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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. 5) 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. 5) 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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 to 7	The day on which this Act receives the Royal Assent.	
3. Schedule 8	The later of: (a) the day on which this Act receives the Royal Assent; and (b) the day on which the <i>Tax Laws Amendment (2007 Measures No. 4) Act 2007</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 9	The day on which this Act receives the Royal Assent.	
5. Schedule 10, Parts 1 and 2	The day on which this Act receives the Royal Assent.	
6. Schedule 10, Part 3	1 July 2010.	1 July 2010
7. Schedule 10, Part 4	The day on which this Act receives the Royal Assent.	
8. Schedule 11	The day on which this Act receives the Royal Assent.	
9. Schedule 12	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

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

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

4 **3 Schedule(s)**

5 Each Act that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

9 **4 Amendment of assessments**

10 Section 170 of the *Income Tax Assessment Act 1936* does not
11 prevent the amendment of an assessment if:
12 (a) the assessment was made before the commencement of this
13 section; and
14 (b) the amendment is made within 4 years after that
15 commencement; and
16 (c) the amendment is made for the purpose of giving effect to
17 Schedule 2.

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Schedule 1—Tax preferred entities (asset financing)

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Part 3-10

Add:

Division 250—Assets put to tax preferred use

Table of Subdivisions

Guide to Division 250

250-A Objects

250-B When this Division applies to you and an asset

250-C Denial of, or reduction in, capital allowance deductions

250-D Deemed loan treatment of financial benefits provided for tax preferred use

250-E Taxation of deemed loan

250-F Treatment of asset when Division ceases to apply to the asset

250-G Objections against determinations and decisions by the Commissioner

Guide to Division 250

250-1 What this Division is about

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are

1 assessed only to the extent of a notional gain component. This
2 component is worked out on the basis of treating the arrangements
3 under which the asset is put to a tax preferred use, and financial
4 benefits are provided in relation to that tax preferred use, as a loan.
5 Subdivision 250-E then applies to determine the amounts that are
6 to be assessed.

7 **Subdivision 250-A—Objects**

8 **Table of sections**

9 250-5 Main objects

10 **250-5 Main objects**

11 The main objects of this Division are:

- 12 (a) to deny or reduce your *capital allowance deductions in
13 respect of an asset if the asset is put to a *tax preferred use
14 and you have insufficient economic interest in the asset; and
15 (b) if your capital allowance deductions are denied or reduced, to
16 treat the *arrangement for the tax preferred use of the asset as
17 a loan that is taxed as a financial arrangement (on a
18 compounding accruals basis).

19 **Subdivision 250-B—When this Division applies to you and an**
20 **asset**

21 **Table of sections**

22 **Overall test**

23 250-10 When this Division applies to you and an asset
24 250-15 General test
25 250-20 First exclusion—small business entities
26 250-25 Second exclusion—financial benefits under minimum value limit
27 250-30 Third exclusion—certain short term or low value arrangements
28 250-35 Exceptions to section 250-30
29 250-40 Fourth exclusion—sum of present values of financial benefits less that
30 amount otherwise assessable
31 250-45 Fifth exclusion—Commissioner determination

32 **Tax preferred use of asset**

Schedule 1 Tax preferred entities (asset financing)

Part 1 Main amendments

1	250-50	<i>End user</i> of an asset
2	250-55	<i>Tax preferred end user</i>
3	250-60	<i>Tax preferred use</i> of an asset
4	250-65	<i>Arrangement period</i> for tax preferred use
5	250-70	New tax preferred use at end of arrangement period if tax preferred use continues
6		
7	250-75	What constitutes a separate asset for the purposes of this Division
8	250-80	Treatment of particular arrangements in the same way as leases

9 **Financial benefits in relation to tax preferred use**

10	250-85	Financial benefits in relation to tax preferred use of an asset
11	250-90	Financial benefit provided directly or indirectly
12	250-95	Expected financial benefits in relation to an asset put to tax preferred use
13	250-100	Present value of financial benefit that has already been provided

14 **Discount rate to be used in working out present values**

15	250-105	Discount rate to be used in working out present values
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16 **Predominant economic interest**

17	250-110	Predominant economic interest
18	250-115	Limited recourse debt test
19	250-120	Right to acquire asset test
20	250-125	Effectively non-cancellable, long term arrangement test
21	250-130	Meaning of <i>effectively non-cancellable</i> arrangement
22	250-135	Level of expected financial benefits test
23	250-140	When to retest predominant economic interest under section 250-135

24 **Overall test**

25 **250-10 When this Division applies to you and an asset**

26		This Division applies to you and an asset at a particular time if:
27		(a) the general test in section 250-15 is satisfied in relation to
28		you and the asset; and
29		(b) none of the exclusions in sections 250-20, 250-25, 250-30,
30		250-40 and 250-45 apply.

31 **250-15 General test**

32		This Division applies to you and an asset at a particular time if:
33		(a) the asset is being *put to a tax preferred use; and

- 1 (b) the *arrangement period for the *tax preferred use of the asset
2 is greater than 12 months; and
3 (c) *financial benefits in relation to the tax preferred use of the
4 asset have been, will be or can reasonably be expected to be,
5 *provided to you (or a *connected entity) by:
6 (i) a *tax preferred end user (or a connected entity); or
7 (ii) any *tax preferred entity (or a connected entity); or
8 (iii) any entity that is not an Australian resident; and
9 (d) disregarding this Division, you would be entitled to a *capital
10 allowance in relation to:
11 (i) a decline in the value of the asset; or
12 (ii) expenditure in relation to the asset; and
13 (e) you lack a *predominant economic interest in the asset at that
14 time.

15 **250-20 First exclusion—small business entities**

16 This Division does not apply to you and an asset if:

- 17 (a) you are a *small business entity for the income year in which
18 the *arrangement period for the *tax preferred use of the asset
19 starts; and
20 (b) you choose to deduct amounts under Subdivision 328-D for
21 the asset for that income year.

22 **250-25 Second exclusion—financial benefits under minimum value**
23 **limit**

- 24 (1) This Division does not apply to you and an asset that is being *put
25 to a tax preferred use under a particular *arrangement if, at the start
26 of the *arrangement period, the total of the nominal values of all
27 the *financial benefits that have been, or will be or can reasonably
28 be expected to be, provided to you (or a *connected entity):
29 (a) by *members of the tax preferred sector; and
30 (b) in relation to the *tax preferred use of the asset or any other
31 asset that is being, or is to be, put to a tax preferred use under
32 the arrangement;
33 does not exceed \$5 million.
34 (2) The amount referred to in subsection (1) is indexed annually.
35 Note: Subdivision 960-M shows you how to index amounts.
-

1 **250-30 Third exclusion—certain short term or low value**
2 **arrangements**

3 *Certain short term or low value arrangements generally excluded*

4 (1) This Division does not apply to you and an asset that is being *put
5 to a tax preferred use under a particular *arrangement if:

6 (a) the *arrangement period for the *tax preferred use of the asset
7 does not exceed:

8 (i) 5 years if the asset is real property and the tax preferred
9 use of the asset is a lease; or

10 (ii) 3 years in any other case; or

11 (b) at the start of the arrangement period, the total of the nominal
12 values of all the *financial benefits that have been, will be or
13 can reasonably be expected to be, provided to you (or a
14 *connected entity):

15 (i) by *members of the tax preferred sector; and

16 (ii) in relation to the tax preferred use of the asset or any
17 other asset that is being, or is to be, put to a tax
18 preferred use under the arrangement;

19 does not exceed:

20 (iii) \$50 million if the asset is real property and the tax
21 preferred use of the asset is a lease; or

22 (iv) \$30 million in any other case; or

23 (c) at the start of the arrangement period, the total of the values
24 of all the assets that are put to a tax preferred use under the
25 arrangement does not exceed:

26 (i) \$40 million if the asset is real property and the tax
27 preferred use of the asset is a lease; or

28 (ii) \$20 million in any other case.

29 This subsection has effect subject to section 250-35.

30 (2) The amounts referred to in paragraphs (1)(b) and (c) are indexed
31 annually.

32 Note: Subdivision 960-M shows you how to index amounts.

1 **250-35 Exceptions to section 250-30**

2 *Debt interests*

- 3 (1) Section 250-30 does not apply if the *arrangement (either alone or
4 together with any arrangement in relation to the *tax preferred use
5 of the asset or the provision of *financial benefits in relation to the
6 tax preferred use of the asset) is a *debt interest.
- 7 (2) In applying subsection (1), disregard subsection 974-130(4).

8 *Member of tax preferred sector having certain rights in relation to*
9 *the asset*

- 10 (3) Section 250-30 does not apply if:
- 11 (a) a *member of the tax preferred sector has:
- 12 (i) a right, obligation or contingent obligation to purchase
13 or acquire the asset or a legal or equitable interest in the
14 asset; or
- 15 (ii) a right to require the transfer of the asset or a legal or
16 equitable interest in the asset; or
- 17 (iii) a residual or reversionary interest in the asset that will
18 arise or become exercisable at or after the end of the
19 *arrangement period; and
- 20 (b) the consideration for the purchase, acquisition or transfer of
21 the right, obligation or interest is not fixed as the *market
22 value of the asset at the time of the purchase, acquisition or
23 transfer.

24 To avoid doubt, this subsection does not apply to the asset merely
25 because your interest in the asset is one that ceases to exist after the
26 passage of a particular period of time.

27 *Member of tax preferred sector providing financing*

- 28 (4) Section 250-30 does not apply if a *member of the tax preferred
29 sector provides financing, or support for financing, in relation to
30 your interest in the asset (including by way of a loan, a guarantee,
31 an indemnity, a security, hedging or undertaking to provide
32 *financial benefits in the event of the termination of an
33 *arrangement).

Schedule 1 Tax preferred entities (asset financing)

Part 1 Main amendments

1 *Finance leases, non-cancellable operating leases, service*
2 *concessions and similar arrangements*

3 (5) Section 250-30 does not apply if an *arrangement in relation to the
4 *tax preferred use of the asset, or the provision of *financial
5 benefits in relation to the tax preferred use of the asset, is or
6 involves:

- 7 (a) a finance lease; or
8 (b) a non-cancellable operating lease; or
9 (c) a service concession or similar arrangement;

10 that generally accepted accounting principles, as in force at the
11 start of the *arrangement period, require to be included as an asset
12 or a liability in your balance sheet.

13 *Financial benefits irregular, not based on comparable*
14 *market-based rates or not reflecting value of tax preferred use of*
15 *asset*

16 (6) Section 250-30 does not apply if the *financial benefits that have
17 been, or are to be provided, to you (or a *connected entity) by
18 *members of the tax preferred sector in relation to the *tax
19 preferred use of the asset:

- 20 (a) are not provided on a regular periodic basis (and at least
21 annually); or
22 (b) are not based on comparable market-based rates; or
23 (c) do not reflect the value of the tax preferred use of the asset.

24 *Special rules if tax preferred use is a lease or hire of the asset*

25 (7) If the *tax preferred use of the asset is a lease or hire of the asset
26 (or the use of the asset under a lease or hire arrangement),
27 section 250-30 does not apply if:

28 (a) the asset is so specialised that the *end user could not carry
29 out one or more of its functions effectively without the asset;
30 and

31 (b) you would be unlikely to be able to re-lease, re-hire or resell
32 the asset to another person who is not a *member of the tax
33 preferred end user group.

34 Note: For particular arrangements that are treated as leases, see
35 section 250-80.

1 *Special rules if tax preferred use is not a lease or hire of the asset*

- 2 (8) If the *tax preferred use of the asset is not the lease or hire of the
3 asset (or the use of the asset under a lease or hire arrangement),
4 section 250-30 does not apply if:
- 5 (a) a *member of the tax preferred sector has a right, if particular
6 circumstances occur, to manage, or to assume control over,
7 the asset (other than temporarily for the purpose of ensuring
8 public health or safety, protecting the environment or
9 continuing the supply of an essential service); or
- 10 (b) the asset is so specialised that it is unlikely that it could
11 effectively be put to any use other than the tax preferred use;
12 or
- 13 (c) neither you (nor a *connected entity) has effective day to day
14 control and physical possession of the asset.

