of a  
33 consolidated group, the entity is taken not to have any  
34 pre-commencement excess foreign income tax from an income

1 year, or non-membership period described in section 701-30 of the  
2 1997 Act, that ended before or at that time.

3 (2) Subsection (1) does not affect the operation of section 770-220 in  
4 accordance with section 770-290.

5 **770-305 Exit history rule does not treat leaving entity as having**  
6 **pre-commencement excess foreign income tax**

- 7 (1) This section operates in relation to an income year if:  
8 (a) an entity (the *leaving entity*) ceases to be a subsidiary  
9 member of a consolidated group before the end of that  
10 income year; and  
11 (b) the head company of the group has pre-commencement  
12 excess foreign income tax from an earlier income year.
- 13 (2) To avoid doubt, the leaving entity is *not* taken because of  
14 section 701-40 of the 1997 Act (the exit history rule) to have that  
15 pre-commencement excess foreign income tax.
- 16 (3) It does not matter whether the head company has that  
17 pre-commencement excess foreign income tax because of  
18 section 717-10 of the 1997 Act or 770-290 (whether in relation to  
19 the leaving entity or another entity) or because of another  
20 provision.

21 **770-310 Application of Subdivision to MEC groups**

22 This Subdivision has effect in relation to a MEC group in the same  
23 way in which it has effect in relation to a consolidated group.

1

2 **Part 4—Consequential and other amendments**

3 *A New Tax System (Goods and Services Tax) Act 1999*

4 **6 Section 110-10**

5 Repeal the section.

6 **7 Section 195-1 (note at the end of the definition of *taxable***  
7 ***supply*)**

8 Omit “110-10.”.

9 *Bank Integration Act 1991*

10 **8 Paragraph 22(4)(c)**

11 Omit “and foreign tax credits”.

12 *Fringe Benefits Tax Assessment Act 1986*

13 **9 Paragraph 19(1)(b)**

14 Omit “, other than a foreign income deduction,”.

15 **10 Subparagraph 19(1)(ba)(ii)**

16 Omit “other than a foreign income deduction”.

17 **11 Paragraph 24(1)(b)**

18 Omit “, other than a foreign income deduction,”.

19 **12 Subparagraph 24(1)(ba)(ii)**

20 Omit “other than a foreign income deduction”.

21 **13 Paragraph 44(1)(b)**

22 Omit “, other than a foreign income deduction,”.

23 **14 Subparagraph 44(1)(ba)(ii)**

24 Omit “other than a foreign income deduction”.

1 **15 Paragraph 52(1)(b)**

2 Omit “, other than a foreign income deduction,”.

3 **16 Subparagraph 52(1)(ba)(ii)**

4 Omit “other than a foreign income deduction”.

5 **17 Subsection 136(1) (definition of *foreign income deduction*)**

6 Repeal the definition.

7 ***Income Tax Assessment Act 1936***

8 **18 Subsection 6(1)**

9 Insert:

10 *interest income*, in relation to a taxpayer, means income consisting  
11 of interest, or a payment in the nature of interest, in respect of:

- 12 (a) money lent, advanced or deposited; or  
13 (b) credit given; or  
14 (c) any other form of debt or liability;

15 whether security is given or not, other than:

- 16 (d) an amount to the extent to which it is a return on an equity  
17 interest in a company; or  
18 (e) interest derived by the taxpayer from a transaction directly  
19 related to the active conduct of a trade or business; or  
20 (f) interest derived by the taxpayer from carrying on a banking  
21 business or any other business whose income is principally  
22 derived from the lending of money; or  
23 (g) interest received by the taxpayer during a year of income  
24 from a foreign company, where:  
25 (i) at any time during the year of income, the taxpayer had  
26 (or would have had, if the taxpayer were a company and  
27 a resident), a voting interest, within the meaning of  
28 section 334A, amounting to at least 10% of the voting  
29 power, within the meaning of that section, in that  
30 company; and  
31 (ii) during the year of income or the preceding year of  
32 income, the company has not derived an amount of  
33 interest income exceeding 10% of the total profits  
34 derived by the company during the same year.

1 **19 Subsection 6(1)**

2 Insert:

3 *passive commodity gain*, in relation to a taxpayer, in relation to a  
4 year of income, means a gain realised by the taxpayer in a year of  
5 income from disposing of a forward contract or a futures contract,  
6 or a right or option in respect of a forward contract or a futures  
7 contract, in respect of any thing (a *commodity*):

8 (a) that is capable of delivery under an agreement for its  
9 delivery; and

10 (b) that is not an instrument creating or evidencing a chose in  
11 action;

12 unless the contract, right or option relates to the carrying on by the  
13 taxpayer of a business:

14 (c) of producing or processing the commodity; or

15 (d) that involves the use of the commodity as a raw material in a  
16 production process.

17 **20 Subsection 6(1)**

18 Insert:

19 *passive income*, in relation to a taxpayer, in relation to a year of  
20 income means:

21 (a) dividends (within the meaning of this section) and non-share  
22 dividends paid to the taxpayer in the year of income; or

23 (b) unit trust dividends (within the meaning of Division 6B or  
24 6C) paid to the taxpayer in the year of income; or

25 (c) a distribution made to the taxpayer in the year of income that  
26 is taken to be a dividend because of section 47; or

27 (d) an amount that is taken to be a dividend paid to the taxpayer  
28 in the year of income because of section 47A or 108 or  
29 Division 7A of Part III; or

30 (e) interest income derived by the taxpayer in the year of  
31 income; or

32 (f) annuities derived by the taxpayer in the year of income; or

33 (g) income derived by the taxpayer by way of rent (within the  
34 meaning of Part X) in the year of income; or

35 (h) royalties derived by the taxpayer in the year of income; or

36 (i) an amount derived by the taxpayer in the year of income as  
37 consideration for the assignment, in whole or in part, of any

- 1 copyright, patent, design, trade mark or other like property or  
2 right; or  
3 (j) profits of a capital nature that accrued to the taxpayer in the  
4 year of income; or  
5 (k) passive commodity gains that accrued to the taxpayer in the  
6 year of income; or  
7 (l) an amount included in the assessable income of the taxpayer  
8 of the year of income under section 102AAZD, 456, 457,  
9 459A or 529;  
10 but does not include:  
11 (m) an amount that arose from an asset necessarily held by the  
12 taxpayer in connection with an insurance business actively  
13 carried on by the taxpayer; or  
14 (n) an amount included in the taxpayer's assessable income  
15 under Division 13A.

16 **21 Subsection 6AB(1)**

17 Omit "26D,".

18 **22 Subsections 6AB(1A) and (1B)**

19 Repeal the subsections.

20 **23 Subsection 6AB(2)**

21 Repeal the subsection, substitute:

- 22 (2) A reference in this Act to foreign tax is a reference to tax imposed  
23 by a law of a foreign country, being:  
24 (a) tax upon income; or  
25 (b) tax upon profits or gains, whether of an income or capital  
26 nature; or  
27 (c) any other tax, being a tax that is subject to an agreement  
28 having the force of law under the *International Tax*  
29 *Agreements Act 1953*;  
30 but does not include a unitary tax or a credit absorption tax.

31 **24 Subsections 6AB(3), (3A), (4), (5) and (5A)**

32 Repeal the subsections.

33 **25 Subsection 6AB(6) (definition of *credit absorption tax*)**

---

1 Omit “a credit in respect of the tax under Division 18 of Part III”,  
2 substitute “an offset in respect of the tax under Division 770 of the  
3 *Income Tax Assessment Act 1997*”.

4 **26 Section 6AC**

5 Repeal the section.

6 **27 Subsections 6B(2AA) and (2B)**

7 Repeal the subsections.

8 **28 After section 6CA**

9 Insert:

10 **6D Some tax offsets under the 1997 Assessment Act are treated as**  
11 **credits**

12 A tax offset under a provision of the *Income Tax Assessment Act*  
13 *1997* that corresponds to a provision of this Act that provides for a  
14 credit is taken to be a credit for the purposes of this Act.

15 Note: All other tax offsets under the *Income Tax Assessment Act 1997* are  
16 treated as rebates: see section 160ADA.

17 **29 Subsection 23AI(2)**

18 Repeal the subsection, substitute:

19 (2) This section is to be disregarded for the purposes of applying any  
20 other provision of this Act to determine allowable deductions.

21 **30 Subsection 23AK(2)**

22 Repeal the subsection, substitute:

23 (2) This section is to be disregarded for the purposes of applying any  
24 other provision of this Act to determine allowable deductions.

25 **31 Section 26A**

26 Repeal the section.

27 **32 Section 26D**

28 Repeal the section.

1 **33 Subsection 46FA(11) (definition of *group company*)**

2 Before “section 160AFE”, insert “former”.

3 **34 Subsection 46FB(6) (definition of *group company*)**

4 Before “section 160AFE”, insert “former”.

5 **35 Subsection 47A(2)**

6 Omit “Division 18 and section 365”, substitute “section 365 of this Act  
7 and Division 770 of the *Income Tax Assessment Act 1997*”.

8 **36 Section 79D**

9 Repeal the section.

10 **37 Section 79DA**

11 Repeal the section.

12 **38 Section 102AAB**

13 Insert:

14 *tax offset* has the same meaning as in the *Income Tax Assessment*  
15 *Act 1997*.

16 **39 Subsection 102AAM(2) (formula)**

17 Omit “FTC”, substitute “FITO”.

18 **40 Subsection 102AAM(2)**

19 Insert:

20 *FITO* (Foreign income tax offset) means so much of any tax offset  
21 under Division 770 of the *Income Tax Assessment Act 1997* to  
22 which the taxpayer is entitled as is attributable to the distributed  
23 amount of the non-resident trust’s year of income.

24 **41 Subsection 102AAM(2) (definition of *FTC*)**

25 Repeal the definition.

26 **42 Subsection 102AAM(3) (formula)**

27 Omit “FTC”, substitute “FITO”.

28 **43 Subsection 102AAM(3)**

---



1           Insert:

2                    **FITO** (Foreign income tax offset) means so much of any tax offset  
3                    under Division 770 of the *Income Tax Assessment Act 1997* to  
4                    which the taxpayer is entitled as is attributable to the taxpayer's  
5                    portion of the distributed amount of the non-resident trust's year of  
6                    income.

7           **44 Subsection 102AAM(3) (definition of *FTC*)**

8                    Repeal the definition.

9           **45 Subsection 102AAM(4) (formula)**

10                   Omit "FTC", substitute "FITO".

11           **46 Subsection 102AAM(4)**

12                   Insert:

13                    **FITO** (Foreign income tax offset) means so much of any tax offset  
14                    under Division 770 of the *Income Tax Assessment Act 1997* to  
15                    which the taxpayer is entitled as is attributable to the taxpayer's  
16                    portion of the distributed amount of the non-resident trust's year of  
17                    income.

18           **47 Subsection 102AAM(4) (definition of *FTC*)**

19                    Repeal the definition.

20           **48 Subsection 102AAM(4A) (formula)**

21                    Omit "FTC", substitute "FITO".

22           **49 Subsection 102AAM(4A)**

23                   Insert:

24                    **FITO** (Foreign income tax offset) means so much of any tax offset  
25                    under Division 770 of the *Income Tax Assessment Act 1997* to  
26                    which the trustee of the first trust would be entitled, in respect of  
27                    the taxpayer's portion of the distributed amount of the non-resident  
28                    trust's year of income, if the taxpayer's portion of the distributed  
29                    amount of the non-resident trust's income were an amount in  
30                    respect of which the trustee were liable to be assessed and to pay  
31                    tax under section 99A.

1 **50 Subsection 102AAM(4A) (definition of *FTC*)**

2 Repeal the definition.

3 **51 Subsection 102AAZC(1)**

4 Omit “(1)”.

5 **52 Subsection 102AAZC(2)**

6 Repeal the subsection.

7 **53 Subsection 102L(6)**

8 Omit “or in section 160AF”.

9 **54 Subsection 102T(7)**

10 Omit “or in section 160AF”.

11 **55 Paragraph 121B(3)(c)**

12 Repeal the paragraph.

13 **56 Paragraph 121B(3)(d)**

14 Omit “unless it is taken to have a foreign source because it has been  
15 subject to foreign tax”.

16 **57 After subsection 121EG(3)**

17 Insert:

18 *Only eligible fraction of foreign income tax is taken to be paid*

19 (3A) Subject to section 121EH, this Act applies to an OBU as if only the  
20 eligible fraction of each amount of foreign income tax (within the  
21 meaning of the *Income Tax Assessment Act 1997*) the OBU paid in  
22 respect of an amount of assessable OB income had been paid in  
23 respect of that income.

24 Note: The heading to section 121EG is replaced by the heading “**Reduction of assessable OB**  
25 **income, allowable OB deductions and foreign income tax paid**”.

26 **58 At the end of section 121EH**

27 Add:

28 ; and (e) subsection 121EG(3A) (which limits the OBU’s foreign  
29 income tax) does not apply to the OBU in relation to an

1 amount of foreign income tax (within the meaning of the  
2 *Income Tax Assessment Act 1997*) the OBU paid in respect of  
3 an amount of the OBU's assessable OB income of the year of  
4 income.

5 **59 Section 121EI**

6 Repeal the section.

7 **60 Subsection 121EJ(1)**

8 Omit "(1)".

9 **61 Subsection 121EJ(2)**

10 Repeal the subsection.

11 **62 Section 121K**

12 Omit "subsection 3(6) and".

13 **63 Section 160ADA (note)**

14 Omit "160AHA", substitute "6D".

15 **64 Division 18 of Part III**

16 Repeal the Division.

17 **65 Division 18A of Part III**

18 Repeal the Division.

19 Note: The heading to Division 18B of Part III is omitted.

20 **66 Division 19 of Part III**

21 Repeal the Division.

22 **67 Section 160ZZY**

23 Repeal the section.

24 **68 After subsection 170(10A)**

25 Insert:

26 (11) Nothing in this section prevents the amendment, at any time, of an  
27 assessment to decrease the liability of a taxpayer for the purpose of

1 giving effect to section 24 of the *International Tax Agreements Act*  
2 *1953*.

3 **69 Subsection 177A(1) (definition of *foreign tax credit*)**

4 Repeal the definition.

5 **70 Subsection 177A(1)**

6 Insert:

7 *foreign income tax offset* means a tax offset allowed under  
8 Division 770 of the *Income Tax Assessment Act 1997*.