15 Note: For particular arrangements that are treated as leases, see
16 section 250-80.

17 **250-40 Fourth exclusion—sum of present values of financial benefits**
18 **less that amount otherwise assessable**

- 19 (1) This Division does not apply to you and an asset that is being *put
20 to a tax preferred use under a particular *arrangement if, when that
21 *tax preferred use of the asset starts, the Division 250 assessable
22 amount is less than the alternative assessable amount.
- 23 (2) For the purposes of subsection (1), the ***Division 250 assessable***
24 ***amount*** is the sum of the present values of all the amounts that
25 would be likely to be included in your assessable income under this
26 Division in relation to the *tax preferred use of the asset if this
27 Division applied to you and the asset.
- 28 (3) This is how to work out the ***alternative assessable amount*** for the
29 purposes of subsection (1):

30 *Method statement*

31 *Step 1.* Add up the present values of the amounts that would be
32 included in your assessable income in relation to the
33 *financial benefits *provided in relation to the tax

Schedule 1 Tax preferred entities (asset financing)

Part 1 Main amendments

-
- 1 preferred use of the asset during the *arrangement period
2 if this Division did not apply to you and the asset.
- 3 *Step 2.* Add up the present values of the amounts that you would
4 be able to deduct in relation to the asset, or expenditure in
5 relation to the asset, under Division 40 or Division 43 in
6 relation to the *arrangement period if this Division did
7 not apply to you and the asset.
- 8 *Step 3.* Deduct the amount obtained in Step 2 from the amount
9 obtained in Step 1. The result is the ***alternative***
10 ***assessable amount.***
- 11 (4) To avoid doubt, the amounts referred to in subsections (2) and (3)
12 are all the amounts that would be likely to be included in your
13 assessable income, or deducted, for all the income years during the
14 whole, or a part, of which the asset is *put to the tax preferred use.
- 15 (5) The point in time to be used in determining, for the purposes of this
16 section:
- 17 (a) the present value of an amount that is included in your
18 assessable income for an income year; or
19 (b) the present value of an amount that you would be able to
20 deduct for an income year;
21 is the end of the income year.

22 **250-45 Fifth exclusion—Commissioner determination**

- 23 This Division does not apply to you and an asset at a particular
24 time if:
- 25 (a) you request the Commissioner to make a determination under
26 this subsection; and
27 (b) the Commissioner determines that it is unreasonable that the
28 Division should apply to you and the asset at that time,
29 having regard to:
- 30 (i) the circumstances because of which this Division would
31 apply to you and the asset; and
32 (ii) any other relevant circumstances.

1 **Tax preferred use of asset**

2 **250-50 End user of an asset**

- 3 (1) An entity (other than you) is an **end user** of an asset if the entity
4 (or a *connected entity):
5 (a) uses, or effectively controls the use of, the asset; or
6 (b) will use, or effectively control the use of, the asset; or
7 (c) is able to use, or effectively control the use of, the asset; or
8 (d) will be able to use, or effectively control the use of, the asset.
- 9 (2) The control referred to in subsection (1) may be direct or indirect.
- 10 (3) For the purposes of subsection (1), disregard any temporary control
11 of the asset that is for the purpose of ensuring public health or
12 safety, protecting the environment or continuing the supply of an
13 essential service.
- 14 (4) To avoid doubt, an entity is taken to be an **end user** of an asset if
15 the entity (or a *connected entity) holds rights as a lessee under a
16 lease of the asset.

17 Note: For particular arrangements that are treated as leases, see
18 section 250-80.

19 **250-55 Tax preferred end user**

- 20 An *end user of an asset is a **tax preferred end user** if:
21 (a) the end user (or a *connected entity) is a *tax preferred entity;
22 or
23 (b) the end user is an entity that is not an Australian resident.

24 **250-60 Tax preferred use of an asset**

- 25 (1) An asset is **put to a tax preferred use** at a particular time if:
26 (a) an *end user (or a *connected entity) holds, at that time, rights
27 as lessee under a lease of the asset; and
28 (b) either or both of the following subparagraphs is satisfied at
29 that time:
30 (i) the asset is, or is to be, used by or on behalf of an end
31 user who is a *tax preferred end user because of
32 paragraph 250-55(a) (tax preferred entity);

Schedule 1 Tax preferred entities (asset financing)

Part 1 Main amendments

- 1 (ii) the asset is, or is to be, used wholly or principally
2 outside Australia and an end user of the asset is a tax
3 preferred end user because of paragraph 250-55(b)
4 (non-resident).

5 If this subsection applies, the *tax preferred use* of the asset is the
6 lease referred to in paragraph (a).

7 Note: For particular arrangements that are treated as leases, see
8 section 250-80.

9 (2) An asset is also *put to a tax preferred use* at a particular time if:

10 (a) at that time the asset is, or is to be, used (whether or not by
11 you) wholly or partly in connection with:

12 (i) the production, supply, carriage, transmission or
13 delivery of goods; or

14 (ii) the provision of services or facilities; and

15 (b) either or both of the following subparagraphs is satisfied at
16 that time:

17 (i) some or all of the goods, services or facilities are, or are
18 to be, produced for or supplied, carried, transmitted or
19 delivered to or for an *end user who is a *tax preferred
20 end user because of paragraph 250-55(a) (tax preferred
21 entity) but is not an *exempt foreign government
22 agency;

23 (ii) the asset is, or is to be, used wholly or principally
24 outside Australia and an end user of the asset is a tax
25 preferred end user because of paragraph 250-55(b)
26 (non-resident).

27 If this subsection applies, the *tax preferred use* of the asset is the
28 production, supply, carriage, transmission, delivery or provision
29 referred to in paragraph (a).

30 (3) To avoid doubt, the *facilities* referred to in subsection (2) include:

31 (a) hospital or medical facilities; or

32 (b) prison facilities; or

33 (c) educational facilities; or

34 (d) *land transport facilities; or

35 (e) other transport facilities; or

36 (f) the supply of water, gas or electricity; or

37 (g) housing or accommodation; or

- 1 (h) premises from which to operate a *business or other
2 undertaking.
- 3 (4) If the asset is being *put to a tax preferred use:
4 (a) the *members of the tax preferred end user group* are:
5 (i) the *tax preferred end user; and
6 (ii) the *connected entities of the tax preferred end user; and
7 (b) the *members of the tax preferred sector* are:
8 (i) the tax preferred end user (and connected entities); and
9 (ii) any *tax preferred entity (or a connected entity); and
10 (iii) any entity that is not an Australian resident.

11 **250-65 Arrangement period for tax preferred use**

12 *Start of the arrangement period*

- 13 (1) The *arrangement period* for a particular *tax preferred use of an
14 asset starts when that tax preferred use of the asset starts.

15 *End of the arrangement period*

- 16 (2) Subject to subsection (3), the *arrangement period* for a particular
17 *tax preferred use of an asset is taken to end on the day that is the
18 date on which the tax preferred use of the asset may reasonably be
19 expected, or is likely, to end.
- 20 (3) The *arrangement period* for the *tax preferred use of the asset ends
21 when this Division ceases to apply to you and the asset if that
22 happens before the day referred to in subsection (2).
- 23 (4) In determining when a particular *tax preferred use of an asset is
24 likely to end:
25 (a) regard must be had to:
26 (i) the terms of, and any other circumstances relating to,
27 any *arrangement dealing with that tax preferred use of
28 the asset; and
29 (ii) the terms of, and any other circumstances relating to,
30 any arrangement dealing with the *provision of
31 *financial benefits in relation to that tax preferred use of
32 the asset; and

- 1 (b) it must be assumed that any right that an entity has to renew
2 or extend such an arrangement will not be exercised (unless it
3 is reasonable to assume that the right will be exercised
4 because of the commercial consequences for the entity (or a
5 *connected entity) of not exercising the right).

6 *Tax preferred uses of asset by entity and connected entity*

- 7 (5) For the purposes of this section:
8 (a) the *tax preferred use of an asset by an entity; and
9 (b) the tax preferred use of the asset by a *connected entity of
10 that entity;
11 are taken to constitute a single tax preferred use of the asset.

12 **250-70 New tax preferred use at end of arrangement period if tax**
13 **preferred use continues**

14 If:

- 15 (a) this Division applies to you and an asset because the asset is
16 *put to a tax preferred use; and
17 (b) the *arrangement period for the *tax preferred use of the asset
18 ends on a particular date (the *termination date*); and
19 (c) the asset continues to be put to the tax preferred use after the
20 termination date;

21 the tax preferred use of the asset after the termination date is taken
22 to be a separate and distinct tax preferred use of the asset from the
23 tax preferred use of the asset before the termination date.

24 Note: This means, among other things, that there is a new arrangement
25 period for the tax preferred use after the termination date and that the
26 arrangement is retested under section 250-15 against circumstances as
27 they stand immediately after the termination date.

28 **250-75 What constitutes a separate asset for the purposes of this**
29 **Division**

- 30 (1) This Division applies to:
31 (a) an improvement to land; or
32 (b) a fixture on land;
33 whether the improvement or fixture is removable or not, as if it
34 were an asset separate from the land.

1 (2) Whether a particular composite item is itself an asset or whether its
2 components are separate assets is a question of fact and degree
3 which can only be determined in the light of all the circumstances
4 of the particular case.

5 Example 1: A car is made up of many separate components, but usually the car is
6 an asset rather than each component.

7 Example 2: A floating restaurant consists of many separate components (like the
8 ship itself, stoves, fridges, furniture, crockery and cutlery), but usually
9 these components are treated as separate assets.

10 (3) This Division applies to a renewal or extension of an asset that is a
11 right as if the renewal or extension were a continuation of the
12 original right.

13 (4) This Division applies to an asset (the *underlying asset*) in which:
14 (a) you have an interest; and
15 (b) one or more other entities also have an interest;
16 as if your interest in the underlying asset were itself the underlying
17 asset.

18 **250-80 Treatment of particular arrangements in the same way as**
19 **leases**

20 This Division applies to an *arrangement that:

21 (a) in substance or effect, depends on the use of a specific asset
22 that is:

23 (i) real property; or

24 (ii) goods or a personal chattel (other than money or a
25 money equivalent); and

26 (b) gives a right to control the use of the asset (other than
27 temporarily for the purpose of ensuring public health or
28 safety, protecting the environment or continuing the supply
29 of an essential service); and

30 (c) is not a lease;

31 in the same way as it applies to a lease.

32 Note: Even if this section applies to treat an arrangement in relation to an
33 asset as a lease, the requirements in section 250-50 still need to be
34 satisfied before an entity can be an end user of the asset.