9 **71 Paragraphs 177C(1)(bb) and (f)**

10 Omit “foreign tax credit” (wherever occurring), substitute “foreign  
11 income tax offset”.

12 **72 Paragraph 177C(2)(d)**

13 Omit “foreign tax credit” (wherever occurring), substitute “foreign  
14 income tax offset”.

15 **73 Paragraphs 177C(3)(ca) and (g)**

16 Omit “foreign tax credit”, substitute “foreign income tax offset”.

17 **74 Paragraph 177F(1)(d)**

18 Omit “foreign tax credit” (wherever occurring), substitute “foreign  
19 income tax offset”.

20 **75 Paragraph 177F(3)(d)**

21 Omit “foreign tax credit” (wherever occurring), substitute “foreign  
22 income tax offset”.

23 **76 Section 177H**

24 Repeal the section.

25 **77 Paragraph 316(2)(e)**

26 Repeal the paragraph.

27 **78 Section 317**

28 Before “In this Part”, insert “(1)”.

1 **79 Section 317 (definition of *attributed tax account credit*)**

2 Repeal the definition.

3 **80 Section 317 (definition of *attributed tax account debit*)**

4 Repeal the definition.

5 **81 Section 317 (definition of *attributed tax account surplus*)**

6 Repeal the definition.

7 **82 Section 317 (definition of *member of a non-portfolio***  
8 ***company group*)**

9 Repeal the definition.

10 **83 Section 317 (definition of *non-portfolio dividend*)**

11 Omit “section 160AFB”, substitute “section 334A”.

12 **84 Section 317 (definition of *tainted interest income*)**

13 Omit all the words after “factoring income;”, substitute:

14 but does not include:

15 (d) income (being interest, fees, commission or other amounts)  
16 derived by a person in respect of offshore banking transfers  
17 of the person; or

18 (e) income consisting of dividends or non-share dividends paid  
19 to a person by a company out of profits derived from the  
20 making of offshore banking transfers.

21 **85 At the end of section 317**

22 Add:

23 (2) Where, if all offshore borrowings made by persons when they were  
24 offshore banking units were taken to be tax exempt loan money of  
25 the persons for the purposes of Division 11A of Part III, an  
26 offshore loan, or other transfer, of an amount by a person would,  
27 for the purposes of that Division, be an offshore loan, or other  
28 transfer, of tax exempt loan money of the person, the offshore loan,  
29 or other transfer, of the amount is an offshore banking transfer of  
30 the person for the purposes of the definition of *tainted interest*  
31 *income*.

32 **86 Subsection 324(1)**

---

1 Repeal the subsection, substitute:

- 2 (1) Subject to this section, for the purposes of this Part, a particular  
3 item of income or profits derived by an entity is taken to be subject  
4 to tax in a listed country in a particular tax accounting period if,  
5 and only if, foreign tax (other than a withholding-type tax) is  
6 payable under a tax law of the listed country in respect of the item  
7 because the item is included in the tax base of that law for the tax  
8 accounting period.

9 **87 Section 334**

10 Repeal the section.

11 **88 After section 334**

12 Insert:

13 **334A Voting interests in companies**

- 14 (1) For the purposes of this section, a company is taken to have a  
15 voting interest in another company if:  
16 (a) the first-mentioned company is the beneficial owner of shares  
17 (other than eligible finance shares or widely distributed  
18 finance shares) in the other company that carry the right to  
19 exercise any of the voting power in the other company; and  
20 (b) there is no arrangement in force at the relevant time by virtue  
21 of which any person is in a position, or may become in a  
22 position, to affect that right;  
23 and the extent of the voting interest is taken to be the total number  
24 of votes that, by virtue of that right, can be cast on a poll at, or  
25 arising out of, a general meeting of the other company as regards  
26 all questions that could be submitted to such a poll.
- 27 (2) For the purposes of paragraph (1)(b), a person is taken to be in a  
28 position to affect a right of a company if that person has a right,  
29 power or option (whether by virtue of any provision in the  
30 constituent document of any company or by virtue of any  
31 agreement or instrument or otherwise) to acquire that right or do an  
32 act or thing that would prevent the first-mentioned company from  
33 exercising that right or receiving any benefits accruing by reason of  
34 that right.

- 1 (3) Despite paragraph (1)(b) and subsection (2), in determining for the  
2 purposes of this section:  
3 (a) whether a company has a voting interest in another company;  
4 and  
5 (b) the extent of that interest;  
6 any appointment of a liquidator in respect of the other company is  
7 to be disregarded.
- 8 (4) For the purposes of this section, the voting power in a company is  
9 the maximum number of votes that can be cast on a poll at, or  
10 arising out of, a general meeting of a company as regards all  
11 questions that can be submitted to such a poll.
- 12 (5) In this section, *arrangement* includes:  
13 (a) any agreement, arrangement, understanding, promise or  
14 undertaking, whether expressed or implied, and whether or  
15 not enforceable, or intended to be enforceable, by legal  
16 proceedings; and  
17 (b) any scheme, plan, proposal, action, course of action or course  
18 of conduct, whether unilateral or otherwise.

19 **89 Division 5 of Part X**

20 Repeal the Division.

21 **90 Paragraph 389(a)**

22 Omit “6AC,”.

23 **91 Paragraph 401(1)(d)**

24 Omit “subsection (5); and”, substitute “subsection (5).”.

25 **92 Paragraph 401(1)(e)**

26 Repeal the paragraph.

27 **93 Subsection 401(6)**

28 Repeal the subsection.

29 **94 Section 424**

30 Repeal the section.

31 **95 Subsection 425(1)**

1 Omit “of a particular class”.

2 **96 Subsection 425(1)**

3 Omit “of that class”.

4 **97 Subsection 425(2)**

5 Omit “sections 430 and”, substitute “section”.

6 **98 Subsection 425(2)**

7 Omit “, in relation to notional assessable income of a particular class,”.

8 **99 Subsection 425(2)**

9 Omit “of that class” (wherever occurring).

10 **100 Subsection 425(3)**

11 Omit “, in relation to notional assessable income of a particular class,”.

12 **101 Subsection 425(3)**

13 Omit “, in relation to notional assessable income of that class,”.

14 **102 Subsection 425(4)**

15 Omit “, in relation to notional assessable income of a particular class,”.

16 **103 Subsection 425(4)**

17 Omit “, in relation to notional assessable income of that class,”.

18 **104 Paragraph 426(a)**

19 Omit “disregarding section 430,”.

20 **105 Paragraph 426(a)**

21 Omit “in relation to notional assessable income of a particular class”.

22 Note: The heading to section 426 is altered by omitting “**in relation to a class of notional**  
23 **assessable income**”.

24 **106 Subparagraph 426(a)(i)**

25 Omit “of that class”.

26 **107 Subparagraph 426(a)(ii)**

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1 Omit “of that class”.

2 **108 Section 426**

3 Omit “ in relation to notional assessable income of that class”.

4 **109 Paragraph 427(b)**

5 Omit “sections 79D and 79DA of this Act and”.

6 **110 Paragraph 427(b)**

7 Omit “Subdivision 165-A,”.

8 **111 Paragraph 427(b)**

9 Omit “175-A,”.

10 **112 Paragraph 427(ba)**

11 Omit “;”, substitute “.”.

12 **113 Paragraph 427(c)**

13 Repeal the paragraph.

14 **114 Section 429**

15 Omit “in relation to notional assessable income of a particular class”.

16 Note: The heading to section 429 is altered by omitting “**of a particular class**”.

17 **115 Section 429**

18 Omit “of that class”.

19 **116 Section 430**

20 Repeal the section.

21 **117 Subsection 431(1)**

22 Omit “, in relation to notional assessable income of a particular class,”.

23 Note: The heading to section 431 is altered by omitting “**in relation to a class of notional**  
24 **assessable income**”.

25 **118 Paragraph 431(2)(a)**

26 Omit “of the class”.

27 **119 Paragraph 431(2)(b)**

---

1 Repeal the paragraph, substitute:

- 2 (b) any excess is then a notional allowable deduction for the  
3 eligible period, but only to the extent that the deduction does  
4 not exceed the amount of the notional assessable income for  
5 the period as reduced by notional allowable deductions other  
6 than under this section;

7 **120 Subsections 431(4), (4A), (4B) and (4C)**

8 Repeal the subsections, substitute:

9 (4) A loss for a statutory accounting period is to be taken into account  
10 under subsection (2) only if:

11 (a) where the eligible CFC is a resident of a listed country at the  
12 end of the eligible period:

13 (i) the eligible CFC is a resident of a listed country at the  
14 end of that statutory accounting period; and

15 (ii) if there are any statutory accounting periods (the  
16 *intervening periods*) occurring between that statutory  
17 accounting period and the eligible period—the eligible  
18 CFC was a resident of a listed country at the end of each  
19 of the intervening periods; or

20 (b) where the eligible CFC is a resident of an unlisted country at  
21 the end of the eligible period:

22 (i) the eligible CFC is a resident of an unlisted country at  
23 the end of that statutory accounting period; and

24 (ii) if there are any statutory accounting periods (also the  
25 *intervening periods*) occurring between that statutory  
26 accounting period and the eligible period—the eligible  
27 CFC was a resident of an unlisted country at the end of  
28 each of the intervening periods.

29 (4A) If:

30 (a) at the end of both the eligible period and of a prior statutory  
31 accounting period, the eligible CFC was a resident of the  
32 same country; and

33 (b) the country was either:

34 (i) a listed country at the end of the eligible period and an  
35 unlisted country at the end of that statutory accounting  
36 period; or

1 (ii) an unlisted country at the end of the eligible period and  
2 a listed country at the end of that statutory accounting  
3 period;  
4 subsection (4) does not prevent a loss for that statutory accounting  
5 period, or an earlier statutory accounting period, from being taken  
6 into account under subsection (2).

7 (4B) If:

- 8 (a) the eligible CFC is a resident of an unlisted country at the  
9 end of the eligible period; and  
10 (b) that country emerged from the dissolution of another country;  
11 and  
12 (c) the other country was in existence at the end of a prior  
13 statutory accounting period; and  
14 (d) at the end of that statutory accounting period, the CFC was a  
15 resident of the other country; and  
16 (e) the other country was a listed country at the end of that  
17 statutory accounting period;  
18 subsection (4) does not prevent a loss for that statutory accounting  
19 period, or an earlier statutory accounting period, from being taken  
20 into account under subsection (2).

21 **121 Subsections 431(4D)**

22 Omit “, (4B) or (4C)”, substitute “or (4B)”.

23 **122 Subsection 431(5)**

24 Repeal the subsection, substitute:

- 25 (5) A loss for a statutory accounting period is not to be taken into  
26 account under subsection (2) if, assuming that it were a tax loss  
27 (within the meaning of the *Income Tax Assessment Act 1997*) of  
28 the eligible CFC, it would not be taken into account or allowed as a  
29 deduction in relation to the eligible period.

30 **123 Paragraph 461(1)(f)**

31 Omit “section 373; and”, substitute “section 373.”.

32 **124 Paragraph 461(1)(g)**

33 Repeal the paragraph.

1 **125 Subsection 469(8)**

2 Repeal the subsection.

3 **126 Division 20 of Part XI**

4 Repeal the Division.

5 **127 Section 245-110 in Schedule 2C (table items 2 and 3 of**  
6 **the table in the definition of *table of deductible revenue***  
7 ***losses*)**

8 Repeal the items.

9 ***Income Tax Assessment Act 1997***

10 **128 Subsection 4-15(2) (at the end of the table)**

11 Add:

6. The Commissioner makes a determination of the amount of taxable income to prevent double taxation in certain treaty cases section 24 of the *International Tax Agreements Act 1953*

12 **129 Section 10-5 (table item headed “dividends”)**

13 Omit:

foreign taxes on, grossing up of ..... 6AC

14 **130 Section 10-5 (table item headed “dividends”)**

15 Omit:

repayments of foreign income tax deducted from ..... 26A

16 **131 Section 10-5 (table item headed “foreign investment**  
17 **funds (FIFs)”)**

18 Omit:

foreign tax paid in respect of a foreign investment fund  
attribution account payment ..... 26D

19 **132 Section 12-5 (table item headed “foreign income”)**

20 Repeal the item.

21 **133 Section 12-5 (table item headed “foreign tax credits”)**

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1 Repeal the item.

2 **134 Section 12-5 (table item headed “offshore banking**  
3 **units”)**

4 Omit:  
foreign tax deduction ..... **121EI**

5 **135 Section 13-1 (table item headed “films”)**

6 Repeal the item.

7 **136 Section 13-1 (table item headed “foreign tax”)**

8 Repeal the item, substitute:  
**foreign income tax**  
foreign income tax paid, tax offset for ..... Division 770

9 **137 Section 13-1 (table item headed “overseas tax”)**

10 Repeal the item.

11 **138 Section 13-1 (table item headed “shipping income”)**

12 Repeal the item.

13 **139 Section 13-1 (table item headed “tax credit”)**

14 Repeal the item.

15 **140 Section 36-10 (note 1)**

16 Repeal the note, substitute:

17 Note 1: Some deductions are limited so that they cannot contribute to a tax  
18 loss. See section 26-55 (Limit on certain deductions).

19 **141 Section 36-25 (table items 1 and 2 in the table headed**  
20 **“Tax losses of entities generally”)**

21 Repeal the items.

22 **142 Paragraph 61-570(2)(c)**

23 Omit “subsection 160AEA(1)”, substitute “section 6”.

24 **143 Subsection 63-10(1) (after table item 20)**

25 Insert:



1 Omit “under section 160AF (Credits in respect of foreign tax) of the  
2 *Income Tax Assessment Act 1936* to a credit”, substitute “to a tax offset  
3 under Division 770”.

4 **153 Paragraph 305-75(2)(b)**

5 Omit “\*foreign tax”, substitute “\*foreign income tax”.

6 **154 Paragraph 305-75(3)(b)**

7 Omit “\*foreign tax”, substitute “\*foreign income tax”.

8 **155 Paragraph 305-75(5)(a)**

9 Omit “\*foreign tax”, substitute “\*foreign income tax”.

10 **156 Paragraph 701-1(4)(c)**

11 Omit “;”, substitute “.”.

12 **157 Paragraphs 701-1(4)(d) to (g)**

13 Repeal the paragraphs.

14 **158 Paragraph 707-110(2)(b)**

15 Omit “; and”, substitute “.”.

16 **159 Paragraph 707-110(2)(c)**

17 Repeal the paragraph.

18 **160 Subsection 707-130(1) (note 2)**

19 Omit “(and, through section 160AFD of that Act, an overall foreign  
20 loss)”.

21 **161 Subsection 707-310(3) (table items 2 and 6)**

22 Repeal the items.

23 **162 Subsection 713-225(6A)**

24 Repeal the subsection.

25 **163 Subdivision 717-A**

26 Repeal the Subdivision, substitute:

1 **Subdivision 717-A—Foreign income tax offsets**

2 **717-1 What this Subdivision is about**

3 If an entity becomes a subsidiary member of a consolidated group,  
4 the head company receives any tax offsets under section 770-10  
5 that arise because the entity pays foreign income tax while it is a  
6 subsidiary member of the group.

7 **Table of sections**

8 **Object**

9 717-5 Object of this Subdivision

10 **Foreign income tax on amounts in head company's assessable income**

11 717-10 Head company taken to be liable for subsidiary member's foreign income  
12 tax

13 **Object**

14 **717-5 Object of this Subdivision**

15 The object of this Subdivision is to allow the \*head company of a  
16 \*consolidated group to get the benefit of \*foreign income tax paid  
17 in respect of amounts included in the head company's assessable  
18 income because another entity is or was a \*subsidiary member of  
19 the group.

20 **Foreign income tax on amounts in head company's assessable  
21 income**

22 **717-10 Head company taken to be liable for subsidiary member's  
23 foreign income tax**

24 (1) This section operates if:

25 (a) an entity was a \*subsidiary member of a \*consolidated group  
26 for all or part of an income year; and



1 (b) an amount was included in the \*ordinary income or \*statutory  
2 income of the \*head company of the group for that income  
3 year; and

4 (c) the entity paid \*foreign income tax (except \*credit absorption  
5 tax or \*unitary tax) in respect of the amount.

6 (2) Division 770 operates as if:

7 (a) the \*head company had paid the \*foreign income tax; and

8 (b) the entity had not paid the foreign income tax.

9 Note: Division 770 provides a tax offset for foreign income tax paid.

10 (3) This section does not limit the operation of Division 770.

11 **164 Section 717-200**

12 Omit “, attributed tax account surplus, FIF attribution surplus and FIF  
13 attributed tax account surplus”, substitute “and FIF attribution surplus”.

14 **165 Paragraph 717-205(b)**

15 Repeal the paragraph.

16 **166 Paragraph 717-205(c)**

17 Omit “joining time;”, substitute “joining time.”.

18 **167 Paragraph 717-205(d)**

19 Repeal the paragraph.

20 **168 Section 717-215**

21 Repeal the section.

22 **169 Section 717-225**

23 Repeal the section (including the note).

24 **170 Section 717-235**

25 Omit “, attributed tax account surplus, FIF attribution surplus and FIF  
26 attributed tax account surplus”, substitute “and FIF attribution surplus”.

27 **171 Paragraph 717-240(b)**

28 Repeal the paragraph.

1 **172 Paragraph 717-240(c)**

2 Omit “leaving time;”, substitute “leaving time.”.

3 **173 Paragraph 717-240(d)**

4 Repeal the paragraph.

5 **174 Section 717-250**

6 Repeal the section.

7 **175 Section 717-260**

8 Repeal the section (including the note).

9 **176 Paragraph 768-550(1)(a)**

10 Omit “section 160AFB”, substitute “section 334A”.

11 **177 Paragraph 768-550(1)(a)**

12 Omit “(within the meaning of that section)”.

13 **178 Subsection 768-550(2)**

14 Omit “section 160AFB”, substitute “section 334A”.

15 **179 Section 802-40 (heading)**

16 Repeal the heading, substitute:

17 **802-40 Effect of foreign income tax offset on conduit foreign income**

18 **180 Section 802-40**

19 Omit “credit arose for the entity under section 160AF of the *Income Tax*  
20 *Assessment Act 1936*”, substitute “tax offset arose for the entity under  
21 Division 770”.

22 **181 Section 802-40 (formula)**

23 Omit “Credit”, substitute “Offset”.

24 **182 Paragraph 830-1(a)**

25 Omit “foreign tax”, substitute “foreign income tax”.

26 **183 Paragraph 830-10(1)(b)**

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1 Omit “\*foreign tax”, substitute “\*foreign income tax (except \*credit  
2 absorption tax or \*unitary tax)”.

3 **184 Paragraph 830-10(1)(c)**

4 Omit “foreign tax”, substitute “foreign income tax (except credit  
5 absorption tax or unitary tax)”.

6 **185 Paragraph 830-15(1)(b)**

7 Omit “\*foreign tax”, substitute “\*foreign income tax (except \*credit  
8 absorption tax or \*unitary tax)”.

9 **186 Paragraph 830-15(2)(b)**

10 Omit “\*foreign tax”, substitute “\*foreign income tax (except \*credit  
11 absorption tax or \*unitary tax)”.

12 **187 Paragraph 830-15(3)(b)**

13 Omit “\*foreign tax”, substitute “\*foreign income tax (except \*credit  
14 absorption tax or \*unitary tax)”.

15 **188 Subsection 995-1(1) (definition of *attribution percentage*)**

16 Repeal the definition, substitute:

17 *attribution percentage:*

18 (a) in relation to a \*CFC or a \*CFT—has the meaning given by  
19 Part X of the *Income Tax Assessment Act 1936*; and

20 (b) in relation to a \*FIF that is a company—has the meaning  
21 given by section 581 of that Act.

22 **189 Subsection 995-1(1)**

23 Insert:

24 *credit absorption tax* has the meaning given by section 770-15.

25 **190 Subsection 995-1(1) (definition of *excess foreign tax*  
26 *credits*)**

27 Repeal the definition.

28 **191 Subsection 995-1(1)**

29 Insert:

1                    *foreign income tax* has the meaning given by section 770-15.

2        **192 Subsection 995-1(1) (definition of *foreign tax*)**

3                    Repeal the definition.

4        **193 Subsection 995-1(1) (at the end of the definition of *tax***  
5                    ***loss*)**

6                    Add:

7                    ; or (d) a tax loss determined under section 24 of the *International*  
8                    *Tax Agreements Act 1953* (about relief from double taxation  
9                    where profits are adjusted).

10        **194 Subsection 995-1(1)**

11                    Insert:

12                    *unitary tax* has the meaning given by section 770-15.

13        ***Income Tax (Transitional Provisions) Act 1997***

14        **195 Subsection 701D-1(1)**

15                    After “overall foreign loss”, insert “(as defined in former  
16                    section 160AFD of the *Income Tax Assessment Act 1936*)”.

17        **196 Paragraphs 701D-10(3)(a) and (b)**

18                    Before “section 160AFD”, insert “former”.

19        **197 Paragraph 707-325(1)(d)**

20                    Before “section 160AFD”, insert “former”.

21        **198 Subsection 707-325(9)**

22                    Before “section 160AFD”, insert “former”.

23        **199 Paragraph 707-326(1)(b)**

24                    Before “section 160AFD”, insert “former”.

25        **200 Subsection 707-328A(6)**

26                    Before “section 160AFD”, insert “former”.

27        **201 Division 717**

1 Repeal the Division.

2 **202 Subsection 830-20(3)**

3 After “paid foreign tax” (wherever occurring), insert “(within the  
4 meaning of that Act)”.

5 **203 Paragraph 830-20(4)(c)**

6 After “paid foreign tax”, insert “(within the meaning of that Act)”.

7 **204 Subsection 830-20(4)**

8 After “paid foreign tax,” (last occurring), insert “(within the meaning of  
9 that Act)”.

10 **205 Subsection 830-20(5)**

11 After “paid foreign tax” (wherever occurring), insert “(within the  
12 meaning of that Act)”.

13 ***International Tax Agreements Act 1953***

14 **206 Subsection 3(5)**

15 Repeal the subsection.

16 **207 Subsection 3(6)**

17 Repeal the subsection.

18 **208 Subsection 4(2)**

19 Omit “section 160AO or”.

20 **209 Subsection 11FA(3)**

21 Before “Division 19”, insert “former”.

22 **210 Subsection 11FB(3)**

23 Before “Division 19”, insert “former”.

24 **211 After section 23**

25 Insert:

1 **24 Relief from double taxation where profits adjusted**

2 *Application*

3 (1) This section applies if:

4 (a) Australia has an agreement with one of the following (a  
5 ***treaty partner***):

6 (i) a foreign country or a constituent part of a foreign  
7 country;

8 (ii) an overseas territory; and

9 (b) the treaty partner taxes profits, or purports to tax profits, in  
10 accordance with, or consistent with the principles of:

11 (i) if the treaty partner is the United Kingdom—Article 9  
12 of the 2003 United Kingdom convention; or

13 (ii) otherwise—a corresponding provision of another  
14 agreement.

15 Note: Article 9 of the 2003 United Kingdom Convention deals with  
16 associated enterprises.

17 *Object*

18 (2) The object of this section is to prevent double taxation of the  
19 profits, to the extent that the Commissioner considers the taxation  
20 of the profits by the treaty partner to be in accordance with the  
21 agreement.

22 *Adjustment of taxable income or tax loss*

23 (3) The Commissioner may determine the amount of a taxpayer's  
24 taxable income or tax loss of a year of income to be an amount that  
25 is appropriate having regard to the object of this section.

26 Note: The Commissioner may amend an assessment at any time to give  
27 effect to this section: see subsection 170(11) of the *Income Tax*  
28 *Assessment Act 1936*.

29 ***Taxation Administration Act 1953***

30 **212 Paragraph 14ZW(1)(aaa)**

31 Before “section 160AL”, insert “former”.

1 ***Taxation (Interest on Overpayments and Early Payments) Act***  
2 ***1983***

3 **213 Subsection 3(1) (paragraph (a) of the definition of *income***  
4 ***tax crediting amount*)**

5 Repeal the paragraph.

6 **214 Subsection 3A(1)**

7 Omit “, or the applying of an income tax crediting amount takes place,”.

8 **215 Subsection 3A(1)**

9 After “*provide correlative relief*”, insert “for juridical double taxation”.

10 **216 After subsection 3A(1)**

11 Insert:

12 (1A) For the purposes of this Act, a decision to which this Act applies is  
13 made to *provide correlative relief* for economic double taxation if:

14 (a) Australia has an agreement with one of the following (a  
15 *treaty partner*):

16 (i) a foreign country or a constituent part of a foreign  
17 country;

18 (ii) an overseas territory; and

19 (b) the treaty partner taxes profits, or purports to tax profits, in  
20 accordance with, or consistent with the principles of:

21 (i) if the treaty partner is the United Kingdom—Article 9  
22 of the 2003 United Kingdom convention; or

23 (ii) otherwise—a corresponding provision of another  
24 agreement; and

25 Note: Article 9 of the 2003 United Kingdom Convention deals with  
26 associated enterprises.

27 (c) the decision is made in giving effect to subsection 24(3) of  
28 the *International Tax Agreements Act 1953*.

29 **217 Subsection 3A(2)**

30 Omit “, or the applying of an income tax crediting amount takes place,”.

31 **218 Paragraph 3A(2)(c)**

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**Schedule 1** New foreign income tax offset rules  
**Part 4** Consequential and other amendments

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1 Omit “, or the applying of the income tax crediting amount takes  
2 place,”.

3 **219 Section 8J**

4 Repeal the section.

5 **220 Paragraph 9(1A)(b)**

6 After “provide correlative relief”, insert “, for juridical double taxation  
7 or economic double taxation,”.

8 **221 Paragraph 11(b)**

9 After “provide correlative relief”, insert “, for juridical double taxation  
10 or economic double taxation,”.

11 Note: The heading to section 11 is altered by inserting “**income**” after “**foreign**”.



1

2 **Part 5—Application**

3 **222 Application**

4 Subject to items 223 and 224, the amendments made by this Schedule  
5 apply in relation to income years, statutory accounting periods and  
6 notional accounting periods starting on or after the first 1 July that  
7 occurs after the day on which this Act receives the Royal Assent.

8 **223 Application and transitional rules for section 802-40 of**  
9 **the 1997 Act**

- 10 (1) The amendments made by items 179 to 181 apply in relation to income  
11 years starting one year later than the first income year (the *transitional*  
12 *year*) covered by item 222.
- 13 (2) Section 802-40 of the *Income Tax Assessment Act 1997* has effect in  
14 relation to the transitional year as if section 160AF of the *Income Tax*  
15 *Assessment Act 1936* had not been repealed.

16 **224 Application rule for credits arising under the**  
17 ***International Tax Agreements Act 1953***

- 18 (1) Despite the repeal of Division 19 of Part III of the *Income Tax*  
19 *Assessment Act 1936*, that Division continues to apply, after the  
20 commencement of this item, in relation to:  
21 (a) a determination made by a person under the Division before  
22 the commencement of this item; or  
23 (b) a credit to which the Division applied before the  
24 commencement of this item;  
25 as if the repeal had not happened.
- 26 (2) The Commissioner may make determinations under that Division as it  
27 so continues to apply.
- 28 (3) Section 24 of the *International Tax Agreements Act 1953*, as inserted by  
29 item 211 of this Schedule, applies from the commencement of this item  
30 in relation to any income year.

1

2 **Part 6—Savings provisions**

3 **225 Object**

4 The object of this Part is to ensure that, despite the repeals and  
5 amendments made by this Act, the full legal and administrative  
6 consequences of:

- 7 (a) any act done or omitted to be done; or  
8 (b) any state of affairs existing; or  
9 (c) any period ending;

10 before such a repeal or amendment applies, can continue to arise and be  
11 carried out, directly or indirectly through an indefinite number of steps,  
12 even if some or all of those steps are taken after the repeal or  
13 amendment applies.

14 **226 Making and amending assessments, and doing other**  
15 **things, in relation to past matters**

16 Even though an Act is repealed or amended by this Act, the repeal or  
17 amendment is disregarded for the purpose of doing any of the following  
18 under any Act or legislative instrument (within the meaning of the  
19 *Legislative Instruments Act 2003*):

- 20 (a) making or amending an assessment (including under a  
21 provision that is itself repealed or amended);  
22 (b) exercising any right or power, performing any obligation or  
23 duty or doing any other thing (including under a provision  
24 that is itself repealed or amended);

25 in relation to any act done or omitted to be done, any state of affairs  
26 existing, or any period ending, before the repeal or amendment applies.

27 **Example:** For the 2006-07 income year, Smart Investor Pty Ltd, an Australian  
28 resident private investment company, has assessable foreign income in  
29 the passive income class on which it has paid foreign tax for which it  
30 wishes to claim a foreign tax credit. The company also has a tax loss  
31 for the year from its Australian investments. When it lodges its tax  
32 return for the year it does not elect to claim a deduction for any of the  
33 tax loss under section 79DA of the ITAA 1936, because the Australian  
34 tax payable on its passive foreign income equals the foreign tax it has  
35 paid.

36 In 2009 the amount of foreign tax payable in respect of some foreign  
37 rental income it had included in its return for the 2006-07 year is  
38 reduced and Smart Investor receives a refund of the difference in  
39 foreign tax. Smart Investor Pty Ltd then applies to be able to make an

1 election under section 79DA, that is, after the *Tax Laws Amendment*  
2 *(2007 Measures No. 4) Act 2007* (which repeals section 79DA)  
3 receives Royal Assent. The Commissioner allows Smart Investor to  
4 submit an election to claim a deduction for so much of its 2006-07 tax  
5 loss as to reduce the amount of Australian tax payable on its 2006-07  
6 assessable foreign income to the revised foreign tax paid, by the end  
7 of 2009.

8 Despite the repeal of section 79DA, item 226 allows the  
9 Commissioner to permit an election to be lodged after the return for  
10 2006-07 has been lodged, and to amend Smart Investor's assessment  
11 for that year, because these actions relate to a thing done, and periods  
12 ending, before the repeal of section 79DA applies.