1 **Financial benefits in relation to tax preferred use**

2 **250-85 Financial benefits in relation to tax preferred use of an asset**

- 3 (1) For the purposes of this Division, the *financial benefits *provided*
4 *in relation to a tax preferred use of an asset* include (but are not
5 limited to):
6 (a) a financial benefit provided in relation to:
7 (i) bringing the asset into a state, condition or location in
8 which it can be *put to the tax preferred use; or
9 (ii) the start of the *tax preferred use of the asset; and
10 (b) a financial benefit provided in relation to the end of the tax
11 preferred use of the asset; and
12 (c) a financial benefit provided in relation to the termination or
13 expiration of an *arrangement that deals with:
14 (i) the tax preferred use of the asset; or
15 (ii) the provision of financial benefits in relation to the tax
16 preferred use of the asset; and
17 (d) a financial benefit provided in relation to the purchase or
18 acquisition of the asset by, or transfer of the asset to, the *tax
19 preferred end user (or a *connected entity).
- 20 (2) Without limiting paragraph (1)(b), if the asset has a *guaranteed
21 residual value:
22 (a) the amount of the guaranteed residual value is taken to be a
23 *financial benefit *provided in relation to the tax preferred*
24 *use of the asset*; and
25 (b) that financial benefit is taken to be provided when the
26 relevant payment is made in relation to the guaranteed
27 residual value.
- 28 (3) The asset has a *guaranteed residual value* if there is an
29 *arrangement that provides to the effect that if:
30 (a) on or after the end of the *arrangement period, you (or a
31 *connected entity) sell or otherwise dispose of the asset to
32 any person; and
33 (b) you (or a connected entity) receives in respect of the sale or
34 disposal:
35 (i) no consideration; or
-

- 1 (ii) consideration that is less than an amount (the
2 ***guaranteed amount***) specified in, or ascertainable
3 under, the provision;
- 4 a *member of the tax preferred sector will pay to you (or a
5 connected entity), or to someone else for your benefit (or for the
6 benefit of a connected entity), an amount equal to:
- 7 (c) the guaranteed amount if subparagraph (b)(i) applies; or
8 (d) the amount by which the guaranteed amount exceeds the
9 consideration if subparagraph (b)(ii) applies.
- 10 The amount of the guaranteed residual value is taken to be the
11 guaranteed amount.
- 12 (4) If:
- 13 (a) an asset is *put to a tax preferred use; and
14 (b) an entity is an *end user of the asset because the entity
15 manages the asset or the use to which the asset is put;
16 any *financial benefit that the entity (or a *connected entity)
17 provides that is calculated by reference to the receipts, revenue or
18 income generated by the use of the asset is also taken to be a
19 financial benefit ***provided in relation to the tax preferred use of***
20 ***the asset.***
- 21 (5) For the purposes of this Division (other than this subsection), a
22 *financial benefit provided by a *member of the tax preferred
23 sector is taken not to be ***provided in relation to the tax preferred***
24 ***use of an asset*** to the extent to which the financial benefit merely
25 passes on, or represents:
- 26 (a) financial benefits provided in relation to the use of the asset;
27 or
28 (b) something derived from the use of the asset;
29 by someone who is not a member of the tax preferred sector.
- 30 (6) For the purposes of this Division, disregard a *financial benefit
31 *provided in relation to the tax preferred use of the asset to the
32 extent to which it consists solely of routine maintenance of the
33 asset.
- 34 (7) For the purposes of this Division, if a *financial benefit is provided
35 in relation to the use of a number of assets, a separate financial
36 benefit of an amount or value that is reasonably attributable to each
37 asset is taken to be provided in relation to each asset.
-

1 (8) To avoid doubt, a *financial benefit may be *provided in relation to*
2 *a tax preferred use of an asset* even though it is provided before
3 the *tax preferred use of the asset starts.

4 (9) For the purposes of this Division:

5 (a) a *financial benefit that is not an amount:

6 (i) is taken to become due and payable when the entity
7 providing the financial benefit becomes liable to
8 provide the financial benefit; and

9 (ii) is taken to be paid when it is provided; and

10 (b) a financial benefit that is paid without becoming due and
11 payable is taken to have become due and payable on the day
12 on which it was paid.

13 **250-90 Financial benefit provided directly or indirectly**

14 For the purposes of this Division, a person (the *provider*) is taken
15 to provide a *financial benefit to a person (the *recipient*) in relation
16 to a *tax preferred use of an asset whether the financial benefit is
17 provided to the recipient:

18 (a) directly; or

19 (b) indirectly (including indirectly through an entity that is not a
20 *connected entity of the recipient and is not a connected
21 entity of the provider).

22 **250-95 Expected financial benefits in relation to an asset put to tax** 23 **preferred use**

24 For the purposes this Division, the *expected financial benefits* at a
25 particular time in relation to an asset that is *put to a tax preferred
26 use are the *financial benefits that, at that time:

27 (a) have been; or

28 (b) will, assuming normal operating conditions, be; or

29 (c) can, assuming normal operating conditions, reasonably be
30 expected to be;

31 *provided in relation to the tax preferred use of the asset by a
32 *member of the tax preferred sector to someone who is not a
33 member of the tax preferred sector.

34 Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits
35 provided in relation to the end of the tax preferred use of the asset or
36 in relation to the purchase, disposal or transfer of the asset to be

1 treated as financial benefits provided in relation to the tax preferred
2 use of the asset.

3 **250-100 Present value of financial benefit that has already been**
4 **provided**

5 For the purposes of this Division, the *present value* of a *financial
6 benefit at a particular time is the nominal amount or value of the
7 financial benefit if the financial benefit has been provided before
8 that time.

9 **Discount rate to be used in working out present values**

10 **250-105 Discount rate to be used in working out present values**

11 (1) For the purposes of section 250-40, the discount rate to be used in
12 working out the present value of a future amount is:

13 (a) the average, expressed as a decimal fraction, of the assessed
14 secondary market yields in respect of 10-year non-rebate
15 Treasury bonds published by the Reserve Bank during the
16 *financial year in which the relevant *arrangement period
17 starts; or

18 (b) if no assessed secondary market yield in respect of bonds of
19 that kind was published by the Reserve Bank during the
20 year—the decimal fraction determined by the Treasurer for
21 the purposes of the definition of long-term bond rate in
22 section 2 of the *Petroleum Resource Rent Tax Assessment Act*
23 *1987* in relation to the financial year in which the relevant
24 arrangement period starts.

25 (2) For the purposes of section 250-135 and Subdivisions 250-C and
26 250-D, the discount rate to be used in working out the present
27 value of a future amount is a rate that reflects a constant periodic
28 rate of return (worked out on a compounding basis) on the
29 investment in:

30 (a) the asset referred to in subparagraph 250-15(d)(i) if that
31 subparagraph applies; or

32 (b) the expenditure referred to in paragraph 250-15(d)(ii) if that
33 subparagraph applies;

34 that is implicit in the *arrangements under which the asset is *put to
35 a tax preferred use and *financial benefits are *provided in relation
36 to that tax preferred use.

1 **Predominant economic interest**

2 **250-110 Predominant economic interest**

3 You lack a *predominant economic interest* in an asset at a
4 particular time only if one or more of the following sections apply
5 to you and the asset at that time:

- 6 (a) section 250-115 (limited recourse debt test);
7 (b) section 250-120 (right to acquire asset test);
8 (c) section 250-125 (effectively non-cancellable, long term
9 arrangement test);
10 (d) section 250-135 (level of expected financial benefits test).

11 **250-115 Limited recourse debt test**

12 (1) You lack a *predominant economic interest* in an asset at a
13 particular time if more than the allowable percentage of the cost of
14 your acquiring or constructing the asset is financed (directly or
15 indirectly) by a *limited recourse debt or debts.

16 (2) For the purposes of subsection (1):

- 17 (a) the amount of a *limited recourse debt is to be reduced by the
18 value of any *debt property (other than the *financed
19 property) that is provided as security for the debt; and
20 (b) if the limited recourse debt finances the acquisition or
21 construction of 2 or more assets, only the amount of the debt
22 that is reasonably attributable to the asset referred to in
23 subsection (1) is to be taken into account.

24 (3) For the purposes of subsection (1), the allowable percentage is:

- 25 (a) 80% if the asset is taken to be *put to a tax preferred use
26 because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use
27 by *tax preferred entities); or
28 (b) 55% if the asset is taken to be put to a tax preferred use
29 because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end
30 use by non-residents).

31 (4) This section does not apply to the asset if:

- 32 (a) you are a *corporate tax entity; and

- 1 (b) the *tax preferred use of the asset is not the lease or hire of
2 the asset (and is not the use of the asset under a lease or hire
3 arrangement); and
4 (c) the asset is *put to the tax preferred use wholly or principally
5 in Australia; and
6 (d) no *member of the tax preferred sector provides financing, or
7 support for financing, in relation to your interest in the asset
8 (including by way of a loan, a guarantee, an indemnity, a
9 security, hedging or undertaking to provide *financial
10 benefits in the event of the termination of an *arrangement).
- 11 (5) Paragraph (4)(b) does not apply if:
12 (a) the asset is real property (or an interest in real property); and
13 (b) the *tax preferred use of the asset is a lease; and
14 (c) the space within the property that is occupied by tenants who
15 are *members of the tax preferred sector is less than half of
16 the total space within the property that is either occupied by
17 tenants or available to be occupied by tenants.
- 18 (6) This section also does not apply to the asset if:
19 (a) you hold the asset as a trustee; and
20 (b) the asset is real property (or an interest in real property); and
21 (c) the *tax preferred use of the asset is a lease; and
22 (d) the space within the property that is occupied by tenants who
23 are *members of the tax preferred sector is less than half of
24 the total space within the property that is either occupied by
25 tenants or available to be occupied by tenants; and
26 (e) the asset is *put to the tax preferred use wholly or principally
27 in Australia; and
28 (f) no member of the tax preferred sector provides financing, or
29 support for financing, in relation to your interest in the asset
30 (including by way of a loan, a guarantee, an indemnity, a
31 security, hedging or undertaking to provide *financial
32 benefits in the event of the termination of an *arrangement).

33 **250-120 Right to acquire asset test**

- 34 (1) You lack a *predominant economic interest* in an asset at a
35 particular time if, at that time:

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- 1 (a) the asset is to be transferred to a *member of the tax preferred
2 sector after the end of the *arrangement period; and
3 (b) the consideration for the transfer is not fixed as the *market
4 value of the asset at the time of the transfer.

5 (2) You also lack a *predominant economic interest* in an asset at a
6 particular time if, at that time:

- 7 (a) a *member of the tax preferred end user group has, or will
8 have:
9 (i) a right, obligation or contingent obligation to purchase
10 or acquire the asset or a legal or equitable interest in the
11 asset; or
12 (ii) a right to require the transfer of the asset or a legal or
13 equitable interest in the asset; and
14 (b) the consideration for the purchase, acquisition or transfer is
15 not fixed as the *market value of the asset at the time of the
16 purchase, acquisition or transfer.

17 To avoid doubt, this section does not apply to the asset merely
18 because your interest in the asset is one that ceases to exist after the
19 passage of a particular period of time.

20 **250-125 Effectively non-cancellable, long term arrangement test**

21 (1) You lack a *predominant economic interest* in an asset at a
22 particular time if:

- 23 (a) any *arrangement that relates to:
24 (i) the *tax preferred use of the asset; or
25 (ii) the *financial benefits to be *provided by the *members
26 of the tax preferred sector in relation to the tax preferred
27 use of the asset;
28 is *effectively non-cancellable (see section 250-130); and
29 (b) the *arrangement period for the tax preferred use of the asset
30 is:
31 (i) greater than 30 years; or
32 (ii) if the arrangement period is less than or equal to 30
33 years—75% or more of that part of the asset's *effective
34 life that remains when the tax preferred use of the asset
35 starts.

- 1 (2) Disregard section 40-102 in working out the asset's *effective life
2 for the purposes of subparagraph (1)(b)(ii).

3 **250-130 Meaning of *effectively non-cancellable* arrangement**

- 4 (1) An *arrangement that relates to *financial benefits to be *provided
5 by a *member of the tax preferred sector in relation to the tax
6 preferred use of an asset is ***effectively non-cancellable*** if:
7 (a) the arrangement can be cancelled only with:
8 (i) your permission; or
9 (ii) the permission of a *connected entity of yours; or
10 (iii) an agent or entity acting on your behalf (or on behalf of
11 a connected entity of yours); or
12 (b) the arrangement can be cancelled without the permission of
13 an entity referred to in paragraph (a) but, if the arrangement
14 were cancelled, the member of the tax preferred sector or
15 another member of the tax preferred sector:
16 (i) would be required to enter into a new arrangement for
17 the *provision of financial benefits in relation to the tax
18 preferred use of the asset; or
19 (ii) would incur a penalty and the magnitude of the penalty
20 would be such as to discourage cancellation.
21 (2) For these purposes, if a *member of the tax preferred sector
22 defaults under an *arrangement and the arrangement is cancelled,
23 the arrangement is to be taken to have been cancelled without the
24 permission of an entity referred to in paragraph (1)(a).

25 **250-135 Level of expected financial benefits test**

26 *Effective guarantee or indemnity for value of asset*

- 27 (1) You lack a ***predominant economic interest*** in an asset at a
28 particular time if the asset has a *guaranteed residual value at that
29 time.