1

2 **Part 7—Sunsetting**

3 *Income Tax (Transitional Provisions) Act 1997*

4 **227 Division 770**

5 Repeal the Division.

1  
2 **Schedule 2—Exchange of membership**  
3 **interests in MDOs**

4 **Part 1—Amendments**

5 *Income Tax Assessment Act 1997*

6 **1 After section 112-53**

7 Insert:

8 **112-53A MDO roll-over**

9  

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**MDO roll-over**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Exchange of an interest in an MDO for an interest in another MDO	First element of cost base and reduced cost base	124-985

---

10 **2 Section 112-115 (after table item 14BA)**

11 Insert:

14BB Exchange of an interest in an MDO for an interest in another MDO Subdivision 124-P

12 **3 Subsection 124-5(1)**

13 Omit “124-O”, substitute “124-P”.

14 **4 Subsection 124-5(2) (at the end of the note)**

15 Add “The consequences of an exchange of a membership interest in an  
16 MDO are set out in Subdivision 124-P.”.

17 **5 At the end of Division 124**

18 Add:

1 **Subdivision 124-P—Exchange of a membership interest in an**  
2 **MDO for a membership interest in another MDO**

3 **Guide to Subdivision 124-P**

4 **124-975 What this Subdivision is about**

5 You can choose a roll-over if you exchange your interest as a  
6 member of an MDO for an interest as a member of another MDO.

7 You can only choose the roll-over if you would have made a  
8 capital gain from the exchange.

9 **Table of sections**

10 **Operative provisions**

11	124-980	Exchange of membership interests in an MDO
12	124-985	What the roll-over is for post-CGT interests
13	124-990	Partial roll-over
14	124-995	Pre-CGT interests

15 **Operative provisions**

16 **124-980 Exchange of membership interests in an MDO**

- 17 (1) There is a roll-over if:
- 18 (a) an entity exchanges:
- 19 (i) an interest (the *original interest*) in an \*MDO (the
- 20 *original MDO*) as a member of the original MDO; for
- 21 (ii) a similar interest (the *replacement interest*) in another
- 22 MDO (the *new MDO*) as a member of the new MDO;
- 23 and
- 24 (b) both the original MDO and the new MDO are companies
- 25 limited by guarantee; and
- 26 (c) the exchange is in consequence of a single \*arrangement that
- 27 satisfies subsection (3); and
- 28 (d) apart from the roll-over, the entity would make a \*capital
- 29 gain from a \*CGT event happening in relation to its original
- 30 interest; and

- 1 (e) the entity chooses to obtain the roll-over; and  
2 (f) the entity acquired the original interest on or after  
3 20 September 1985.

4 Note: The entity can obtain only a partial roll-over if the capital proceeds for  
5 its original interest include something other than its replacement  
6 interest: see section 124-990.

- 7 (2) In working out whether an original interest is exchanged for a  
8 similar interest, disregard a difference that consists only of a right  
9 to receive distributions of income or capital.

10 *Conditions for arrangement*

- 11 (3) The \*arrangement must:  
12 (a) result in the new \*MDO becoming the sole \*member of the  
13 original MDO; and  
14 (b) be one in which participation was available on substantially  
15 the same terms for all of the holders of interests as members  
16 of the original MDO of a particular type.

17 **124-985 What the roll-over is for post-CGT interests**

- 18 (1) A \*capital gain the entity makes from an original interest \*acquired  
19 on or after 20 September 1985 is disregarded.
- 20 (2) The entity works out the first element of the \*cost base of each  
21 replacement interest the entity received as a result of the exchange  
22 by reasonably attributing to it the cost base (or the part of it) of the  
23 entity's original interest for which it was exchanged and for which  
24 the entity obtained the roll-over.
- 25 (3) In applying subsection (2), the entity reduces (but not below zero)  
26 the \*cost base of the original interest (just before stopping owning  
27 it) by so much of that cost base as is attributable to an ineligible  
28 part (see section 124-990).
- 29 (4) The first element of the \*reduced cost base of a replacement  
30 interest is worked out similarly.

31 **124-990 Partial roll-over**

- 32 (1) The entity can obtain only a partial roll-over if its \*capital proceeds  
33 for its original interest include something (the *ineligible proceeds*)

**Schedule 2** Exchange of membership interests in MDOs  
**Part 1** Amendments

---

1 other than its replacement interest. There is no roll-over for that  
2 part (the *ineligible part*) of its original interest for which it  
3 received ineligible proceeds.

4 (2) The \*cost base of the ineligible part is that part of the cost base of  
5 the original interest as is reasonably attributable to it.

6 **124-995 Pre-CGT interests**

7 If the entity exchanges an original interest that the entity \*acquired  
8 before 20 September 1985 for its replacement interest, the first  
9 element of the \*cost base and \*reduced cost base of the replacement  
10 interest is zero.



1

2 **Part 2—Application of amendments**

3 **6 Application of amendments**

4           The amendments made by this Schedule apply to CGT events  
5           happening on or after 14 February 2007.

1  
2 **Schedule 3—Investment by superannuation**  
3 **funds in instalment warrants**  
4

5 *Superannuation Industry (Supervision) Act 1993*

6 **1 Before subsection 67(5)**

7 Insert:

8 *Exception—instalment warrants*

9 (4A) Subsection (1) does not prohibit a trustee (the *RSF trustee*) of a  
10 regulated superannuation fund from borrowing money, or  
11 maintaining a borrowing of money, under an arrangement under  
12 which:

- 13 (a) the money is or has been applied for the acquisition of an  
14 asset (the *original asset*) other than one the RSF trustee is  
15 prohibited by this Act or any other law from acquiring; and  
16 (b) the original asset, or another asset (the *replacement*) that:  
17 (i) is an asset replacing the original asset or any other asset  
18 that met the conditions in this subparagraph and  
19 subparagraph (ii); and  
20 (ii) is not an asset the RSF trustee is prohibited by this Act  
21 or any other law from acquiring;  
22 is held on trust so that the RSF trustee acquires a beneficial  
23 interest in the original asset or the replacement; and  
24 (c) the RSF trustee has a right to acquire legal ownership of the  
25 original asset or the replacement by making one or more  
26 payments after acquiring the beneficial interest; and  
27 (d) the rights of the lender against the RSF trustee for default on  
28 the borrowing, or on the sum of the borrowing and charges  
29 related to the borrowing, are limited to rights relating to the  
30 original asset or the replacement; and  
31 (e) if, under the arrangement, the RSF trustee has a right relating  
32 to the original asset or the replacement (other than a right  
33 described in paragraph (c))—the rights of the lender against  
34 the RSF trustee for the RSF trustee’s exercise of the RSF  
35 trustee’s right are limited to rights relating to the original  
36 asset or replacement.

1 **2 At the end of section 71**

2 Add:

3 *Limit on when investments in related trusts are in-house assets*

4 (8) If, at a time:

5 (a) an asset (the *investment asset*) of a superannuation fund is an  
6 investment in a related trust of the fund; and

7 (b) the related trust is one described in paragraph 67(4A)(b) in  
8 connection with a borrowing, by the trustee of the fund, that  
9 is covered by subsection 67(4A); and

10 (c) the only property of the related trust is the original asset or  
11 replacement described in that subsection;

12 the investment asset is an in-house asset of the fund at the time  
13 only if the original asset or replacement described in subsection  
14 67(4A) would be an in-house asset of the fund if it were an asset of  
15 the fund at the time.

16 (9) Subsections (1), (2) and (4) have effect subject to subsection (8).

1  
2 **Schedule 4—Trustee beneficiary reporting**  
3 **rules**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1936*

6 **1 Subsection 102UA(1)**

7 Repeal the subsection, substitute:

- 8 (1) The main purpose of this Division is to ensure that the trustee of a  
9 closely held trust with one or more trustee beneficiaries that are  
10 presently entitled to a share of the income or of a tax-preferred  
11 amount of the trust advises the Commissioner soon after the end of  
12 the year of income of certain details about those trustee  
13 beneficiaries. This will allow the Commissioner to check whether  
14 the assessable income of the trustee beneficiaries includes the  
15 correct share of net income, and whether the net assets of the  
16 trustee beneficiaries reflect the receipt of the tax-preferred  
17 amounts.

18 **2 Paragraph 102UA(2)(a)**

19 Omit “ultimate”, substitute “trustee”.

20 **3 Subsection 102UA(3)**

21 Omit “there are in fact no ultimate beneficiaries of net income of the  
22 closely held trust”, substitute “the trustee of the closely held trust  
23 becomes presently entitled to an amount that is reasonably attributable  
24 to the whole or a part of the share of the net income of the closely held  
25 trust”.

26 **4 Section 102UB**

27 Insert:

28 *correct TB statement* has the meaning given by section 102UG.

29 **5 Section 102UB (definition of *correct UB statement*)**

30 Repeal the definition.

1 **6 Section 102UB (definition of *listed person*)**

2 Repeal the definition.

3 **7 Section 102UB**

4 Insert:

5 *TB statement period* has the meaning given by section 102UH.

6 **8 Section 102UB**

7 Insert:

8 *trustee beneficiary non-disclosure tax* means tax payable under  
9 paragraph 102UK(2)(a) or 102UM(2)(a).

10 **9 Section 102UB (definition of *UB statement period*)**

11 Repeal the definition.

12 **10 Section 102UB (definition of *ultimate beneficiary*)**

13 Repeal the definition.

14 **11 Section 102UB (definition of *ultimate beneficiary*  
15 *non-disclosure tax*)**

16 Repeal the definition.

17 **12 Section 102UB**

18 Insert:

19 *untaxed part*, of a share of the net income of a closely held trust,  
20 has the meaning given by section 102UE.

21 **13 Subsection 102UC(4) (at the end of the definition of  
22 *excluded trust*)**

23 Add:

24 ; or (c) a family trust; or

25 (d) a trust in relation to which an interposed entity election has  
26 been made and is in force in accordance with section 272-85  
27 of Schedule 2F; or

28 (e) a trust that is covered by subsection 272-90(5) of  
29 Schedule 2F.

1 **14 Sections 102UE and 102UF**

2 Repeal the sections, substitute:

3 **102UE Meaning of *untaxed part***

- 4 (1) The *untaxed part* of a share of the net income of a closely held  
5 trust is so much of that share as is not covered by subsection (2).
- 6 (2) The share of the net income of the closely held trust is covered by  
7 this subsection to the extent that:
- 8 (a) the trustee of the closely held trust is assessed and liable to  
9 pay tax under subsection 98(4) in respect of the share; or
- 10 (b) the share is reasonably attributable to a part of the net income  
11 of another trust estate in respect of which the trustee of the  
12 other trust estate is assessed and liable to pay tax under  
13 subsection 98(4); or
- 14 (c) the share is represented by or reasonably attributable to an  
15 amount from which an entity was required to withhold an  
16 amount under Subdivision 12-H in Schedule 1 to the  
17 *Taxation Administration Act 1953*; or
- 18 (d) the share is reasonably attributable to a part of the net income  
19 of another trust estate in respect of which the trustee of the  
20 other trust estate was liable to pay trustee beneficiary  
21 non-disclosure tax.

22 **15 Section 102UG**

23 Repeal the section, substitute:

24 **102UG Correct TB statement**

25 *Share of net income case*

- 26 (1) This section applies if a share of the net income of a closely held  
27 trust for a year of income is included in the assessable income of a  
28 trustee beneficiary of the trust under section 97 and the share  
29 comprises or includes an untaxed part.

1 *Tax-preferred amount case*

- 2 (2) This section also applies if a trustee beneficiary of a closely held  
3 trust is presently entitled at the end of a year of income to a share  
4 of a tax-preferred amount of the trust.

5 *Correct TB statement*

- 6 (3) If this section applies, the trustee of the closely held trust makes a  
7 **correct TB statement** about the share if the trustee correctly states,  
8 in the approved form:  
9 (a) if the trustee beneficiary is a resident at the end of the year of  
10 income:  
11 (i) the name and tax file number of the trustee beneficiary;  
12 and  
13 (ii) the amount of the untaxed part of the share or the  
14 amount of the share of the tax-preferred amount; and  
15 (b) if the trustee beneficiary is a non-resident at the end of the  
16 year of income:  
17 (i) the name and address of the trustee beneficiary; and  
18 (ii) the amount of the untaxed part of the share or the  
19 amount of the share of the tax-preferred amount.

20 Note: If a closely held trust has multiple trustee beneficiaries, the  
21 requirements in subsection (3) will have to be met for each of them for  
22 the trustee of the closely held trust to avoid paying any trustee  
23 beneficiary non-disclosure tax.

24 **16 Section 102UH**

25 Repeal the section, substitute:

26 **102UH TB statement period**

27 The **TB statement period**, for the trustee of a trust in relation to a  
28 year of income, is the period from the end of the year of income  
29 until the end of:

- 30 (a) the period within which the trustee is required to give to the  
31 Commissioner the trust's return of income for the year of  
32 income; or  
33 (b) such further period as the Commissioner allows.

34 **17 Section 102UJ**

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1 Repeal the section, substitute:

2 **102UJ Extended concept of present entitlement to capital of a trust**

3 For the purposes of this Division, section 95A applies in relation to  
4 capital of a trust in the same way as it applies to income of the  
5 trust.

6 **18 Subdivision C of Division 6D of Part III (heading)**

7 Repeal the heading, substitute:

8 **Subdivision C—Trustee beneficiary non-disclosure tax on share**  
9 **of net income**

10 **19 Subsections 102UK(1), (2) and (2A)**

11 Repeal the subsections, substitute:

- 12 (1) Subject to subsection (2A), this section applies if:
- 13 (a) a share of the net income of a closely held trust for a year of  
14 income is included in the assessable income of a trustee  
15 beneficiary of the trust under section 97; and
  - 16 (b) the share comprises or includes an untaxed part; and
  - 17 (c) the trustee of the closely held trust is not covered by a  
18 determination under subsection (1A) for the year of income;  
19 and
  - 20 (d) during the TB statement period in relation to the year of  
21 income, the trustee of the closely held trust does not make  
22 and give to the Commissioner a correct TB statement about  
23 the share.

24 *Determination that a class of trustees is not required to give a*  
25 *correct TB statement*

26 (1A) The Commissioner may, by legislative instrument, determine that a  
27 specified class of trustees is not required to make a correct TB  
28 statement for a year of income.

- 29 (1B) A determination under subsection (1A):
- 30 (a) may be expressed to be subject to conditions; and
  - 31 (b) may be for one or more years of income.



1 *Consequences of section applying*

2 (2) If this section applies:

3 (a) either:

4 (i) if the trustee of the closely held trust is the only person  
5 in the trustee group (see subsection (3))—the trustee is  
6 liable to pay tax; or

7 (ii) if the trustee of the closely held trust is not the only  
8 person in the trustee group—the persons in the trustee  
9 group are jointly and severally liable to pay tax;

10 as imposed by the *Taxation (Trustee Beneficiary*  
11 *Non-disclosure Tax) Act (No. 1) 2007*, on the untaxed part;  
12 and

13 (b) except for the purposes of sections 99, 99A and 99B and this  
14 Division, the untaxed part is not included in the assessable  
15 income of the trustee beneficiary under section 97.

16 Note: Provisions dealing with the payment etc. of the tax under  
17 paragraph (a) (known as trustee beneficiary non-disclosure tax) are set  
18 out in Subdivision D.

19 *Amendment of incorrect statement*

20 (2A) If:

21 (a) during the TB statement period in relation to a year of  
22 income, the trustee of a closely held trust makes and gives to  
23 the Commissioner a statement, that the trustee believes on  
24 reasonable grounds is a correct TB statement, about a share  
25 of the net income of the trust; and

26 (b) the statement is not a correct TB statement about the share,  
27 with the result that, apart from this subsection, this section  
28 applies; and

29 (c) either:

30 (i) the trustee could not reasonably have foreseen the event  
31 that caused the statement not to be a correct TB  
32 statement; or

33 (ii) the statement is not a correct TB statement because of  
34 an inadvertent error; and

35 (d) either:

36 (i) before any trustee beneficiary non-disclosure tax  
37 becomes due and payable on the untaxed part as a result  
38 of this section applying; or

**Schedule 4** Trustee beneficiary reporting rules  
**Part 1** Main amendments

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- 1 (ii) before the end of 4 years after any such tax becomes due  
2 and payable;  
3 the trustee advises the Commissioner in writing of any  
4 change that is necessary to make the statement a correct TB  
5 statement about the share;  
6 this section does not apply, and is taken never to have applied, to  
7 the untaxed part.

8 Note: The heading to section 102UK is replaced by the heading “**Trustee beneficiary**  
9 **non-disclosure tax where no correct TB statement**”.

10 **20 Subsection 102UL(2)**

11 Omit “UB”, substitute “TB”.

12 **21 Paragraphs 102UL(3)(a), (4)(a), (4)(c) and (5)(a)**

13 Omit “UB”, substitute “TB”.

14 **22 Subparagraphs 102UL(5)(b)(i) and (ii)**

15 Omit “UB”, substitute “TB”.

16 **23 Subsections 102UM(1) and (2)**

17 Repeal the subsections, substitute:

- 18 (1) This section applies if:  
19 (a) a share of the net income of a closely held trust for a year of  
20 income is included in the assessable income of a trustee  
21 beneficiary of the trust under section 97; and  
22 (b) the trustee of the closely held trust becomes presently entitled  
23 to an amount that is reasonably attributable to the whole or a  
24 part of the untaxed part of the share; and  
25 (c) trustee beneficiary non-disclosure tax is not payable by the  
26 trustee of the closely held trust on the untaxed part under  
27 paragraph 102UK(2)(a).

28 *Consequences of section applying*

- 29 (2) If this section applies:  
30 (a) either:  
31 (i) if the trustee of the closely held trust is the only person  
32 in the trustee group (see subsection (3))—the trustee is  
33 liable to pay tax; or

- 1 (ii) if the trustee of the closely held trust is not the only  
2 person in the trustee group—the persons in the trustee  
3 group are jointly and severally liable to pay tax;  
4 as imposed by the *Taxation (Trustee Beneficiary*  
5 *Non-disclosure Tax) Act (No. 2) 2007*, on the whole or that  
6 part of the untaxed part; and  
7 (b) except for the purposes of sections 99, 99A and 99B and this  
8 Division, the whole or that part of the untaxed part is not  
9 included in the assessable income of the trustee beneficiary  
10 under section 97.

11 Note: Provisions dealing with the payment etc. of the tax under  
12 paragraph (a) (known as trustee beneficiary non-disclosure tax) are set  
13 out in Subdivision D.

14 Note: The heading to section 102UM is replaced by the heading “**Trustee beneficiary**  
15 **non-disclosure tax where share is distributed to trustee of closely held trust**”.

## 16 **24 Subdivision D of Division 6D of Part III (heading)**

17 Repeal the heading, substitute:

### 18 **Subdivision D—Payment etc. of trustee beneficiary** 19 **non-disclosure tax**

## 20 **25 Subsections 102UN(1) and (2)**

21 Omit “ultimate”, substitute “trustee”.

22 Note: The heading to section 102UN is altered by omitting “**ultimate**” and substituting  
23 “**trustee**”.

## 24 **26 Subsection 102UO(1)**

25 Omit “Ultimate”, substitute “Trustee”.

26 Note: The heading to section 102UO is altered by omitting “**ultimate**” and substituting  
27 “**trustee**”.

## 28 **27 Paragraph 102UO(1)(a)**

29 Omit “UB”, substitute “TB”.

## 30 **28 Subsection 102UO(2)**

31 Omit “Ultimate”, substitute “Trustee”.

## 32 **29 Subsection 102UO(3)**

33 Omit “ultimate”, substitute “trustee”.

1 **30 Subsection 102UO(4)**

2 Omit “ultimate”, substitute “trustee”.

3 **31 Subsection 102UO(4) (note)**

4 Omit “ultimate”, substitute “trustee”.

5 **32 Section 102UP**

6 Omit “ultimate” (wherever occurring), substitute “trustee”.

7 Note: The heading to section 102UP is altered by omitting “ultimate” and substituting  
8 “trustee”.

9 **33 Paragraph 102UR(1)(a)**

10 Omit “ultimate”, substitute “trustee”.

11 **34 Subsections 102UR(2) and 102URA(1)**

12 Omit “ultimate”, substitute “trustee”.

13 **35 Paragraph 102US(1)(d)**

14 Omit “ultimate”, substitute “trustee”.

15 **36 Section 102USA**

16 Repeal the section, substitute:

17 **102USA Recovery of trustee beneficiary non-disclosure tax from**  
18 **trustee beneficiaries providing incorrect information etc.**  
19 **to head trustee**

20 (1) This section applies if the requirements in subsections (2) and (3)  
21 are satisfied.

22 *Requirement for payment of trustee beneficiary non-disclosure tax*

23 (2) A requirement for this section to apply is that:

24 (a) the trustee of a closely held trust does not make a correct TB  
25 statement about a share of the net income of the trust of a  
26 year of income during the TB statement period in relation to  
27 the year of income; and

28 (b) as a result, the trustee becomes liable, or the persons in the  
29 trustee group become jointly and severally liable, under

- 1 section 102UK to pay trustee beneficiary non-disclosure tax;  
2 and  
3 (c) the trustee or any of the persons in the trustee group pays an  
4 amount (the *recoverable amount*), being some or all of the  
5 tax or any general interest charge under section 102UP in  
6 relation to the tax.

7 *Requirement for refusal etc. to provide information or for incorrect*  
8 *statement*

- 9 (3) A requirement for this section to apply is that:  
10 (a) either:  
11 (i) the trustee of the closely held trust was unable to make a  
12 correct TB statement about the share of the net income  
13 during the TB statement period because the trustee  
14 beneficiary in whose assessable income the share is  
15 included under section 97, when requested to do so,  
16 refused or failed to give information to the trustee; or  
17 (ii) the trustee of the closely held trust purported to make a  
18 correct TB statement about the share of the net income  
19 during the TB statement period but the statement was  
20 not a correct TB statement because it contained  
21 incorrect information given to the trustee of the closely  
22 held trust by the trustee beneficiary in whose assessable  
23 income the share is included under section 97, and the  
24 trustee honestly believed on reasonable grounds that the  
25 information was correct; and  
26 (b) the trustee of the closely held trust distributed to the trustee  
27 beneficiary an amount representing some or all of the share  
28 of the net income without withholding an amount under  
29 section 254 in respect of the recoverable amount.

30 *Consequences of section applying*

- 31 (4) If this section applies, the trustee or the person in the trustee group  
32 mentioned in paragraph (2)(c) may, in a court of competent  
33 jurisdiction, sue for the recoverable amount and recover it from the  
34 trustee beneficiary.

35 **37 Subdivision E of Division 6D of Part III (heading)**

36 Repeal the heading, substitute:

1 **Subdivision E—Making correct TB statement about trustee**  
2 **beneficiaries of tax-preferred amounts**

3 **38 Subsection 102UT(1)**

4 Repeal the subsection, substitute:

5 (1) If, at the end of a year of income:

6 (a) a trustee beneficiary of a closely held trust is presently  
7 entitled to a share of a tax-preferred amount of the trust; and

8 (b) the trustee of the closely held trust is not covered by a  
9 determination under subsection 102UK(1A) for the year of  
10 income;

11 the trustee of the closely held trust must, during the TB statement  
12 period, make and send to the Commissioner a correct TB statement  
13 covering the share.

14 Note: The heading to section 102UT is replaced by the heading “**Requirement to make**  
15 **correct TB statement about trustee beneficiaries of tax-preferred amounts**”.

16 **39 Subsection 102UT(3)**

17 Omit “or statements” (wherever occurring).

18 **40 Paragraph 102UT(3)(c)**

19 Omit “UB”, substitute “TB”.

20 **41 Sections 102UU and 102UV**

21 Repeal the sections, substitute:

22 **102UU Trustee beneficiary may quote tax file number to trustee of**  
23 **closely held trust**

24 A trustee beneficiary in respect of:

25 (a) a share of the net income of a closely held trust for a year of  
26 income that is included in the assessable income of the  
27 trustee beneficiary of the trust under section 97; or

28 (b) a share of a tax-preferred amount of a closely held trust to  
29 which the trustee beneficiary of the trust is presently entitled  
30 at the end of a year of income;

31 may quote his or her tax file number to the trustee of the closely  
32 held trust in connection with that trustee making a correct TB  
33 statement about that share.



1

2 **Part 2—Consequential amendments**

3 *Income Tax Assessment Act 1936*

4 **42 Sub-subparagraph 47A(18)(d)(i)(G)**

5 Omit “ultimate”, substitute “trustee”.

6 **43 Subparagraph 102AAE(2)(c)(i)**

7 Omit “ultimate”, substitute “trustee”.

8 **44 Sub-subparagraph 102AAU(1)(c)(i)(C)**

9 Omit “ultimate”, substitute “trustee”.

10 **45 Subsection 170(10) (table item 18, column headed “Brief**  
11 **description”)**

12 Omit “Ultimate”, substitute “Trustee”.

13 **46 Paragraph 254(3)(a)**

14 Omit “ultimate”, substitute “trustee”.

15 *Taxation Administration Act 1953*

16 **47 Subsection 8AAB(4) (table item 1AA, column headed**  
17 **“Topic”)**

18 Omit “ultimate”, substitute “trustee”.

19 **48 Subsection 250-10(1) in Schedule 1 (table item 5, column**  
20 **headed “Topic”)**

21 Omit “ultimate”, substitute “trustee”.



1

2 **Part 3—Repeal of Acts**

3 *A New Tax System (Ultimate Beneficiary Non-disclosure*  
4 *Tax) Act (No. 1) 1999*

5 **49 The whole of the Act**

6 Repeal the Act.

7 *A New Tax System (Ultimate Beneficiary Non-disclosure*  
8 *Tax) Act (No. 2) 1999*

9 **50 The whole of the Act**

10 Repeal the Act.

1

2 **Part 4—Application and transitional**

3 **51 Application**

4 The amendments made by this Schedule apply to the first income year  
5 starting on or after the day on which this Act receives the Royal Assent  
6 and later income years.

7 **52 Transitional**

8 (1) This item applies in relation to income years starting on or after 1 July  
9 2006 and before the first income year to which the amendments made  
10 by this Schedule apply in accordance with item 51.

11 (2) The trustee of a closely held trust is not liable to pay tax under  
12 section 102UK or 102UM of the *Income Tax Assessment Act 1936* in  
13 respect of a share of the net income of the trust to the extent to which:

14 (a) the trustee of the closely held trust is assessed and liable to  
15 pay tax under subsection 98(4) of that Act in respect of the  
16 share; or

17 (b) the share is reasonably attributable to a part of the net income  
18 of another trust estate in respect of which the trustee of the  
19 other trust estate is assessed and liable to pay tax under that  
20 subsection; or

21 (c) the share is represented by or reasonably attributable to an  
22 amount from which an entity was required to withhold an  
23 amount under Subdivision 12-H in Schedule 1 to the  
24 *Taxation Administration Act 1953*; or

25 (d) the share is represented by or reasonably attributable to an  
26 amount which was liable to tax under section 255 of the  
27 *Income Tax Assessment Act 1936*.

1  
2 **Schedule 5—Superannuation amendments**

3 **Part 1—Main amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Section 290-70 (heading)**

6 Repeal the heading, substitute:

7 **290-70 Employment activity conditions**

8 **2 Before paragraph 290-70(a)**

9 Insert:

10 (aa) your employee (within the expanded meaning of employee  
11 given by section 12 of the *Superannuation Guarantee*  
12 (*Administration*) Act 1992); or

13 **3 Subsection 290-90(4)**

14 Omit “either”.

15 **4 Before paragraph 290-90(4)(a)**

16 Insert:

17 (aa) an employee (within the expanded meaning of employee  
18 given by section 12 of the *Superannuation Guarantee*  
19 (*Administration*) Act 1992) of the other person’s employer; or

20 **5 At the end of section 295-385**

21 Add:

22 (6) However, assets of a \*complying superannuation fund that are  
23 supporting a \*superannuation income stream benefit that is  
24 prescribed by the regulations for the purposes of this section are  
25 not *segregated current pension assets* to the extent that the  
26 \*market value of the assets exceeds the account balance supporting  
27 the benefit.

28 **6 At the end of subsection 295-485(1)**

29 Add:



1 **14 After subsection 307-5(3)**

2 Insert:

3 (3A) For the purposes of paragraph (3)(d), the Commissioner may make  
4 a decision in writing that the superannuation benefit is *not* a  
5 ***superannuation member benefit*** under subsection (3), if:

6 (a) both of these conditions are satisfied:

7 (i) the payment of the benefit is delayed because of legal  
8 action about entitlement to the benefit;

9 (ii) the benefit is paid more than 6 months after the legal  
10 action ceases; or

11 (b) both of these conditions are satisfied:

12 (i) the payment of the benefit is delayed because of  
13 reasonable delays in the process of identifying and  
14 making initial contact with potential recipients of the  
15 benefit;

16 (ii) the benefit is paid more than 6 months after that process  
17 is completed.

18 (3B) In making a decision under subsection (3A), the Commissioner  
19 must have regard to the following matters:

20 (a) whether there was any action taken to try to pay the benefit  
21 within the 6 months after the cessation of the legal action or  
22 the completion of the process, and if so, the nature of that  
23 action;

24 (b) whether there were any factors beyond the control of the  
25 entity that paid the benefit, or of the person to whom the  
26 benefit was paid, that prevented the payment of the benefit  
27 within those 6 months;

28 (c) the circumstances of the person to whom the benefit was  
29 paid, and the actions of that person in relation to the benefit.

30 **15 Subsection 307-290(1) (note)**

31 Repeal the note, substitute:

32 Note 1: Those sections allow deductions for insurance premiums that have  
33 been paid, and for liability for future benefits.