30 *Likely financial benefits exceeding 70% limit*

- 31 (2) You also lack a ***predominant economic interest*** in an asset at a
32 particular time if, at that time:

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- 1 (a) the *arrangement under which the asset is *put to the tax
2 preferred use (either alone or together with any other
3 arrangement in relation to the *tax preferred use of the asset
4 or the *provision of *financial benefits in relation to the tax
5 preferred use of the asset) is a *debt interest; or
6 (b) the sum of the present values of the *expected financial
7 benefits that *members of the tax preferred sector have
8 provided, or are or are reasonably likely to provide, to you
9 (or a *connected entity) in relation to the tax preferred use of
10 the asset exceeds 70% of:
11 (i) the *market value of the asset if subparagraph
12 250-15(d)(i) applies; or
13 (ii) so much of the market value of the asset as is
14 attributable to the expenditure referred to subparagraph
15 250-15(d)(ii) if that subparagraph applies.

16 **250-140 When to retest predominant economic interest under**
17 **section 250-135**

18 *Purpose for applying section*

- 19 (1) This section applies for the purposes of working out whether this
20 Division applies to you and to an asset that is *put to a tax
21 preferred use.

22 *No need to keep retesting if section 250-135 does not apply at start*
23 *of tax preferred use of asset*

- 24 (2) If section 250-135 does not apply to you and the asset at the time
25 when the *tax preferred use of the asset starts, that section is taken,
26 subject to subsection (4), to continue not to apply to you and the
27 asset.

28 Note: This subsection means that if section 250-135 does not apply to the
29 arrangement when the tax preferred use of the asset starts, the
30 arrangement does not need to be retested against section 250-135 until
31 a change of the kind referred to in subsection (4) occurs.

32 *No need to keep retesting if section 250-135 does not apply when*
33 *you do something to increase value of expected financial benefits*

- 34 (3) If:

1 (a) you (or a *connected entity), or a *member of the tax
2 preferred sector, do something, or omit to do something, at a
3 particular time that increases the value of the *expected
4 financial benefits in relation to the *tax preferred use of the
5 asset; and

6 (b) section 250-135 does not apply to the asset at that time;
7 that section is taken, subject to subsection (4), to continue not to
8 apply to you and the asset.

9 Note: This subsection means that if the arrangement is retested against
10 section 250-135 at a particular time and section 250-135 does not
11 apply to the arrangement on that retesting, the arrangement does not
12 need to be again retested against section 250-135 until a change of the
13 kind referred to in subsection (4) occurs.

14 *Retesting when you do something to increase the value of expected*
15 *financial benefits*

16 (4) Subsection (2) or (3) ceases to apply to you and the asset if you (or
17 a *connected entity), or a *member of the tax preferred sector, do
18 something, or omit to do something, that increases the value of the
19 *expected financial benefits in relation to the *tax preferred use of
20 the asset.

21 *Certain financial benefits ignored when retesting*

22 (5) For the purposes of reapplying section 250-135 to the asset,
23 disregard *financial benefits provided before subsection (2) or (3)
24 of this section ceased to apply to the asset.

25 Note: If:

- 26 (a) subsection (2) or (3) ceases to apply to the asset at a particular
27 time under this subsection; and
28 (b) the asset is retested at that time against section 250-135; and
29 (c) on the retesting, that section is found to apply to the asset at that
30 time;

31 subsection (3) will start to apply to the asset again from that time
32 because paragraph (3)(b) will have been satisfied.

33 *Clarification that retesting only required if you do something to*
34 *increase value of expected benefits*

35 (6) To avoid doubt, subsection (2) or (3) does not cease to apply
36 merely because the value of the *expected financial benefits in

1 relation to the asset increase because of something other than
2 action taken, or an omission made, by you (or a *connected entity)
3 or a *member of the tax preferred sector.

4 Note: This subsection means that retesting under subsection (4) is not
5 triggered by an increase in the value of expected financial benefits that
6 happens because of external circumstances (circumstances external to
7 activities and omissions of yours, your connected entities and
8 members of the tax preferred sector).

9 **Subdivision 250-C—Denial of, or reduction in, capital**
10 **allowance deductions**

11 **Table of sections**

12 250-145 Denial of capital allowance deductions
13 250-150 Apportionment rule

14 **250-145 Denial of capital allowance deductions**

15 (1) If this Division applies to you and an asset at a particular time, any
16 condition that needs to be satisfied for you to be able to deduct an
17 amount under a *capital allowance provision in relation to:

- 18 (a) a decline in the value of the asset; or
19 (b) expenditure in relation to the asset;
20 is taken not to be satisfied at that time.

21 (2) This section has effect subject to section 250-150.

22 **250-150 Apportionment rule**

23 (1) This section applies if:

- 24 (a) this Division applies to you and an asset that is *put to a tax
25 preferred use; and
26 (b) it is reasonable to expect that, during the *arrangement period
27 for the *tax preferred use of the asset, particular *financial
28 benefits will be provided to you (or a *connected entity); and
29 (c) it is reasonable to expect that those financial benefits:
30 (i) will be provided in relation to a use of the asset that is
31 not that tax preferred use and is not a private use; or
32 (ii) will be *provided in relation to that tax preferred use of
33 the asset but will not be attributable, directly or

- 1 indirectly, to financial benefits that are provided by
2 *members of the tax preferred sector; and
- 3 (d) the amount or value of those financial benefits is known or
4 can reasonably be estimated; and
- 5 (e) you choose to have this section apply to the asset.
- 6 In applying paragraph (c), disregard financial benefits that are
7 provided under an *arrangement that is a *debt interest.
- 8 (2) A choice under paragraph (1)(e) in relation to an asset:
- 9 (a) must be made before the due date for you to lodge your
10 *income tax return for the income year in which the
11 *arrangement period for the *tax preferred use of the asset
12 starts; and
- 13 (b) must be made for the whole of the arrangement period for the
14 tax preferred use of the asset; and
- 15 (c) must extend to all assets that are, or are to be, *put to a tax
16 preferred use under the *arrangement under which the asset is
17 put to that use; and
- 18 (d) is irrevocable.
- 19 The choice may extend to an asset referred to in paragraph (c) even
20 if it is likely that paragraphs (1)(b) and (c) will not apply to that
21 asset.
- 22 (3) If this section applies, section 250-145 applies to you and the asset
23 only to the extent of the *disallowed capital allowance percentage.
- 24 (4) Subject to subsection (6), the ***disallowed capital allowance***
25 ***percentage*** is the following ratio (expressed as a percentage):
- $$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$
- 26
- 27 (5) The Commissioner may, before the due date for you to lodge your
28 *income tax return for the income year to which the *arrangement
29 period for the *tax preferred use of the asset starts, approve an
30 alternative method for working out the *disallowed capital
31 allowance percentage for you and the asset.
- 32 (6) If the Commissioner approves an alternative method under
33 subsection (5), the ***disallowed capital allowance percentage*** is the
34 percentage worked out in accordance with that alternative method.
-

1 **Subdivision 250-D—Deemed loan treatment of financial**
2 **benefits provided for tax preferred use**

3 **Table of sections**

4	250-155	Arrangement treated as loan
5	250-160	Financial benefits that are <i>subject to deemed loan treatment</i>
6	250-165	Financial arrangement
7	250-170	Financial arrangement (equity interest or right or obligation in relation to equity interest)
8		
9	250-175	Rights, obligations and arrangements (grouping and disaggregation rules)
10	250-180	End value of asset
11	250-185	Financial benefits subject to deemed loan treatment not assessed

12 **250-155 Arrangement treated as loan**

13 *Loan with characteristics provided for in this section taken to exist*

- 14 (1) If this Division applies to you and an asset at a particular time in an
15 income year, a *financial arrangement in the form of a loan (with
16 the characteristics provided for in this section) is taken to exist at
17 that time for the purposes of working out your taxable income for
18 that income year.

19 Note: See Subdivision 250-E for the taxation treatment of the financial
20 arrangement.

21 *Lender*

- 22 (2) You are taken to be the lender in relation to the loan.

23 *Amount lent and unpaid at the start of the arrangement period*

- 24 (3) The amount worked out under subsection (4) is taken to be the
25 amount that you have lent, and that the borrower has not repaid, at
26 the start of the *arrangement period.

- 27 (4) The amount is worked out by taking:

28 (a) the amount that, at the start of the *arrangement period, is:

29 (i) the *adjustable value of the asset if subparagraph
30 250-15(d)(i) applies; or

31 (ii) the amount worked out under subsection (5) if
32 subparagraph 250-15(d)(ii) applies; or

1 (b) if section 250-150 applies—the amount that, at the start of
 2 the arrangement period, is the *disallowed capital allowance
 3 percentage of:
 4 (i) the adjustable value of the asset if subparagraph
 5 250-15(d)(i) applies; or
 6 (ii) the amount worked out under subsection (5) if
 7 subparagraph 250-15(d)(ii) applies;
 8 and deducting the sum of all *financial benefits that are *subject to
 9 deemed loan treatment and that have become due and payable
 10 before the start of the arrangement period.

11 (5) If subparagraph 250-15(d)(ii) applies, the amount worked out
 12 under this subsection for the purposes of subsection (4) is:
 13

Item	If the expenditure referred to in that subparagraph is ...	the amount is ...
1	capital expenditure under Division 40	the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40
2	capital expenditure under Division 43	the *undeducted construction expenditure in relation to the capital expenditure

14 *Amounts paid to you by borrower under the loan*

15 (6) Any *financial benefit that:
 16 (a) a person provides; and
 17 (b) is *subject to deemed loan treatment;
 18 is taken to be an amount that the borrower pays you under the loan.

19 Note 1: Section 250-160 tells you which financial benefits are subject to the
 20 deemed loan treatment.

21 Note 2: These benefits may be ones that are provided either to you or to a
 22 connected entity.

23 *Period of the loan*

24 (7) The *arrangement period is taken to be the period of the loan.

- 1 (ii) the financial benefits you have received under the loan
2 are taken to include financial benefits that are subject to
3 deemed loan treatment that a person is, at the end of the
4 arrangement period, liable to provide to you.
- 5 (9) If, under subsection 250-160(2), a particular percentage of a
6 reasonable estimate of the *end value of the asset was taken to be a
7 *financial benefit that is *subject to the deemed loan treatment,
8 subsection 250-275(1) applies to the loan at the end of the
9 *arrangement period as if you had received under the loan a
10 financial benefit equal to the relevant percentage of the end value
11 of the asset.

12 **250-160 Financial benefits that are *subject to deemed loan treatment***

13 *General rule*

- 14 (1) Subject to subsections (3) and (4), a *financial benefit is ***subject to***
15 ***deemed loan treatment*** if:
- 16 (a) the financial benefit:
17 (i) has been; or
18 (ii) will, assuming normal operating conditions, be; or
19 (iii) can, assuming normal operating conditions, reasonably
20 be expected to be;
21 provided to you (or a *connected entity); and
- 22 (b) the financial benefit has been, will be or can reasonably be
23 expected to be *provided directly or indirectly by a *member
24 of the tax preferred sector in relation to the *tax preferred use
25 of the asset; and
- 26 (c) the right to receive, or the obligation to provide, the financial
27 benefit is *cash settleable; and
- 28 (d) the financial benefit has not been, will not be or can be
29 expected not to be provided by one of your connected
30 entities.
- 31 Note: Paragraph (d) stops a financial benefit passing between you and any of
32 your connected entities from being counted twice.

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1 *End value also taken to be financial benefit subject to deemed loan*
2 *treatment*

- 3 (2) The relevant percentage of a reasonable estimate of the *end value
4 of the asset is also taken to be a *financial benefit that is ***subject to***
5 ***deemed loan treatment*** if:
6 (a) the asset is not to be purchased or acquired by, or transferred
7 to, a *member of the tax preferred sector at the end of the
8 *arrangement period under a legally enforceable
9 *arrangement; or
10 (b) the asset:
11 (i) is, or is to become, a *privatised asset; or
12 (ii) would be, or would become, a privatised asset if it were
13 a *depreciating asset; or
14 (iii) would be a privatised asset if the asset were a
15 depreciating asset and paragraphs 58-5(2)(a) and
16 58-5(4)(a) were not limited to acquisitions of
17 depreciating assets that occurred on or after 1 July 2001.

18 The relevant percentage is the *disallowed capital allowance
19 percentage if section 250-150 applies. Otherwise it is 100%.

20 Note: See section 250-180 for how to work out the end value of the asset.

21 *Financial benefits only subject to deemed loan treatment to the*
22 *extent to which they represent a return on investment*

- 23 (3) The *financial benefit is ***subject to deemed loan treatment*** only to
24 the extent to which it reasonably represents a return of, or on, an
25 investment in the asset (as distinct, for example, from representing
26 consideration for the provision of services or the recovery of
27 production costs), having regard to:
28 (a) the *market value of the asset; and
29 (b) the discount rate applicable under subsection 250-105(2); and
30 (c) your costs in relation to funding your interest in the asset; and
31 (d) any other relevant matter.

32 The regulations may provide rules to be applied in determining the
33 extent to which a financial benefit reasonably represents a return of
34 or on an investment in the asset.

1 *Only financial benefits provided after Division starts applying to*
2 *you and the asset*

- 3 (4) If the *tax preferred use of the asset starts before this Division
4 starts applying to you and the asset, only *financial benefits
5 provided after this Division starts applying to you and the asset are
6 ***subject to deemed loan treatment.***

7 **250-165 *Financial arrangement***

- 8 (1) You have a ***financial arrangement*** if you have, under an
9 *arrangement:

- 10 (a) a *cash settlable legal or equitable right to receive a *financial
11 benefit; or
12 (b) a cash settlable legal or equitable obligation to provide a
13 financial benefit; or
14 (c) a combination of one or more such rights and/or one or more
15 such obligations;

16 unless:

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

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

- 31 (2) A right you have to receive, or an obligation you have to provide, a
32 *financial benefit is ***cash settlable*** if, and only if:

- 33 (a) the benefit is money or a *money equivalent; or
34 (b) in the case of a right—you intend to satisfy or settle it by
35 receiving money, or a money equivalent, or by starting to
36 have, or ceasing to have, another *financial arrangement; or

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- 1 (c) in the case of an obligation—you intend to satisfy or settle it
2 by providing money, or a money equivalent, or by starting to
3 have, or ceasing to have, another financial arrangement; or
4 (d) you have a practice of satisfying or settling similar rights or
5 obligations as mentioned in paragraph (b) or (c) (whether or
6 not you intend to satisfy or settle the right or obligation in
7 that way); or
8 (e) you deal with the right or obligation, or with similar rights or
9 obligations, in order to generate a profit from short-term
10 fluctuations in price, from a dealer’s margin, or from both; or
11 (f) none of paragraphs (a) to (e) applies but:
12 (i) the financial benefit is readily convertible into money or
13 a money equivalent or there is a market for the financial
14 benefit that has a high degree of liquidity; and
15 (ii) you do not have, as your sole or dominant purpose for
16 entering into the *arrangement under which you are to
17 receive or provide the financial benefit, the purpose of
18 receiving or delivering the benefit as part of your
19 expected purchase, sale or usage requirements in the
20 ordinary course of *business; or
21 (g) you are able to settle the right or obligation as mentioned in
22 paragraph (b) or (c) (whether or not you intend to satisfy or
23 settle the right or obligation in that way) and you do not have,
24 as your sole or dominant purpose for entering into the
25 arrangement under which you are to receive or provide the
26 financial benefit, the purpose of receiving or delivering the
27 financial benefit as part of your expected purchase, sale or
28 usage requirements in the ordinary course of business.
- 29 Note: The following are examples of dealing of the kind covered by
30 paragraph (e):
31 (a) dealing with the right or obligation, or similar rights or
32 obligations, on a frequent basis, a short term basis or frequent
33 and short term basis;
34 (b) acquiring the right or obligation, or similar rights or obligations,
35 and managing the resulting risk by entering into offsetting
36 arrangements that provide a profit margin.

1 **250-170 Financial arrangement (equity interest or right or**
2 **obligation in relation to equity interest)**

- 3 (1) You also have a *financial arrangement* if you have an *equity
4 interest. The equity interest constitutes the financial arrangement.
- 5 (2) You also have a *financial arrangement* if:
6 (a) you have, under an *arrangement:
7 (i) a legal or equitable right to receive something that is a
8 *financial arrangement under this section; or
9 (ii) a legal or equitable obligation to provide something that
10 is a financial arrangement under this section; or
11 (iii) a combination of one or more such rights and/or
12 obligations; and
13 (b) the right, obligation or combination does not constitute a
14 financial arrangement under section 250-165.
15 The right, obligation or combination referred to in paragraph (a)
16 constitutes the financial arrangement.

17 **250-175 Rights, obligations and arrangements (grouping and**
18 **disaggregation rules)**

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

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

27 *Matters relevant to determining what rights and/or obligations*
28 *comprise particular arrangements*

- 29 (4) For the purposes of this Division, whether a number of rights
30 and/or obligations are themselves an *arrangement or are 2 or more
31 separate arrangements is a question of fact and degree that you
32 determine having regard to the following:
33 (a) the nature of the rights and/or obligations;

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- 1 (b) their terms and conditions (including those relating to any
2 payment or other consideration for them);
3 (c) the circumstances surrounding their creation and their
4 proposed exercise or performance (including what can
5 reasonably be seen as the purposes of one or more of the
6 persons involved);
7 (d) whether they can be dealt with separately or must be dealt
8 with together;
9 (e) normal commercial understandings and practices in relation
10 to them (including whether they are regarded commercially
11 as separate things or as a group or series as whole);
12 (f) the objects of this Division.

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

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

20 Example 2: Your rights and obligations under a typical price-linked or
21 index-linked bond with option or forward components would
22 comprise one arrangement.

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

28 Note 2: If the commercial effect of your individual rights and/or obligations in
29 a group or series cannot be understood without reference to the group
30 or series as a whole, this would tend to indicate that all of your rights
31 and/or obligations in the group or series together comprise one
32 arrangement.

33 **250-180** *End value of asset*

- 34 (1) The *end value* of an asset is worked out in accordance with this
35 section.
36 (2) If the asset has a *guaranteed residual value, the *end value* of the
37 asset is:
38 (a) the amount of the guaranteed residual amount if
39 subparagraph 250-15(d)(i) applies; or

- 1 (b) so much of the amount referred to in paragraph (a) as is
2 attributable to the expenditure referred to in subparagraph
3 250-15(d)(ii) if that subparagraph applies.
- 4 (3) If the asset does not have a *guaranteed residual value and is a
5 *depreciating asset, the **end value** of the asset is:
6 (a) if subparagraph 250-15(d)(i) applies—the amount that would
7 have been the *adjustable value of the asset at the end of the
8 *arrangement period if:
9 (i) this Division had not applied to you and the asset; and
10 (ii) the decline in the asset's value were worked out on the
11 basis of the asset's *effective life and using the *prime
12 cost method; or
13 (b) if subparagraph 250-15(d)(ii) applies—so much of the
14 amount referred to in paragraph (a) as is attributable to the
15 expenditure referred to in that subparagraph.
- 16 (4) Disregard section 40-102 in working out the asset's *effective life
17 for the purposes of subparagraph (3)(a)(ii).
- 18 (5) If neither subsection (2) nor subsection (3) applies and an estimate
19 of the value of the asset is recognised for accounting purposes, the
20 **end value** of the asset is:
21 (a) the value of the relevant asset at the end of the *arrangement
22 period that would be recognised for accounting purposes if
23 subparagraph 250-15(d)(i) applies; or
24 (b) so much of the value of referred to in paragraph (a) as is
25 attributable to the expenditure referred to subparagraph
26 250-15(d)(ii) if that subparagraph applies.
27 The **end value** must not, however, exceed the amount worked out
28 under subsections 250-15(4) and (5) (amount taken to have been
29 lent).
- 30 (6) If none of subsections (2), (3) and (5) apply to the asset, the **end**
31 **value** of the asset is:
32 (a) a reasonable estimate of the *market value of the asset at the
33 end of the *arrangement period if subparagraph 250-15(d)(i)
34 applies; or
35 (b) so much of the estimate referred to in paragraph (a) as is
36 attributable to the expenditure referred to in subparagraph
37 250-15(d)(ii) if that subparagraph applies.
-

1 The *end value* must not, however, exceed the amount worked out
2 under subsections 250-155(4) and (5) (amount taken to have been
3 lent).

4 **250-185 Financial benefits subject to deemed loan treatment not**
5 **assessed**

6 A *financial benefit is not included in your assessable income if the
7 financial benefit:

8 (a) is *provided to you in relation to the tax preferred use of the
9 asset; and

10 (b) is provided directly or indirectly by a *member of the tax
11 preferred sector; and

12 (c) is *subject to deemed loan treatment.

13 The financial benefit is not assessable income and is not *exempt
14 income.

15 **Subdivision 250-E—Taxation of deemed loan**

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16 **Guide to Subdivision 250-E**

17 **250-190 What this Subdivision is about**

18 This Subdivision is about the tax treatment of gains and losses

19 from the financial arrangement that you are taken to have under

20 section 250-155.

21 You recognise gains and losses from the financial arrangement, as

22 appropriate, over the life of the financial arrangement and ignore

23 distinctions between income and capital. You use a compounding

24 accruals method to recognise the gain or loss.

25 A change in circumstances may cause a re-estimation of gains and

26 losses that the accruals method is being applied to.

27 A balancing adjustment is made if you transfer particular rights or

28 obligations or particular rights or obligations cease.

1 **Application and objects of Subdivision**

2 **250-195 Application of Subdivision**

3 This Subdivision applies for the purposes of working out the
4 amount of the gain or loss that is to be included in your assessable
5 income or allowed as a deduction in relation to the *financial
6 arrangement that is taken to exist under section 250-155.

7 **250-200 Objects of this Subdivision**

8 The objects of this Subdivision are:

- 9 (a) to properly recognise gains and losses from the *financial
10 arrangement by allocating them to appropriate periods of
11 time; and
12 (b) to minimise tax deferral.

13 **Tax treatment of gains and losses from financial arrangements**

14 **250-205 Gains are assessable and losses deductible**

15 *Gains*

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

18 *Losses*

- 19 (2) You can deduct a loss you make from the *financial arrangement,
20 but only to the extent that:
21 (a) you make it in gaining or producing your assessable income;
22 or
23 (b) you necessarily make it in carrying on a *business for the
24 purpose of gaining or producing your assessable income.

25 **250-210 Gain or loss to be taken into account only once under this**
26 **Act**

27 *Purpose of this section*

- 28 (1) The purpose of this section is to ensure that your gains that are
29 assessable under this Subdivision, and your losses that are

1 deductible under this Subdivision, are taken into account only once
2 under this Act in working out your taxable income.

3 *Gain or loss*

4 (2) If a gain or loss is, or is to be, included in your assessable income
5 or allowable as a deduction to you for an income year under this
6 Subdivision, the gain or loss is not to be (to any extent):

7 (a) included in your assessable income; or

8 (b) allowable as a deduction to you;

9 under any other provisions of this Act for the same or any other
10 income year.

11 *Associated financial benefits*

12 (3) If the amount or value of a *financial benefit is taken into account
13 in working out whether you make, or the amount of, a gain or loss
14 that is, or is to be, included in your assessable income or allowable
15 as a deduction for you for an income year under this Subdivision,
16 the benefit is not to be (to any extent):

17 (a) included in your assessable income; or

18 (b) allowable as a deduction to you;

19 under any other provision of this Act for the same or any other
20 income year.

21 **Method to be applied to take account of gain or loss**

22 **250-215 Methods for taking gain or loss into account**

23 The methods that can be applied to take account of a gain or loss
24 you make from the *financial arrangement you have are:

25 (a) the accruals method provided for in sections 250-235 to
26 250-255; or

27 (b) a balancing adjustment provided for in sections 250-265 to
28 250-275.

29 A gain or loss is not taken into account under the method referred
30 to in paragraph (a) to the extent to which the gain or loss is taken
31 into account under sections 250-265 to 250-275.