34 Note 2: Deductions made under former section 279 or 279B of the *Income Tax*  
35 *Assessment Act 1936* are treated for the purposes of this section as  
36 having been made under section 295-465 or 295-470 (see  
37 section 307-290 of the *Income Tax (Transitional Provisions) Act*  
38 *1997*).

1 **16 Subsection 995-1(1) (definition of *non-complying***  
2 ***superannuation fund*)**

3 Repeal the definition, substitute:

4 *non-complying superannuation fund* means a \*superannuation  
5 fund that:

6 (a) is a fund; and

7 (b) is not a \*complying superannuation fund.

8 ***Income Tax (Former Non-resident Superannuation Funds)***  
9 ***Act 1994***

10 **17 At the end of section 3**

11 Add “of that Act”.

12 ***Income Tax (Transitional Provisions) Act 1997***

13 **18 After section 295-465**

14 Insert:

15 **295-485 Deductions for increased amount of superannuation lump**  
16 **sum death benefit**

17 Paragraph 295-485(1)(b) of the *Income Tax Assessment Act 1997*  
18 has effect as if the reference in that paragraph to amounts included  
19 in assessable income under Subdivision 295-C of that Act included  
20 a reference to amounts included in assessable income under former  
21 section 274 (taxable contributions) of the *Income Tax Assessment*  
22 *Act 1936*.

23 **19 Paragraph 307-125(4)(b)**

24 Omit “under subsection (6)”, substitute “under subsections (6) and  
25 (6A)”.

26 **20 Paragraph 307-125(6)(b)**

27 Omit “within the meaning of section 27A”, substitute “within the  
28 meaning of paragraph (a) of the definition of that term in subsection  
29 27A(1)”.

1 **21 Paragraph 307-125(6)(b)**

2 After “of this section”, insert “, and disregarding paragraphs (b) and (c)  
3 of that definition”.

4 **22 Paragraph 307-125(6)(b)**

5 Omit “stream”, substitute “stream, reduced by the tax free components  
6 (worked out under subsection (2)) of any benefits paid from the  
7 superannuation income stream after 30 June 2007”.

8 **23 Paragraph 307-125(6)(c)**

9 Omit “However, treat this amount as nil for the purposes of this  
10 paragraph if at least one superannuation income stream benefit was paid  
11 from the superannuation income stream before 1 July 1994.”.

12 **24 After subsection 307-125(6)**

13 Insert:

14 (6A) Despite subsection (6), if:

15 (a) at least one superannuation income stream benefit was paid  
16 from the superannuation income stream before 1 July 1994;  
17 or

18 (b) section 27AAAA of the *Income Tax Assessment Act 1936* (as  
19 in force just before 1 July 2007) applied to the  
20 superannuation income stream just before 1 July 2007;

21 for the purposes of paragraph (4)(b), the tax free component is  
22 equal to the amount worked out under paragraph (6)(b).

23 **25 After section 307-125**

24 Insert:

25 **307-290 Taxed and untaxed elements of death benefit**  
26 **superannuation lump sums**

27 For the purposes of section 307-290 of the *Income Tax Assessment*  
28 *Act 1997*:

29 (a) treat a deduction made under former section 279 of the  
30 *Income Tax Assessment Act 1936* as having been made under  
31 section 295-465 of the *Income Tax Assessment Act 1997*  
32 instead; and

- 1 (b) treat a deduction made under former section 279B of the  
2 *Income Tax Assessment Act 1936* as having been made under  
3 section 295-470 of the *Income Tax Assessment Act 1997*  
4 instead.

5 ***Retirement Savings Accounts Act 1997***

6 **26 After section 140**

7 Insert:

8 **140A Holder taken to have quoted where Commissioner gives notice**

- 9 (1) A holder, or a person applying to become a holder, of an RSA is  
10 taken to have quoted his or her tax file number to an RSA provider  
11 in connection with the operation or the possible future operation of  
12 this Act and the other Superannuation Acts if the Commissioner of  
13 Taxation gives to the provider notice of the person's tax file  
14 number.
- 15 (2) The holder or applicant is taken to have quoted that tax file number  
16 at the time when the Commissioner of Taxation gave the notice.

17 ***Superannuation Industry (Supervision) Act 1993***

18 **27 After section 299S**

19 Insert:

20 **299SA Beneficiary taken to have quoted where Commissioner gives  
21 notice**

- 22 (1) A beneficiary, or an applicant to become a beneficiary, of an  
23 eligible superannuation entity or of a regulated exempt public  
24 sector superannuation scheme is taken to have quoted his or her tax  
25 file number to a trustee of the entity or scheme in connection with  
26 the operation or the possible future operation of this Act and the  
27 other Superannuation Acts if the Commissioner of Taxation gives  
28 to the trustee notice of the person's tax file number.
- 29 (2) The beneficiary or applicant is taken to have quoted that tax file  
30 number at the time when the Commissioner of Taxation gave the  
31 notice.



1 ***Superannuation Legislation Amendment (Simplification) Act***  
2 ***2007***

3 **28 Item 12 of Schedule 2**

4 Repeal the item, substitute:

5 **12 Application**

6 (1) The amendments made by items 1 to 9 of this Schedule apply to:

7 (a) individuals who:

8 (i) make the choice referred to in subsection 152-305(1) of  
9 the *Income Tax Assessment Act 1997*; or

10 (ii) receive capital proceeds from a CGT event; and

11 (b) companies or trusts that make a payment referred to in  
12 section 152-325 of the *Income Tax Assessment Act 1997*;

13 after 30 June 2007, regardless of when the relevant CGT event  
14 happened.

15 (2) The amendments made by items 10 and 11 of this Schedule apply to  
16 CGT events happening in the 2006-07 income year and later income  
17 years.

18 ***Taxation Administration Act 1953***

19 **29 After subsection 45-325(1)**

20 Insert:

21 *Notional tax if you have no-TFN contributions income*

22 (1A) In working out the ***notional tax*** of a \*complying superannuation  
23 fund, \*non-complying superannuation fund or \*RSA provider for  
24 the \*base year, assume that the entity had no \*no-TFN  
25 contributions income for the base year and that the entity was not  
26 entitled to a \*tax offset for the base year under Subdivision 295-J  
27 of the *Income Tax Assessment Act 1997*.

28 **30 After subsection 45-365(1)**

29 Insert:

**Schedule 5** Superannuation amendments  
**Part 1** Main amendments

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- 1                                    *Benchmark tax if you have no-TFN contributions income*
- 2                    (1A) In working out the ***benchmark tax*** of a \*complying superannuation
- 3                                    fund, \*non-complying superannuation fund or \*RSA provider for
- 4                                    the variation year, assume that the entity had no \*no-TFN
- 5                                    contributions income for the variation year and that the entity was
- 6                                    not entitled to a \*tax offset for the variation year under
- 7                                    Subdivision 295-J of the *Income Tax Assessment Act 1997*.

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**Part 2—Technical corrections**

*Income Tax Assessment Act 1997*

**31 Section 9-1 (table item 9)**

Omit “section 94J”, substitute “**section 94J**”.

**32 Section 9-1 (table item 10, column headed “because of this provision:”)**

Omit “section 121”, substitute “**section 121**”.

**33 Section 9-1 (table item 11)**

Omit “sections 98, 99, 99A and 102”, substitute “**sections 98, 99, 99A and 102**”.

**34 Subsection 9-5(1) (table item 5)**

Omit “section 23AF or 23AG”, substitute “**section 23AF or 23AG**”.

**35 Subsection 9-5(1) (table item 6)**

Omit “sections 98, 99 and 99A”, substitute “**sections 98, 99 and 99A**”.

**36 Subsection 9-5(1) (table item 7)**

Omit “section 102K”, substitute “**section 102K**”.

**37 Subsection 9-5(1) (table item 8)**

Omit “section 102S”, substitute “**section 102S**”.

**38 Subsection 9-5(1) (table item 9)**

Omit “section 121H”, substitute “**section 121H**”.

**39 Subsection 9-5(1) (table item 10)**

Omit “section 148”, substitute “**section 148**”.

**40 Section 12-5 (table item headed “interest”)**

Omit “**26-85**”, substitute “26-85”.

**41 Section 12-5 (table item headed “interest”)**

1 Omit “26-80”, substitute “26-80”.

2 **42 Section 20-5 (table item 8)**

3 Omit “290-100”, substitute “290-100”.

4 **43 Subsection 295-390(3) (definition of *average value of***  
5 ***superannuation liabilities*)**

6 Omit “\*superannuation income stream benefits”, substitute  
7 “\*superannuation benefits”.

8 **44 Subsection 295-485(3)**

9 Insert:

10 *low tax component rate* is the rate of tax imposed on the \*low tax  
11 component of the fund’s taxable income for the income year.

12 **45 Subsection 295-485(3) (definition of *low tax component***  
13 ***tax rate*)**

14 Repeal the definition.

15 **46 Subsection 995-1(1) (definition of *index number*)**

16 Repeal the definition, substitute:

17 *index number*:

18 (a) for an amount mentioned in a provision listed at items 8 to 12  
19 in section 960-265—*index number* has the meaning given by  
20 section 960-285; or

21 (b) for an amount mentioned in a provision listed at another item  
22 in section 960-265—*index number* has the meaning given by  
23 section 960-280.

24 ***Taxation Administration Act 1953***

25 **47 Subsection 16-165(1)**

26 Omit “payee”, substitute “payer”.

1

2 **Part 3—Application**

3 **48 Application**

- 4 (1) The amendments made by this Schedule apply to the 2007-2008 income  
5 year and later years.
- 6 (2) Despite subitem (1), the amendments made by items 9 to 16, and 19 to  
7 25, of this Schedule apply on and after 1 July 2007.
- 8 (3) Despite subitem (1), the amendments made by items 7, 8, 26 and 27 of  
9 this Schedule apply to notices given by the Commissioner on or after  
10 1 June 2007.
- 11 (4) Despite subitem (1), the amendment made by item 29 of this Schedule  
12 applies in relation to an entity's 2007-2008 base year and later base  
13 years.
- 14 (5) Despite subitem (1), the amendment made by item 30 of this Schedule  
15 applies in relation to an entity's 2007-2008 variation year and later  
16 variation years.

1  
2 **Schedule 6—Specific listings of deductible**  
3 **gift recipients**  
4

5 *Income Tax Assessment Act 1997*

6 **1 Subsection 30-55(2) (table item 6.2.23)**

7 Omit “AAP Mawson’s Huts Foundation Limited”, substitute  
8 “Mawson’s Huts Foundation Limited”.

9 **2 Section 30-105 (at the end of the table)**

10 Add:

13.2.15	Australian Peacekeeping Memorial Project Incorporated	the gift must be made after 29 April 2007 and before 1 January 2009
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13.2.16	Social Ventures Australia Limited	the gift must be made after 3 May 2007
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11 **3 Subsection 30-315(2) (table item 1A)**

12 Repeal the item.

13 **4 Subsection 30-315(2) (after table item 24A)**

14 Insert:

24B	Australian Peacekeeping Memorial Project Incorporated	item 13.2.15
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15 **5 Subsection 30-315(2) (after table item 70)**

16 Insert:

70A	Mawson’s Huts Foundation Limited	item 6.2.23
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17 **6 Subsection 30-315(2) (after table item 111A)**

18 Insert:

111AA	Social Ventures Australia Limited	item 13.2.16
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1  
2 **Schedule 7—Minor amendments**

3 **Part 1—Main amendments**

4 *A New Tax System (Australian Business Number) Act 1999*

5 **1 Section 41 (subparagraph (e)(ii) of the definition of**  
6 **government entity)**

7 Omit “enterprise”, substitute “\*enterprise”.

8 *A New Tax System (Goods and Services Tax) Act 1999*

9 **2 Paragraph 38-90(2)(a)**

10 Omit “a \*Masters or Doctoral course,”.

11 **3 Section 195-1 (paragraph (e) of the definition of education**  
12 **course)**

13 Repeal the paragraph.

14 **4 Section 195-1 (definition of *Masters or Doctoral course*)**

15 Repeal the definition.

16 **5 Section 195-1 (after paragraph (a) of the definition of**  
17 ***tertiary course*)**

18 Insert:

- 19 (aa) a course of study or instruction accredited at Masters or  
20 Doctoral level and supplied by a \*higher education institution  
21 or a \*non-government higher education institution; or

22 **6 Section 195-1 (definition of *tertiary residential college***  
23 ***course*)**

24 Repeal the definition, substitute:

25 *tertiary residential college course* means a course supplied in  
26 connection with a \*tertiary course at premises that are used to  
27 provide accommodation to students undertaking tertiary courses.

1 ***Crimes (Taxation Offences) Act 1980***

2 Note: The headings to sections 5 and 7 are altered by omitting “old sales tax” and substituting  
3 “income tax”.

4 ***Fringe Benefits Tax Assessment Act 1986***

5 **7 Subsection 11(1AA)**

6 Repeal the subsection, substitute:

7 (1AA) The formula for working out the amount of **B** for the person and  
8 the car for subsection (1) is:

9 
$$\frac{\text{DV percentage}}{\text{Effective life of the car}}$$

10 where:

11 ***DV percentage*** is the percentage applicable in using the  
12 diminishing value method (within the meaning of the *Income Tax*  
13 *Assessment Act 1997*) as at the start of the year of tax.

14 ***effective life of the car*** is the number of years in the period  
15 specified as the effective life of the car in a determination made by  
16 the Commissioner under section 40-100 of the *Income Tax*  
17 *Assessment Act 1997* and in effect at the most recent time (before  
18 the end of the year of tax) the person became the owner of the car.

19 **8 Application**

20 The amendment made by item 7 applies to the FBT year starting on  
21 1 April 2008 and to all later FBT years.

22 ***Income Tax Assessment Act 1936***

23 **9 Section 23GA**

24 Repeal the section.

25 **10 Subsection 46A(8AA)**

26 Omit “sections 23A and 23B”, substitute “section 23A”.

27 Note: The heading to section 97A is altered by omitting “income equalization deposits or”.

28 **11 Subsection 128B(3A)**

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1 Omit “or to a partnership”, substitute “or a partnership”.

2 **12 Subsections 139E(2) and (4)**

3 Omit “in a form approved by the Commissioner”, substitute “in the  
4 approved form”.

5 **13 Paragraphs 139GA(3)(a) to (d)**

6 Repeal the paragraphs, substitute:

7 (a) a person who pays, or is liable to pay, work and income  
8 support related withholding payments and benefits; or

9 (b) a person who engages another person in foreign service.