1 **General rules**

2 **250-220 Consistency in working out gains or losses (integrity**
3 **measure)**

4 *Object of section*

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

8 *Consistent treatment for particular financial arrangement*

- 9 (2) If:
10 (a) this Subdivision provides that a particular method applies to
11 gains or losses you make from the *financial arrangement;
12 and
13 (b) that method allows you to choose the particular manner in
14 which you apply that method;
15 you must use that manner consistently for the arrangement for all
16 income years.

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

- 19 (3) If:
20 (a) this Subdivision provides that a particular method applies to
21 gains or losses you make from 2 or more *financial
22 arrangements; and
23 (b) that method allows you to choose the particular manner in
24 which you apply that method;
25 you must use that same manner consistently for all of those
26 financial arrangements that are essentially of the same nature.

27 **250-225 Rights and obligations include contingent rights and**
28 **obligations**

29 To avoid doubt:

- 30 (a) a right is treated as a right for the purposes of this Division
31 even it is subject to a contingency; and

- 1 (b) an obligation is treated as an obligation for the purpose of
2 this Division even if it is subject to a contingency.

3 **The accruals method**

4 **250-230 Application of accruals method**

5 The accruals method provided for in sections 250-235 to 250-255
6 applies to a gain or loss you make from the *financial arrangement
7 if:

- 8 (a) the gain or loss is an overall gain or loss from the
9 arrangement; and
10 (b) the gain or loss is sufficiently certain at the time when you
11 start to have the arrangement.

12 **250-235 Overview of the accruals method**

13 If the accruals method applies to a gain or loss you make from the
14 *financial arrangement:

- 15 (a) you use section 250-240 to work out the period over which
16 the gain or loss is to be spread; and
17 (b) you use section 250-245 to work out how to allocate the gain
18 or loss to particular intervals within the period over which the
19 gain or loss is to be spread; and
20 (c) if an interval to which part of the gain or loss is allocated
21 straddles 2 income years, you use section 250-250 to work
22 out how to allocate that part of the gain or loss allocated
23 between those 2 income years.

24 **250-240 Applying accruals method to work out period over which**
25 **gain or loss is to be spread**

26 If you have a sufficiently certain overall gain or loss from the
27 *financial arrangement, the period over which the gain or loss is to
28 be spread is the period that:

- 29 (a) starts when you start to have the arrangement; and
30 (b) ends when you will cease to have the arrangement.

31 In applying paragraph (b), you must assume that you will continue
32 to have the arrangement for the rest of its life.

1 **250-245 How gain or loss is spread**

2 *How to spread gain or loss*

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

5 *Compounding accruals or approximation*

- 6 (2) The gain or loss is to be spread using:
7 (a) compounding accruals (with the intervals to which parts of
8 the gain or loss are allocated complying with subsection (3));
9 or
10 (b) a method whose results approximate those obtained using the
11 method referred to in paragraph (a) (having regard to the
12 length of the period over which the gain or loss is to be
13 spread).

14 *Intervals to which parts of gain or loss allocated*

- 15 (3) The intervals to which parts of the gain or loss are allocated must:
16 (a) not exceed 12 months; and
17 (b) all be of the same length.
18 Paragraph (b) does not apply to the first and last intervals. These
19 may be shorter than the other intervals.

20 *Assumption of continuing hold arrangement for the rest of its life*

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

23 **250-250 Allocating gain or loss to income years**

- 24 (1) You are taken, for the purposes of section 250-205, to make, for an
25 income year, a gain or loss equal to a part of a gain or loss if:
26 (a) that part of the gain or loss is allocated to an interval under
27 section 250-245; and
28 (b) that interval falls wholly within that income year.
29 (2) If:
30 (a) a part of a gain or loss is allocated to an interval under
31 section 250-245; and

1 (b) that interval straddles 2 income years;
2 you are taken, for purposes of section 250-205, to make a gain or
3 loss equal to so much of that part of the gain or loss as is allocated
4 between those income years on a reasonable basis.

5 (3) If:

- 6 (a) a *consolidated group or *MEC group has a *financial
7 arrangement; and
8 (b) a subsidiary member of the group ceases to be a member of
9 the group at a particular time (the *exit time*); and
10 (c) immediately after the exit time, the subsidiary member has
11 the financial arrangement;
12 an income year of the group is taken, for the purposes of applying
13 this section to the group and the financial arrangement, to end at
14 the exit time.

15 **250-255 When to re-estimate**

16 *When re-estimation necessary*

- 17 (1) You re-estimate a gain or loss from the *financial arrangement
18 under subsection (4) if circumstances arise that materially affect:
19 (a) the amount or value; or
20 (b) the timing;
21 of *financial benefits that were taken into account in working out
22 the amount of the gain or loss. You must re-estimate the gain or
23 loss as soon as reasonably practicable after you become aware of
24 the circumstances referred to in paragraph (b).
- 25 (2) Without limiting subsection (1), the following are circumstances of
26 the kind referred to in paragraph (1)(b):
27 (a) a material change in market conditions that are relevant to the
28 amount or value of the *financial benefits to be received or
29 provided under the *financial arrangement;
30 (b) cash flows that were previously estimated becoming known
31 and the difference between the cash flows that become
32 known and the cash flows that were previously estimated is
33 not insignificant;
34 (c) a right to, or a part of a right to, a financial benefit under the
35 arrangement is written off as a bad debt.

- 1 (3) You do not re-estimate a gain or loss from a *financial arrangement
2 under subsection (4) merely because of any one or more of the
3 following:
4 (a) a change in the credit rating, or the creditworthiness, of a
5 party or parties to the financial arrangement;
6 (b) the impairment (within the meaning of the *accounting
7 standards) of the arrangement or a debt that forms part of the
8 arrangement.

9 *Nature of re-estimation*

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

18 *Basis for re-estimation*

- 19 (5) You may make the fresh allocation of the gain or loss under
20 subsection (4) on either of the following bases:
21 (a) by maintaining the rate of return being used and adjusting the
22 amount to which you apply the rate of return to the present
23 value of the estimated future cash flows discounted at the
24 maintained rate of return;
25 (b) adjusting the rate of return and maintaining the amount to
26 which you apply the rate of return.

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

- 31 (6) If you adopt a particular basis under subsection (5) for a gain or
32 loss from the *financial arrangement, you must use the same basis
33 for all the re-estimations you make under this section in relation to
34 your gains and losses from all your financial arrangements.

1 *Balancing adjustment if rate of return maintained*

- 2 (7) If you make a fresh allocation of the gain or loss on the basis
3 referred to in paragraph (5)(a), you must make the following
4 balancing adjustment:
- 5 (a) if you re-estimate a gain and the amount to which you apply
6 the rate of return increases—you make a gain from the
7 *financial arrangement, for the income year in which you
8 make the re-estimation, equal to the amount of the increase;
 - 9 (b) if you re-estimate a gain and the amount to which you apply
10 the rate of return decreases—you make a loss from the
11 arrangement, for the income year in which you make the
12 re-estimation, equal to the amount of the decrease;
 - 13 (c) if you re-estimate a loss and the amount to which you apply
14 the rate of return increases—you make a loss from the
15 arrangement, for the income year in which you make the
16 re-estimation, equal to the amount of the increase;
 - 17 (d) if you re-estimate a loss and the amount to which you apply
18 the rate of return decreases—you make a gain from the
19 arrangement, the income year in which you make the
20 re-estimation, equal to the amount of the decrease.

21 **250-260 Re-estimation if balancing adjustment on partial disposal**

22 *Re-estimation if balancing adjustment on partial disposal*

- 23 (1) You also re-estimate a gain or loss from a *financial arrangement
24 under subsection (2) if a balancing adjustment is made in relation
25 to the financial arrangement under sections 250-265 to 250-275
26 because you transfer to another person:
- 27 (a) a proportionate share of all of your rights and/or obligations
28 under a *financial arrangement; or
 - 29 (b) a right or obligation that you have under a financial
30 arrangement to a specifically identified *financial benefit; or
 - 31 (c) a proportionate share of a right or obligation that you have
32 under a financial arrangement to a specifically identified
33 financial benefit.

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

1 *Nature of re-estimation*

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

18 *Basis for re-estimation*

- 19 (3) You make the fresh allocation of the gain or loss under
20 subsection (2) by maintaining the rate of return being used and
21 adjusting the amount to which you apply the rate of return to the
22 present value of the estimated future cash flows discounted at the
23 maintained rate of return. The object to be achieved by the fresh
24 allocation is allow you to bring the remainder of the redetermined
25 gain or loss properly to account over the remainder of the period
26 over which you spread the gain or loss.

27 **Balancing adjustment**

28 **250-265 When balancing adjustment made**

29 *When balancing adjustment made*

- 30 (1) A balancing adjustment is made under section 250-275 if:
31 (a) you transfer to another person all of your rights and/or
32 obligations under the *financial arrangement; or
33 (b) all of your rights and/or obligations under the financial
34 arrangement otherwise substantially cease; or

- 1 (c) you transfer to another person:
2 (i) a proportionate share of all of your rights and/or
3 obligations under the financial arrangement; or
4 (ii) a right or obligation that you have under the financial
5 arrangement to a specifically identified *financial
6 benefit; or
7 (iii) a proportionate share of a right or obligation that you
8 have under the financial arrangement to a specifically
9 identified financial benefit.

10 *Modifications for arrangements that are assets*

- 11 (2) The following modifications are made if the *financial arrangement
12 is an asset of yours at the time the event referred to in
13 subsection (1) occurs:
14 (a) paragraphs (1)(a) and (c) do not apply unless the effect of the
15 transfer is to transfer to the other person substantially all the
16 risks and rewards of ownership of the interest transferred;
17 (b) for the purposes of applying section 250-275 to the
18 arrangement, you are treated as transferring a right under the
19 arrangement to another person if:
20 (i) you retain the right but assume a new obligation; and
21 (ii) your assumption of the new obligation has the same
22 effect, in substance, as transferring the right to another
23 person; and
24 (iii) the new obligation arises only to the extent to which the
25 right to *financial benefits under the financial
26 arrangement is satisfied; and
27 (iv) you cannot sell or pledge the right (other than as
28 security in relation to the new obligation); and
29 (v) you must, under the new obligation, provide financial
30 benefits you receive in relation to the right to the person
31 to whom you owe the new obligation without delay.

32 **250-270 Exception for subsidiary member leaving consolidated**
33 **group**

34 A balancing adjustment is not made under section 250-275 in
35 relation to a subsidiary member of a *consolidated group or a *MEC
36 group that has the *financial arrangement ceasing to be a member
37 of the group.

1 **250-275 Balancing adjustment**

2 *Complete cessation or transfer*

- 3 (1) Use the following method statement to make the balancing
4 adjustment if paragraph 250-265(1)(a) or (b) applies:

5 *Method statement for balancing adjustment*

6 *Step 1.* Add up the following:

- 7 (a) the total of all the *financial benefits provided to
8 you under the *financial arrangement;
- 9 (b) the amount or value of any other consideration you
10 receive in relation to the transfer or cessation
11 referred to in subsection 250-265(1);
- 12 (c) the total of the amounts that have been allowed to
13 you as deductions, because of circumstances that
14 have occurred before the transfer or cessation, for
15 losses from the arrangement;
- 16 (d) the total of the other amounts that would have been
17 allowed to you as deductions, because of
18 circumstances that have occurred before the
19 transfer or cessation, for losses from the
20 arrangement if all your losses from the
21 arrangement were allowable as deductions.

22 *Step 2.* Add up the following:

- 23 (a) the total of all the *financial benefits you have
24 provided under the *financial arrangement;
- 25 (b) the amount or value of any other consideration you
26 provide in relation to the transfer or cessation
27 referred to in subsection 250-265(1);
- 28 (c) the total of the amounts that have been included in
29 your assessable income, because of circumstances

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that have occurred before the transfer or cessation,
as gains from the arrangement;

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

Step 3. Compare the amount obtained under Step 1 (the **Step 1 amount**) with the amount obtained under Step 2 (the **Step 2 amount**). If the Step 1 amount exceeds the Step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the *financial arrangement for the purposes of this Subdivision. If the Step 2 amount exceeds the Step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the Step 1 amount and the Step 2 amount are equal, no balancing adjustment is made.

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

- (2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
 - (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
 - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

Transfer of specifically identified right or obligation under financial arrangement

- (3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:

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- 1 (a) the amounts referred to in paragraphs (a), (c) and (d) in step
2 1; and
3 (b) the amounts referred to in paragraphs (a), (c) and (d) in step
4 2;
5 were references to those amounts to the extent to which they are
6 reasonably attributable to the right or obligation referred to in
7 subparagraph 250-265(1)(c)(ii).

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

- 10 (4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing
11 adjustment by applying the method statement:
12 (a) as if the references to:
13 (i) the amounts referred to in paragraphs (a), (c) and (d) in
14 step 1; and
15 (ii) the amounts referred to in paragraphs (a), (c) and (d) in
16 step 2;
17 were references to those amounts to the extent to which they
18 are reasonably attributable to the right or obligation referred
19 to in subparagraph 250-265(1)(c)(iii); and
20 (b) by reducing those amounts by applying the proportion
21 referred to in subparagraph 250-265(1)(c)(iii) to them.

22 *Attribution must reflect appropriate and commercially accepted*
23 *valuation principles*

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

32 *Income year for which gain or loss is made*

- 33 (6) The gain or loss you are taken to make under subsection (1), (2),
34 (3) or (4) is a gain or loss for the income year in which the event
35 referred to in subsection 250-265(1) occurs.

1 **Other provisions**

2 **250-280 Financial arrangement received or provided as**
3 **consideration**

4 (1) If:

5 (a) this Subdivision applies in relation to your gains and losses
6 from the *financial arrangement; and

7 (b) you start to have the financial arrangement (or a part of the
8 financial arrangement) as consideration (or as part of the
9 consideration) for:

10 (i) something (the *thing provided*) that you provided, or are
11 to provide, to someone else; or

12 (ii) something (the *thing acquired*) that someone else has
13 provided, or is to provide, to you; and

14 (c) the thing provided or the thing acquired is not money;
15 the amount of the benefit (or that part of the benefit) that you
16 obtained for the thing provided, or gave for the thing acquired, is
17 taken, for the purposes of applying this Act to you, to be the
18 *market value of the financial arrangement (or that part of the
19 financial arrangement) at the time when you start to have the
20 financial arrangement.

21 Note 1: This amount may be relevant, for example, for the purposes of
22 applying the provisions of this Act dealing with capital gains, capital
23 allowances or trading stock to the thing provided or the thing
24 acquired.

25 Note 2: The market value is to be used instead of the nominal value of the
26 financial benefits to be provided under the financial arrangement.

27 (2) If subsection (1) applies, you are taken to have received, or
28 provided, as consideration for starting to have the *financial
29 arrangement (or the part of the financial arrangement), *financial
30 benefits whose value is equal to the market value of the financial
31 arrangement (or that part of the financial arrangement) at the time
32 when you started to have the financial arrangement.

33 (3) If, but for this subsection:

34 (a) subsection (2) would apply to your starting to have a
35 *financial arrangement; and

36 (b) subsection (1) or (4) would also apply to your starting to have
37 the financial arrangement;

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1 subsection (2) applies to your starting to have the financial
2 arrangement and subsection (1) or (4) does not.

3 (4) If:

- 4 (a) this Subdivision applies in relation to your gains and losses
5 from the *financial arrangement; and
6 (b) you cease to have the financial arrangement (or a part of the
7 financial arrangement) as consideration (or as part of the
8 consideration) for:
9 (i) something (the *thing acquired*) that someone else
10 provides, or is to provide, to you; or
11 (ii) something (the *thing provided*) that you provided, or are
12 to provide, to someone else; and
13 (c) the thing acquired or the thing provided is not money;
14 the amount of the benefit (or that part of the benefit) that you
15 provided for the thing acquired, or obtained for the thing provided,
16 is taken, for the purposes of applying this Act to you, to be the
17 *market value of the financial arrangement (or that part of the
18 financial arrangement) at the time when you cease to have the
19 financial arrangement (or that part of the financial arrangement).

20 Note 1: This amount may be relevant, for example, for the purposes of
21 applying the provisions of this Act dealing with capital gains, capital
22 allowances or trading stock to the thing acquired or the thing
23 provided.

24 Note 2: The market value is to be used instead of the nominal value of the
25 financial benefits to be provided under the financial arrangement.

26 (5) If subsection (4) applies, you are taken to have provided, or
27 received, as consideration for ceasing to have the *financial
28 arrangement (or the part of the financial arrangement), *financial
29 benefits whose value is equal to the market value of the financial
30 arrangement (or that part of the financial arrangement) at the time
31 when you ceased to have the financial arrangement.

32 (6) If, but for this subsection:

- 33 (a) subsection (5) would apply to your ceasing to have a
34 *financial arrangement; and
35 (b) subsection (1) or (4) would also apply to your ceasing to have
36 the financial arrangement;
37 subsection (5) applies to your ceasing to have the financial
38 arrangement and subsection (1) or (4) does not.
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- 1 (7) Without limiting subsections (1) and (4), the thing provided, or the
2 thing acquired, need not be a tangible thing and may take the form
3 of services, conferring a right, incurring an obligation or
4 extinguishing or varying a right or obligation.

5 **Subdivision 250-F—Treatment of asset when Division ceases to**
6 **apply to the asset**

7 **Table of sections**

8	250-285	Treatment of asset after Division ceases to apply to the asset
9	250-290	Balancing adjustment under Subdivision 40-D in some circumstances

10 **250-285 Treatment of asset after Division ceases to apply to the asset**

- 11 (1) For the purposes of Division 40, if:
12 (a) this Division applies to you and an asset; and
13 (b) the *arrangement period for the *tax preferred use of the asset
14 ends at a particular time; and
15 (c) the asset would have had an *adjustable value at that time, for
16 the purposes of Division 40, if this Division had never
17 applied to the asset;
18 the adjustable value of the asset, immediately after the end of the
19 arrangement period, is taken to be equal to the amount worked out
20 using the following method statement:

21	<i>Method statement</i>
22	<i>Step 1.</i> Work out whether section 250-150 applies.
23	<i>Step 2.</i> If section 250-150 does not apply, the amount is the *end
24	value of the asset at the end of the arrangement period.
25	<i>Step 3.</i> If section 250-150 does apply, the amount is worked out
26	by:
27	(a) multiplying the *end value of the asset at the end of
28	the *arrangement period by the *disallowed capital
29	percentage; and

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<p>(b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and</p> <p>(c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).</p>

(2) If:

- (a) this Division applies to you and an asset; and
 - (b) the *arrangement period for the *tax preferred use of the asset ends; and
 - (c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);
- the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:
- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
 - (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

- (a) this Division applies to you and an asset; and
 - (b) the *arrangement period for the *tax preferred use of the asset ends; and
 - (c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);
- the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

1 (d) the total amounts or values of the financial benefits that were
2 subject to deemed loan treatment; and

3 (e) the net amount referred to in paragraph (c).

4 Note: See subsection (6) in relation to the application of paragraph (d).

5 (4) If:

6 (a) this Division applies to you and an asset; and

7 (b) the *arrangement period for the *tax preferred use of the asset
8 ends; and

9 (c) a net amount is included in your assessable income in
10 relation to the *financial benefits that are *subject to the
11 deemed loan treatment (taking into account the adjustments
12 under Subdivision 250-E in relation to the financial benefits
13 that are subject to the deemed loan treatment);

14 then, in determining the profit or loss on the sale of the asset, a
15 deduction equal to the difference between the following is taken to
16 have been allowed for expenditure by you in connection with the
17 asset:

18 (d) the total amounts or values of the financial benefits that were
19 subject to deemed loan treatment; and

20 (e) the net amount referred to in paragraph (c).

21 Note: See subsection (6) in relation to the application of paragraph (d).

22 (5) If:

23 (a) this Division applies to you and an asset; and

24 (b) the *arrangement period for the *tax preferred use of the asset
25 ends; and

26 (c) a net amount is allowed to you as a deduction in relation to
27 the *financial benefits that are *subject to the deemed loan
28 treatment (taking into account the adjustments under
29 Subdivision 250-E in relation to the financial benefits that are
30 subject to the deemed loan treatment);

31 then, in determining the profit or loss on the sale of the asset, a
32 deduction equal to the sum of the following is taken to have been
33 allowed for expenditure by you in connection with the asset:

34 (d) the total amounts or values of the financial benefits that were
35 subject to deemed loan treatment; and

36 (e) the net amount referred to in paragraph (c).

37 Note: See subsection (6) in relation to the application of paragraph (d).

- 1 (6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard
2 subsection 250-160(2) (reasonable estimate of end value treated as
3 financial benefit subject to deemed loan treatment).

4 **250-290 Balancing adjustment under Subdivision 40-D in some**
5 **circumstances**

- 6 (1) This section applies if:
7 (a) this Division applies to you and an asset; and
8 (b) the *arrangement period for the *tax preferred use of the asset
9 ends because a particular event happens; and
10 (c) the event would have been a *balancing adjustment event for
11 the asset for the purposes of Subdivision 40-D if this
12 Division had not applied to you and the asset when the event
13 happened.
- 14 (2) A balancing adjustment is made under Subdivision 40-D as if:
15 (a) the event were a *balancing adjustment event for the asset;
16 and
17 (b) the *adjustable value of the asset, just before the event
18 happened, were the adjustable value worked out under
19 subsection 250-285(1); and
20 (c) sections 40-290 and 40-292 did not apply.

21 **Subdivision 250-G—Objections against determinations and**
22 **decisions by the Commissioner**

23 **Table of sections**

24 250-295 Objections against determinations and decisions by the Commissioner

25 **250-295 Objections against determinations and decisions by the**
26 **Commissioner**

- 27 (1) This section applies to a determination by the Commissioner under
28 section 250-45.
- 29 (2) This section also applies to a decision by the Commissioner under
30 subsection 250-150(5).
- 31 (3) A person who is dissatisfied with a determination or decision to
32 which this section applies may object against the determination or

1 decision in the manner set out in Part IVC of the *Taxation*
2 *Administration Act 1953*.

3 **2 Subsection 995-1(1)**

4 Insert:

5 *arrangement period* for a *tax preferred use of an asset has the
6 meaning given by section 250-65.

7 **3 Subsection 995-1(1)**

8 Insert:

9 *cash settleable* has the meaning given by subsection 250-165(2).

10 **4 Subsection 995-1(1)**

11 Insert:

12 *disallowed capital allowance percentage* has the meaning given by
13 subsection 250-150(4).

14 **5 Subsection 995-1(1)**

15 Insert:

16 *effectively non-cancellable* has the meaning given by
17 section 250-130.

18 **6 Subsection 995-1(1)**

19 Insert:

20 *end user* of an asset has the meaning given by section 250-50.

21 **7 Subsection 995-1(1)**

22 Insert:

23 *end value* of an asset has the meaning given by section 250-180.

24 **8 Subsection 995-1(1)**

25 Insert:

26 *excluded STB* has the same meaning as in section 24AT of the
27 *Income Tax Assessment Act 1936*.

1 **9 Subsection 995-1(1)**

2 Insert:

3 *expected financial benefits* has the meaning given by
4 section 250-95.

5 **10 Subsection 995-1(1)**

6 Insert:

7 *financial arrangement* has the meaning given by sections 250-165
8 to 250-175.

9 **11 Subsection 995-1(1)**

10 Insert:

11 *guaranteed residual value* for an asset that is put to a tax preferred
12 use has the meaning given by subsection 250-85(3).

13 **12 Subsection 995-1(1)**

14 Insert:

15 *member of the tax preferred end user group* has the meaning
16 given by paragraph 250-60(4)(a).

17 **13 Subsection 995-1(1)**

18 Insert:

19 *member of the tax preferred sector* has the meaning given by
20 paragraph 250-60(4)(b).

21 **14 Subsection 995-1(1)**

22 Insert:

23 *money equivalent* means a right to receive:
24 (a) money; or
25 (b) something that is a *money equivalent under this definition.

26 **15 Subsection 995-1(1)**

27 Insert:

1 *predominant economic interest* in an asset has the meaning given
2 by sections 250-110 to 250-140.