10 **14 Application**

11 The amendment made by item 13 applies to assessments for the  
12 2006-07 income year and later income years.

13 **15 Section 202DDA**

14 Repeal the section.

15 **16 Paragraph 202EE(1)(d)**

16 Omit “paragraph 128B(3)(a), (b) or (ga)”, substitute “paragraph  
17 128B(3)(a), (b), (ga) or (jb)”.

18 **17 Application**

19 The amendment made by item 16 applies to income derived in the  
20 2006-07 income year and later income years.

21 ***Income Tax Assessment Act 1997***

22 **18 Section 11-10 (table item headed “interest”)**

23 Omit “, 23GA”.

24 **19 Section 11-15 (table item headed “foreign aspects of  
25 income taxation”)**

26 Omit:

Defence Force member, non-resident, pay and  
allowances of ..... 842-105

27 substitute:

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Defence Force member, foreign resident, pay and  
allowances of ..... 842-105

1 **20 Section 12-5 (table item headed “dividends”)**

2 Omit:  
franking credits, companies and non-residents ..... 207-95(2),  
207-95(3),  
220-405(3)

3 substitute:  
franking credits, companies and foreign residents ..... 207-95(2),  
207-95(3),  
220-405(3)

4 **21 Paragraphs 15-55(1)(b) and 15-60(4)(b)**

5 Omit “320-15(k)”, substitute “320-15(1)(k)”.

6 **22 Application**

7 The amendments made by item 21 apply to assessments for the income  
8 year including 1 January 2003 and later income years.

9 **23 Paragraph 30-60(c)**

10 Omit “Secretary to the Department of the Environment, Sport and  
11 Territories”, substitute “\*Environment Secretary”.

12 **24 Section 30-255**

13 Omit “Secretary to the Department of the Environment, Sport and  
14 Territories”, substitute “\*Environment Secretary”.

15 **25 Subsection 30-265(4)**

16 Omit “Minister for Environment, Sport and Territories”, substitute  
17 “\*Environment Minister”.

18 **26 Subsection 30-270(4)**

19 Omit “Secretary to the Department of the Environment, Sport and  
20 Territories”, substitute “\*Environment Secretary”.

21 **27 Paragraph 30-275(c)**

1 Omit “Minister for Environment, Sport and Territories”, substitute  
2 “\*Environment Minister”.

3 **28 Subsection 30-280(1)**

4 Omit “Secretary to the Department of the Environment, Sport and  
5 Territories”, substitute “\*Environment Secretary”.

6 **29 Subsection 30-280(1)**

7 Omit “Minister for Environment, Sport and Territories”, substitute  
8 “\*Environment Minister”.

9 **30 Subsection 30-280(4)**

10 Omit “Minister for Environment, Sport and Territories”, substitute  
11 “\*Environment Minister”.

12 **31 Subsection 30-285(1)**

13 Omit “Minister for Environment, Sport and Territories”, substitute  
14 “\*Environment Minister”.

15 **32 Subsection 30-285(1)**

16 Omit “Secretary to the Department of the Environment, Sport and  
17 Territories”, substitute “\*Environment Secretary”.

18 **33 Paragraph 31-5(5)(c)**

19 Omit “Minister for the Environment and Heritage”, substitute  
20 “\*Environment Minister”.

21 **34 Section 50-70 (heading)**

22 Repeal the heading, substitute:

23 **50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2**

24 **35 Subsection 51-57(1)**

25 Omit “a law of the Commonwealth, a State or Territory”, substitute “an  
26 \*Australian law”.

27 **36 Section 61-560 (note)**

28 Omit “have you”, substitute “you have”.

1 **37 After subparagraph 118-12(2)(a)(i)**

2 Insert:

3 (ia) section 59-35 (amounts that would be mutual receipts  
4 but for prohibition on distributions to members);

5 **38 Application**

6 The amendment made by item 37 applies to assessments for income  
7 years commencing on or after 1 July 2000.

8 **39 Paragraph 165-12(7)(b)**

9 Omit “direct or indirect equity interests”, substitute “\*direct equity  
10 interests or \*indirect equity interests”.

11 **40 Subsection 165-12(8)**

12 Omit “direct or indirect equity interest”, substitute “\*direct equity  
13 interest or \*indirect equity interest”.

14 **41 Subsection 165-12(9)**

15 Repeal the subsection.

16 **42 Paragraph 165-37(4)(b)**

17 Omit “direct or indirect equity interests”, substitute “\*direct equity  
18 interests or \*indirect equity interests”.

19 **43 Subsection 165-37(5)**

20 Omit “direct or indirect equity interest”, substitute “\*direct equity  
21 interest or \*indirect equity interest”.

22 **44 Subsection 165-37(6)**

23 Repeal the subsection.

24 **45 Paragraph 165-115C(4)(b)**

25 Omit “direct or indirect equity interests”, substitute “\*direct equity  
26 interests or \*indirect equity interests”.

27 **46 Subsection 165-115C(5)**

28 Omit “direct or indirect equity interest”, substitute “\*direct equity  
29 interest or \*indirect equity interest”.

1 **47 Subsections 165-115C(6) and (7)**

2 Repeal the subsections.

3 **48 Paragraph 165-115GB(2)(a)**

4 Omit “direct or indirect equity interest”, substitute “\*direct equity  
5 interest or \*indirect equity interest”.

6 **49 Paragraph 165-123(7)(b)**

7 Omit “direct or indirect equity interests”, substitute “\*direct equity  
8 interests or \*indirect equity interests”.

9 **50 Subsection 165-123(8)**

10 Omit “direct or indirect equity interest”, substitute “\*direct equity  
11 interest or \*indirect equity interest”.

12 **51 Subsections 165-123(9) and (10)**

13 Repeal the subsections.

14 **52 Paragraph 166-272(8)(b)**

15 Omit “direct or indirect equity interests”, substitute “\*direct equity  
16 interests or \*indirect equity interests”.

17 **53 Subsection 166-272(8) (note)**

18 Repeal the note.

19 **54 Subsection 166-272(10)**

20 Omit “direct or indirect equity interest”, substitute “\*direct equity  
21 interest or \*indirect equity interest”.

22 **55 Subsection 166-272(10) (note)**

23 Repeal the note.

24 **56 Subsection 166-272(11)**

25 Repeal the subsection.

26 **57 Paragraph 197-20(b)**

27 Omit “a law of the Commonwealth, or of a State or Territory,”,  
28 substitute “an \*Australian law”.

1 **58 Subsection 320-85(1) (note 1)**

2 Omit “320-15(h)”, substitute “320-15(1)(h)”.

3 **59 Subsection 713-545(6) (definition of *ordinary class tax***  
4 ***rate*)**

5 Omit “subparagraph 23A(a)(ii)”, substitute “paragraph 23A(a)”.

6 **60 Paragraph 727-95(b)**

7 Omit “direct or indirect equity interests”, substitute “\*direct equity  
8 interests or \*indirect equity interests”.

9 **61 Subsections 820-37(2) and (3)**

10 Omit “\*foreign permanent establishments”, substitute “\*overseas  
11 permanent establishments”.

12 **62 Subsection 820-946(3)**

13 Omit “that time”, substitute “the particular time mentioned in  
14 subsection (2) or (2A)”.

15 **63 Subsection 995-1(1)**

16 Insert:

17 *direct equity interests* in a company are \*shares in the company.

18 **64 Subsection 995-1(1)**

19 Insert:

20 *Environment Minister* means the Minister administering the  
21 *Environment Protection and Biodiversity Conservation Act 1999*.

22 **65 Subsection 995-1(1) (definition of *GST joint venture*) (the**  
23 **definition inserted by item 59 of Schedule 3 to the *A***  
24 ***New Tax System (Indirect Tax and Consequential***  
25 ***Amendments) Act 1999*)**

26 Repeal the definition.

27 **66 Subsection 995-1(1)**

28 Insert:

1                    *indirect equity interests*: an entity has *indirect equity interests* in a  
2                    company if it has \*shares or other interests in entities interposed  
3                    between the entity and the company.

4                    **67 Subsection 995-1(1) (paragraph (d) of the definition of**  
5                    **member)**

6                    Omit “person who” (wherever occurring), substitute “entity that”.

7                    **68 Subsection 995-1(1) (all the definitions of share)**

8                    Repeal the definitions, substitute:

9                    *share*:

- 10                    (a) in a company means a share in the capital of the company,  
11                    and includes stock; and  
12                    (b) of an \*exempting credit has the meaning given by  
13                    section 208-180; and  
14                    (c) of a \*franked distribution has the meaning given by  
15                    section 207-55; and  
16                    (d) of a \*franking credit has the meaning given by  
17                    section 207-57.

18                    ***Income Tax (Dividends, Interest and Royalties Withholding***  
19                    ***Tax) Act 1974***

20                    **69 Section 3**

21                    Repeal the section.

22                    **70 Section 4**

23                    Omit “*Income Tax Assessment Act 1936-1974*”, substitute “*Income Tax*  
24                    *Assessment Act 1936*”.

25                    **71 Paragraph 7(a)**

26                    Repeal the paragraph, substitute:

- 27                    (a) in respect of income to which subsection 128B(4) of the  
28                    Assessment Act applies—30%; and

29                    **72 Section 8**

30                    Repeal the section.

1 ***Income Tax Rates Act 1986***

2 **73 Subsection 3(1) (definition of *AD/RLA component*)**

3 Repeal the definition.

4 **74 Subsection 3(1) (definition of *CS/RA component*)**

5 Repeal the definition.

6 **75 Subsection 3(1) (definition of *EIB component*)**

7 Repeal the definition.

8 **76 Subsection 3(1) (definition of *general fund component*)**

9 Repeal the definition.

10 **77 Subsection 3(1) (definition of *NCS component*)**

11 Repeal the definition.

12 **78 Subsection 3(1) (definition of *registered organisation*)**

13 Repeal the definition.

14 **79 Subsection 3(1) (definition of *RSA category A component*)**

15 Repeal the definition.

16 **80 Subsection 3(1) (definition of *RSA category B component*)**

17 Repeal the definition.

18 **81 Subsection 3(1) (definition of *RSA combined component*)**

19 Repeal the definition.

20 **82 Subsection 3(1) (definition of *RSA component*)**

21 Repeal the definition, substitute:

22 *RSA component* has the same meaning as in the *Income Tax*  
23 *Assessment Act 1997*.

24 **83 Subsection 3(1) (definition of *standard component*)**

25 Repeal the definition, substitute:



1                    *standard component* has the same meaning as in the *Income Tax*  
2                    *Assessment Act 1997*.

3                    **84 Subsection 23(1A)**

4                    Omit “sections 23A, 23B and 23C”, substitute “section 23A”.

5                    **85 Paragraphs 23(2)(a) and (b)**

6                    Repeal the paragraphs.

7                    **86 Paragraphs 23(2)(c), (ca) and (d)**

8                    Reletter as paragraphs (a), (b) and (c).

9                    **87 Subsections 23(3), (4), (4A) and (4B)**

10                  Repeal the subsections.

11                  **88 Subsection 23(4BA)**

12                  Omit “or a registered organization”.

13                  **89 Subsections 23(4BA), (4C), (4D), (5) and (6)**

14                  Renumber as subsections (3), (4), (5), (6) and (7).

15                  **90 Subsection 23(6) (as renumbered)**

16                  Omit “, not being a registered organization,”.

17                  **91 Section 23A**

18                  Omit “Subject to sections 23B and 23C, the”, substitute “The”.

19                  **92 Paragraphs 23A(a) and (b)**

20                  Repeal the paragraphs, substitute:

21                          (a) in respect of the ordinary class—30%; and

22                          (b) in respect of the complying superannuation class—15%.

23                  **93 Sections 23B and 23C**

24                  Repeal the sections.

25                  **94 Subparagraph 29(2)(c)(iii)**

26                  Omit “paragraph 23(4BA)(a)”, substitute “paragraph 23(3)(a)”.

27                  **95 Subparagraph 29(2)(c)(iv)**

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1 Omit “paragraph 23(4A)(ba)”, substitute “paragraph 23A(b)”.

2 **96 Application**

3 The amendments made by items 73 to 95 apply to assessments for the  
4 2007-08 income year and later income years.

5 ***Income Tax (Transitional Provisions) Act 1997***

6 **97 Division 136 (heading)**

7 Repeal the heading, substitute:

8 **Division 136—Foreign residents**

9 Note 1: The heading to section 701C-10 is replaced by the heading “**Additional membership  
10 rules where entities are interposed between the head company and a subsidiary  
11 member—case where an interposed entity is a foreign resident and the subsidiary  
12 member is a company**”.

13 Note 2: The heading to section 701C-15 is replaced by the heading “**Additional membership  
14 rules where entities are interposed between the head company and a subsidiary  
15 member—case where an interposed entity is a foreign resident and the subsidiary  
16 member is a trust or partnership**”.

17 **98 The whole of the Act**

18 Omit “\*” (wherever occurring).

19 ***Taxation Administration Act 1953***

20 **99 Section 14ZQ (paragraph (b) of the definition of *delayed*  
21 *administration (trustee) objection*)**

22 Reletter as paragraph (a).

23 **100 Section 14ZQ (paragraphs (c) to (f) of the definition of  
24 *delayed administration (trustee) objection*)**

25 Repeal the paragraphs.

26 **101 Section 14ZQ (paragraph (g) of the definition of *delayed*  
27 *administration (trustee) objection*)**

28 Reletter as paragraph (b).

29 **102 Subsection 288-80(4) in Schedule 1 (definition of  
30 *applicable withholding tax rate*)**

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1 Omit “subparagraph 7(a)(ii)”, substitute “paragraph 7(a)”.

2 ***Taxation (Interest on Overpayments and Early Payments) Act***  
3 ***1983***

4 **103 Paragraph 9(6)(b)**

5 After “at a later”, insert “time”.

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## Part 2—Penalty unit conversion

### 104 Penalty unit conversion

(1) The provisions of the *Fringe Benefits Tax Assessment Act 1986* listed in the table are amended as set out in the table.

Penalty unit conversion			
Item	Provision	Omit:	Substitute:
1	Subsection 121(1) (penalty)	\$1,000	10 penalty units
2	Subsection 121(2) (penalty)	\$1,000	10 penalty units
3	Subsection 121(2B) (penalty)	\$1,000	10 penalty units
4	Subsection 122(1) (penalty)	\$1,000	10 penalty units
5	Section 135	\$500	5 penalty units

(2) The provisions of the *Income Tax Assessment Act 1936* listed in the table are amended as set out in the table.

Penalty unit conversion			
Item	Provision	Omit:	Substitute:
1	Section 16 (penalty)	\$10,000	100 penalty units
2	Subsection 124ZADA(3) (penalty)	\$200	2 penalty units
3	Subsection 124ZADB(1) (penalty)	\$200	2 penalty units
4	Subsection 202CD(1) (penalty)	\$1,000	10 penalty units
5	Subsection 202CD(4) (penalty)	\$1,000	10 penalty units
6	Subsection 202EE(2) (penalty)	\$1,000	10 penalty units
7	Subsection 202EF(4) (penalty)	\$1,000	10 penalty units
8	Subsection 213(2) (penalty)	\$2,000	20 penalty units
9	Section 251A (sub-subparagraph (c)(ii)(A) of the definition of <i>serious taxation offence</i> )	\$2,000	20 penalty units
10	Subsection 251KG(1) (penalty)	\$500	5 penalty units
11	Subsection 251KH(1) (penalty)	\$500	5 penalty units
12	Section 251KJ (penalty)	\$500	5 penalty units

<b>Penalty unit conversion</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit:</b>	<b>Substitute:</b>
13	Subsection 251KK(2) (penalty)	\$500	5 penalty units
14	Subsections 251N(1), (2) and (2B) (penalty)	\$1,000	10 penalty units
15	Subsection 251O(1) (penalty)	\$1,000	10 penalty units
16	Subsection 252(3)	\$50	1 penalty unit
17	Subsection 252A(1)	\$50	1 penalty unit
18	Section 266	\$500	5 penalty units

- 1 (3) The provisions of the *Taxation Administration Act 1953* listed in the  
2 table are amended as set out in the table.  
3

<b>Penalty unit conversion</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit:</b>	<b>Substitute:</b>
1	Subsection 3D(21)	\$10,000	100 penalty units
2	Subsection 8E(1)	\$2,000	20 penalty units
3	Subsection 8E(2)	\$4,000	40 penalty units
4	Subsection 8E(3)	\$5,000	50 penalty units
5	Subsection 8H(1)	\$5,000	50 penalty units
6	Subsection 8M(1)	\$2,000	20 penalty units
7	Subsection 8M(2)	\$4,000	40 penalty units
8	Subsection 8R(1)	\$3,000	30 penalty units
9	Subsection 8R(2)	\$5,000	50 penalty units
10	Subsection 8V(1)	\$5,000	50 penalty units
11	Subsection 8V(2)	\$10,000	100 penalty units
12	Subsection 8WA(1) (penalty)	\$10,000	100 penalty units
13	Subsection 8WB(1) (penalty)	\$10,000	100 penalty units
14	Subsection 8WC(1) (penalty)	\$10,000	100 penalty units
15	Section 8XA (penalty)	\$10,000	100 penalty units
16	Subsection 8XB(1) (penalty)	\$10,000	100 penalty units
17	Subsection 13F(4) (penalty)	\$1,000	10 penalty units
18	Subsection 14J(3) (penalty)	\$1,000	10 penalty units
19	Subsection 14R(1) (penalty)	\$5,000	50 penalty units
20	Subsection 14ZA(1) (penalty)	\$500	5 penalty units

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## Schedule 8—Family trusts

### *Income Tax Assessment Act 1936*

#### **1 After paragraph 270-25(1)(d) in Schedule 2F**

Insert:

- (da) a trust with the same individual specified in its family trust election; or

#### **2 Subsection 272-80(5) in Schedule 2F**

Repeal the subsection, substitute:

*Election generally cannot be varied or revoked*

- (5) Subject to subsections (5A), (5B), (5C), (6) and (6A), the election cannot be varied or revoked.

*Variation cases*

- (5A) The trustee of a trust may, in respect of an income year during the period specified in subsection (6B), vary an election so that a different individual (the *new individual*) is specified for the purposes of subsection (3) as the individual whose family group is to be taken into account in relation to the election if:

- (a) the new individual was a member of the family of the individual originally specified in the election at the election commencement time; and
- (b) any conferrals of present entitlement to income or capital of:
  - (i) the trust; and
  - (ii) an entity for which an interposed entity election has been made in relation to the trust;during the period in which the election has been in force have been made on the new individual or on persons who would have been members of the new individual's family group at the time of the conferral; and
- (c) any distributions of income or capital of:
  - (i) the trust; and
  - (ii) an entity for which an interposed entity election has been made in relation to the trust;

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1                   during the period in which the election has been in force have  
2                   been made to the new individual or to persons who would  
3                   have been members of the new individual's family group at  
4                   the time of the distribution.

5           (5B) A variation of an election under subsection (5A) in relation to a  
6           trust can only be made once.

7           (5C) The trustee of a trust may vary an election so that a different  
8           individual (the *new individual*) is specified for the purposes of  
9           subsection (3) as the individual whose family group is to be taken  
10          into account in relation to the election if:

- 11           (a) an order; or
- 12           (b) an agreement; or
- 13           (c) an award;

14          of a kind mentioned in paragraphs 126-5(1)(a) to (f) of the *Income*  
15          *Tax Assessment Act 1997* results in the new individual, or a group  
16          comprising the new individual and members of the new  
17          individual's family, having control of the trust under  
18          subsection (5D).

19          (5D) The new individual, or a group comprising the new individual and  
20          members of the new individual's family, have control of the trust  
21          for the purposes of subsection (5C) if any of paragraphs  
22          272-87(2)(a) to (g) are satisfied in relation to a group consisting of:

- 23           (a) the new individual; or
- 24           (b) the new individual and members of the new individual's  
25           family.

### 26   **3 After subsection 272-80(6) in Schedule 2F**

27           Insert:

28          (6A) The trustee of a trust may, in respect of an income year during the  
29          period specified in subsection (6B), revoke the election unless:

- 30           (a) the trust, or another entity, has incurred a tax loss and had its  
31           assessable income reduced by part or all of the loss in an  
32           income year or years during the period:

- 33           (i) starting at the beginning of the income year specified in  
34           the election; and

- 1 (ii) finishing at the end of the income year immediately  
2 prior to the income year from which the revocation is to  
3 be effective (see subsection (8));  
4 and the trust, or the other entity, could not have had its  
5 assessable income so reduced had the election not been in  
6 force; or  
7 (b) the trust, or another entity, has claimed a deduction for bad  
8 debts in an income year or years during the period specified  
9 in paragraph (a) and the trust, or the other entity, could not  
10 have claimed the deduction had the election not been in  
11 force; or  
12 (c) a beneficiary of the trust in an income year during the period  
13 specified in paragraph (a) received a franked distribution  
14 indirectly through the trust and paragraph 207-150(1)(a) of  
15 the *Income Tax Assessment Act 1997* would have applied in  
16 relation to the distribution had the election not been in force.

17 *Period to vary or revoke the election*

- 18 (6B) The trustee of a trust cannot vary or revoke the election under  
19 subsections (5A) or (6A) unless the variation or revocation is in  
20 respect of an income year that occurs during the period:  
21 (a) starting at the beginning of the income year specified in the  
22 election and finishing at the end of the fourth income year  
23 after the income year specified in the election; or  
24 (b) starting at the beginning of the income year in which  
25 Schedule 8 to the *Tax Laws Amendment (2007 Measures*  
26 *No. 4) Act 2007* commenced and finishing at the end of the  
27 subsequent income year.

28 Note: The heading to subsection 272-80(6) is altered by omitting “case” and substituting  
29 “cases”.

30 **4 Subsections 272-80(7), (8) and (9) in Schedule 2F**

31 Repeal the subsections, substitute:

32 *How to vary or revoke the election*

- 33 (7) To revoke an election under subsection (6), the revocation must be  
34 made in the trust’s return of income for the income year in which  
35 the later time occurs. If the trustee is not required to give a return  
36 for the income year, the revocation must:



- 1 (a) be in writing and in the approved form; and
- 2 (b) specify the later time; and
- 3 (c) be given to the Commissioner before the end of:
  - 4 (i) 2 months after the end of the income year in which the
  - 5 later time occurs; or
  - 6 (ii) such later day as the Commissioner allows.
- 7 (8) To vary or revoke an election under subsection (5A), (5C) or (6A),
- 8 the variation or revocation must be made in the trust’s return of
- 9 income for the income year from which the variation or revocation
- 10 is to be effective. If the trustee is not required to give a return for
- 11 the income year, the variation or revocation must:
  - 12 (a) be in writing and in the approved form; and
  - 13 (b) specify the income year from which the variation or
  - 14 revocation is to be effective; and
  - 15 (c) be given to the Commissioner on or before:
    - 16 (i) 2 months after the end of that income year; or
    - 17 (ii) such later day as the Commissioner allows.

18 *When election is in force*

- 19 (9) The election is in force:
  - 20 (a) if it is not revoked—at all times after the election
  - 21 commencement time (see subsection (10)); or
  - 22 (b) if it is revoked under subsection (6)—at all times from the
  - 23 election commencement time until the later time specified in
  - 24 the revocation; or
  - 25 (c) if it is revoked under subsection (6A)—at all times from the
  - 26 election commencement time until the end of the income year
  - 27 immediately prior to the income year from which the
  - 28 revocation is to be effective (see subsection (8)).

29 **5 Subsection 272-85(1) in Schedule 2F**

30 Omit “in accordance with subsection 272-80(3)”.

31 **6 Subsections 272-85(5) and (6) in Schedule 2F**

32 Repeal the subsections, substitute:

1                                    *Election generally cannot be revoked*

2                                    (5) Subject to subsections (5A) and (5B), the election cannot be  
3                                    revoked.

4                                    *Revocation cases*

5                                    (5A) A company, the partners in any partnership or the trustee of a trust  
6                                    may, in respect of an income year during the period specified in  
7                                    subsection (5C), revoke the election if at the election  
8                                    commencement time, or at a later time, the entity was, or becomes,  
9                                    a member of the family group (within the meaning of subsection  
10                                    272-90(3A) or (5)) of the individual specified in the family trust  
11                                    election.

12                                    (5B) The election is taken to be revoked if the family trust election to  
13                                    which it relates is revoked.

14                                    *Period to revoke the election*

15                                    (5C) A company, the partners in any partnership or the trustee of a trust  
16                                    cannot revoke an election under subsection (5A) unless the  
17                                    revocation is in respect of an income year that occurs during the  
18                                    period:

- 19                                    (a) starting at the later of:  
20                                        (i) the beginning of the income year specified in the  
21                                        election; and  
22                                        (ii) the beginning of the income year in which the entity  
23                                        became a member of the family group;  
24                                    and finishing at the end of the fourth income year after the  
25                                    income year referred to in subparagraph (i) or (ii); or  
26                                    (b) starting at the beginning of the income year in which  
27                                    Schedule 8 to the *Tax Laws Amendment (2007 Measures*  
28                                    *No. 4) Act 2007* commenced and finishing at the end of the  
29                                    subsequent income year.

30                                    *How revocation is made*

31                                    (6) A revocation must be made in the entity's return of income for the  
32                                    income year from which the revocation is to be effective. If the  
33                                    entity is not required to give a return for the income year, the  
34                                    revocation must:

- 35                                    (a) be in writing and in the approved form; and
-

- 1 (b) specify the income year from which the revocation is to be
- 2 effective; and
- 3 (c) be given to the Commissioner on or before:
- 4 (i) 2 months after the end of that income year; or
- 5 (ii) such later day as the Commissioner allows.

6 *When election is in force*

- 7 (6A) The election is in force:
- 8 (a) if it is not revoked—at all times after the election
- 9 commencement time (see subsection (6B)); or
- 10 (b) if it is revoked under subsection (5A)—at all times from the
- 11 election commencement time to the end of the income year
- 12 immediately prior to the income year from which the
- 13 revocation is to be effective (see subsection (6)); or
- 14 (c) if the family trust election to which it relates is revoked under
- 15 subsection 272-80(6)—at all times from the election
- 16 commencement time until the later time specified in that
- 17 revocation; or
- 18 (d) if the family trust election to which it relates is revoked under
- 19 subsection 272-80(6A)—at all times from the election
- 20 commencement time to the end of the income year
- 21 immediately prior to the income year from which the family
- 22 trust revocation is to be effective (see subsection 272-80(8)).

23 *Election commencement time*

- 24 (6B) The *election commencement time* is:
- 25 (a) if the company, partnership or trust does not pass the family
- 26 control test at all times in the specified income year—the
- 27 later of:
- 28 (i) the beginning of the specified day; and
- 29 (ii) the earliest time from which the company, partnership
- 30 or trust does pass the family control test for the
- 31 remainder of the specified income year; or
- 32 (b) in any other case—the beginning of the specified day.

33 **7 At the end of section 272-85 in Schedule 2F**

34 Add:

- 1 (8) For the purposes of subsection (7) disregard an election that has  
2 been revoked under subsection (5A) or (5B).

3 **8 After subsection 272-90(2) in Schedule 2F**

4 Insert:

5 *Certain former family members*

- 6 (2A) The following persons are members of the primary individual's  
7 family group in relation to the conferral or distribution:  
8 (a) a person who was a spouse of either the primary individual or  
9 of a member of the primary individual's family before a  
10 breakdown in the marriage; and  
11 (b) a person who was a widow or widower (whichever is  
12 applicable) of either the primary individual or of a member of  
13 the primary individual's family and who is now the spouse of  
14 a person who is not a member of the primary individual's  
15 family; and  
16 (c) a person who was a step-child of either the primary  
17 individual or of a member of the primary individual's family  
18 before a breakdown in the marriage of the primary individual  
19 or the member of the primary individual's family.

20 Note: The fact that a person is a member of the family group of an  
21 individual under this subsection does not mean that the person is a  
22 member of the individual's family under section 272-95.

23 **9 After subsection 272-90(3) in Schedule 2F**

24 Insert:

25 *Trust with same primary individual*

- 26 (3A) A trust with the same primary individual specified in its family  
27 trust election is a member of the primary individual's family group  
28 in relation to the conferral or distribution.

29 **10 Section 272-95 in Schedule 2F**

30 Repeal the section, substitute:

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**272-95 Family**

- 1
- 2 (1) The *family* of an individual (the *test individual*) consists of the test
- 3 individual and all of the following (if applicable):
- 4 (a) any parent, grandparent, brother or sister of the test
- 5 individual or the test individual's spouse;
- 6 (b) any nephew, niece or child of the test individual or the test
- 7 individual's spouse;
- 8 (c) any lineal descendant of a nephew, niece or child referred to
- 9 in paragraph (b);
- 10 (d) the spouse of the test individual or of anyone who is a
- 11 member of the test individual's family because of
- 12 paragraphs (a), (b) and (c).

13 Note: *Child* and *spouse* are defined in subsection 6(1).

- 14 (2) A person does not cease to be a family member merely because of
- 15 the death of any other family member.
- 16 (3) In this section, an adopted child, step-child or ex-nuptial child of a
- 17 person is taken to be a lineal descendant of that person for the
- 18 purposes of determining the lineal descendants of that person or
- 19 any other person.

20 Note: A person who is no longer a member of an individual's family under

21 this section may still be a member of the individual's family group

22 under subsection 272-90(2A).

**11 Section 272-140 in Schedule 2F**

23 Before "In this Schedule", insert "(1)".

**12 Section 272-140 in Schedule 2F**

24 Insert:

25 *specified individual* in relation to a family trust election has the

26 meaning given by subsection (2).

**13 At the end of section 272-140 in Schedule 2F**

27 Add:

- 28 (2) A reference in this Schedule to a person specified in a family trust
- 29 election is a reference to:
- 30
- 31
- 32

- 1 (a) if the family trust election has not been varied—the person  
2 specified for the purposes of subsection 272-80(3); or  
3 (b) if the family trust election has been varied—the person most  
4 recently specified under subsection 272-80(5A) or (5C).

5 **14 Application**

6 The amendments made by this Schedule apply to the income year in  
7 which this Act receives the Royal Assent and to later income years.