3 **16 Subsection 995-1(1)**

4 Insert:

5 *prescribed excluded STB* means an *excluded STB that is
6 prescribed by the regulations for the purposes of Division 1AB of
7 Part III of the *Income Tax Assessment Act 1936*.

8 **17 Subsection 995-1(1)**

9 Insert:

10 *present value* of a *financial benefit has a meaning affected by
11 section 250-100.

12 **18 Subsection 995-1(1)**

13 Insert:

14 *provided in relation to a tax preferred use of an asset*, in relation
15 to a *financial benefit, has a meaning affected by section 250-85.

16 **19 Subsection 995-1(1)**

17 Insert:

18 *put to a tax preferred use*, in relation to an asset, has the meaning
19 given by section 250-60.

20 **20 Subsection 995-1(1) (after paragraph (a) of the definition**
21 **of special accrual amount)**

22 Insert:

23 (aa) Subdivision 250-E of this Act if all the *financial benefits
24 provided and received under the *financial arrangement
25 concerned are denominated in a particular foreign currency;

26 **21 Subsection 995-1(1)**

27 Insert:

28 *subject to deemed loan treatment*, in relation to a *financial
29 benefit, has the meaning given by section 250-160.

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

2 Insert:

3 *tax preferred end user* has the meaning given by section 250-55.

4 **23 Subsection 995-1(1)**

5 Insert:

6 *tax preferred entity* means:

7 (a) an *exempt entity; or

8 (b) an *exempt Australian government agency; or

9 (c) an *associated government entity of an exempt Australian
10 government agency; or

11 (d) a *prescribed excluded STB; or

12 (e) an *exempt foreign government agency.

13 **24 Subsection 995-1(1)**

14 Insert:

15 *tax preferred use* of an asset has the meaning given by
16 sections 250-60(1) and (2).

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Part 2—Consequential amendments

Development Allowance Authority Act 1992

25 Subparagraph 93R(b)(v)

Repeal the subparagraph, substitute:

- (v) if the certificate applies to a direct infrastructure borrowing—not do anything that:
 - (A) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or
 - (B) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made; and

26 Subparagraph 93R(c)(ii)

Repeal the subparagraph, substitute:

- (ii) not do anything that:
 - (A) will cause section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned; or
 - (B) would have caused section 51AD of the Tax Act or Division 16D of Part III of that Act to apply to any of the facilities concerned if the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007* had not been made; and

Income Tax Assessment Act 1936

27 After subsection 51AD(1)

Insert:

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- 1 (1A) This section does not apply to property that is put to a tax preferred
2 use (within the meaning of the *Income Tax Assessment Act 1997*) if
3 the tax preferred use:
4 (a) starts on or after 1 July 2007; and
5 (b) does not occur under a legally enforceable arrangement
6 entered into before 1 July 2007.
- 7 (1B) This section does not apply to property that is put to a tax preferred
8 use (within the meaning of the *Income Tax Assessment Act 1997*)
9 if:
10 (a) the tax preferred use starts on or after 1 July 2007; and
11 (b) the tax preferred use occurs under a legally enforceable
12 arrangement that was entered into before 1 July 2007; and
13 (c) an election is made under item 71 of Schedule 1 to the *Tax*
14 *Laws Amendment (2007 Measures No. 5) Act 2007* to have
15 subitem 71(2) of that Schedule apply to the property.
- 16 (1C) This section does not apply to property on or after 1 July 2007 if:
17 (a) Division 16D applied to the property immediately before
18 1 July 2007; or
19 (b) this section did not apply to the property immediately before
20 1 July 2007 and Division 16D would apply to the property on
21 or after 1 July 2007 but for subsection 159GH(2).
22 For the purposes of applying paragraph (b), disregard the operation
23 of section 159GL.
- 24 (1D) Subparagraph (4)(a)(iii) and sub-subparagraph (4)(b)(ii)(D) do not
25 apply to property acquired by a taxpayer if:
26 (a) the property is acquired by the taxpayer on or after 1 July
27 2007; and
28 (b) the property is not acquired under a legally enforceable
29 arrangement entered into before 1 July 2007.

30 **28 Subsection 51AD(4)**

31 Omit “subsection (8)”, substitute “subsections (1A), (1B), (1C), (1D)
32 and (8)”.

33 **29 At the end of subsection 73B(15AA)**

34 Add:

35 Note: If Division 250 of the *Income Tax Assessment Act 1997* applies to you
36 and an asset:

- 1 (a) if section 250-150 of that Act applies—you are taken to have
2 qualifying expenditure in relation to the use of the asset to the
3 extent specified in a determination made under subsection
4 250-150(3) of that Act; or
5 (b) otherwise—you are taken not to have such expenditure.

6 **30 Subsection 73BC(2) (note)**

7 Omit “Note”, substitute “Note 1”.

8 **31 At the end of subsection 73BC(2)**

9 Add:

10 Note 2: If Division 250 of the *Income Tax Assessment Act 1997* applies to you
11 and an asset:

- 12 (a) if section 250-150 of that Act applies—the asset is taken to be
13 used, or installed ready for use, for the purpose of carrying on, by
14 or on behalf of an eligible company, research or development
15 activities to the extent specified in a determination made under
16 subsection 250-150(3) of that Act; or
17 (b) otherwise—the asset is taken not to be used, or installed ready
18 for use, for such a purpose.

19 **32 After section 82KZL**

20 Insert:

21 **82KZLA Subdivision does not apply to financial arrangements to**
22 **which Subdivision 250-E applies**

23 To avoid doubt, this Subdivision does not apply to:

- 24 (a) a financial arrangement to which Subdivision 250-E of the
25 *Income Tax Assessment Act 1997* applies; or
26 (b) a financial benefit (within the meaning of that Act) that is
27 provided or received in relation to such an arrangement.

28 Note: See section 250-210 of the *Income Tax Assessment Act 1997*.

29 **33 Before subsection 159GH(1)**

30 Insert:

- 31 (1A) This Division does not apply in relation to the item of eligible
32 property that is put to a tax preferred use (within the meaning of
33 the *Income Tax Assessment Act 1997*) if the tax preferred use:
34 (a) starts on or after 1 July 2007; and

1 (b) does not occur under a legally enforceable arrangement
2 entered into before 1 July 2007.

3 (1B) This Division does not apply in relation to the item of eligible
4 property that is put to a tax preferred use (within the meaning of
5 the *Income Tax Assessment Act 1997*) if:

6 (a) the tax preferred use starts on or after 1 July 2007; and

7 (b) the tax preferred use occurs under a legally enforceable
8 arrangement that was entered into before 1 July 2007; and

9 (c) an election is made under item 71 of Schedule 1 to the *Tax*
10 *Laws Amendment (2007 Measures No. 5) Act 2007* to have
11 subitem 71(2) of that Schedule apply to the property.

12 **34 Subsection 159GH(1)**

13 Omit “subsection (2)”, substitute “subsections (1A), (1B) and (2)”.

14 **35 Subsection 170(10AA) (after table item 170)**

15 Insert:

16
173 Division 250 Asset is put to a tax preferred use by a
tax preferred end user

17 ***Income Tax Assessment Act 1997***

18 **36 Section 11-55 (table item headed “notional sale and loan”)**

19 After:

luxury car leases, lease payments that the lessor receives or is
entitled to receive **42A-40 in
Schedule 2E**

20 insert:

deemed loan treatment for financial benefits provided for tax
preferred use of asset 250-160

21 **37 Section 12-5 (table item headed “capital allowances”)**

22 After:

spectrum licences..... Subdivision 40-
B

23 insert:

tax preferred use of asset Division 250

1 **38 Section 12-5 (table item headed “leases”)**

2 After:
finance leases and arrangements, use of property if end-user
an exempt public body or use outside Australia to produce **159GE to**
exempt income **159GO**

3 insert:
leases of assets being put to tax preferred use Division 250

4 **39 Section 12-5 (table item headed “notional sales and**
5 **loans”)**

6 After “240-50”, insert “, 250-155”.

7 **40 Section 12-5 (table item headed “notional sales and**
8 **loans”)**

9 Before:
payments to acquire property, no deduction for 240-85

10 insert:
deemed loan treatment for financial benefits provided for tax
preferred use of asset Subdivision 250-
C

11 **41 Section 12-5 (table item headed “property”)**

12 Before:
arrangements relating to use of property if end-user an exempt
public body or use outside Australia to produce exempt
income..... **159GE to**
159GO

13 insert:
arrangements relating to assets being put to tax preferred use
..... Division 250

14 **42 Section 12-5 (after table item headed “tax losses”)**

15 Insert:

Schedule 1 Tax preferred entities (asset financing)
Part 2 Consequential amendments

tax preferred asset financing

generally	Division 250
denial of capital allowance deductions in relation to asset being put to tax preferred use.....	250-145
reduction in capital allowance deductions in relation to asset being put to tax preferred use.....	250-150

1 **43 Subsection 40-25(7)**

2 Omit “A *taxable purpose*”, substitute “Subject to subsection (8), a
3 *taxable purpose*”.

4 **44 At the end of section 40-25**

5 Add:

6 (8) If Division 250 applies to you and an asset that is a *depreciating
7 asset:

- 8 (a) if section 250-150 applies—you are taken to be using the
9 asset for a *taxable purpose to the extent specified in a
10 determination made under subsection 250-150(3); or
11 (b) otherwise—you are taken not to be using the asset for such a
12 purpose.

13 **45 At the end of subsection 40-85(1)**

14 Add:

15 Note: The adjustable value of a depreciating asset may be modified by
16 section 250-285.

17 **46 At the end of subsection 40-525(1)**

18 Add:

19 Note: If Division 250 applies to you and an asset that is a water facility:

- 20 (a) if section 250-150 applies—the condition in this subsection is
21 taken to be satisfied for the facility to the extent specified in a
22 determination made under subsection 250-150(3); or
23 (b) otherwise—the condition in this subsection is taken not to be
24 satisfied for the facility.

25 **47 At the end of subsection 40-525(2)**

26 Add:

27 Note: If Division 250 applies to you and an asset that is a horticultural plant:

- 1 (a) if section 250-150 applies—a condition in this subsection is
2 taken to be satisfied for the plant to the extent specified in a
3 determination made under subsection 250-150(3); or
- 4 (b) otherwise—the conditions in this subsection are taken not to be
5 satisfied for the horticultural plant.

6 **48 At the end of subsection 40-630(1)**

7 Add:

8 Note: If Division 250 applies to you and an asset that is land:

- 9 (a) if section 250-150 applies—you are taken to be using the land for
10 the purpose of carrying on a primary production business, or a
11 business for the purpose of producing assessable income from the
12 use of rural land (except a business of mining operations), to the
13 extent specified in a determination made under subsection
14 250-150(3); or
- 15 (b) otherwise—you are taken not to be using the land for such a
16 purpose.

17 **49 At the end of subsection 40-730(1)**

18 Add:

19 Note: If Division 250 applies to you and an asset that is land:

- 20 (a) if section 250-150 applies—you can deduct expenditure you
21 incur in relation to the land to the extent specified in a
22 determination made under subsection 250-150(3); or
- 23 (b) otherwise—you cannot deduct such expenditure.

24 **50 Subsection 40-735(1) (note)**

25 Omit “Note”, substitute “Note 1”.

26 **51 At the end of subsection 40-735(1)**

27 Add:

28 Note 2: If Division 250 applies to you and an asset that is land:

- 29 (a) if section 250-150 applies—you can deduct expenditure you
30 incur in relation to the land to the extent specified in a
31 determination made under subsection 250-150(3); or
- 32 (b) otherwise—you cannot deduct such expenditure.

33 **52 Subsection 40-750(1) (note)**

34 Omit “Note”, substitute “Note 1”.

35 **53 At the end of subsection 40-750(1)**

Schedule 1 Tax preferred entities (asset financing)
Part 2 Consequential amendments

1 Add:

2 Note 2: If Division 250 applies to you and an asset:

- 3 (a) if section 250-150 applies—you can deduct expenditure you
4 incur in relation to the asset to the extent specified in a
5 determination made under subsection 250-150(3); or
6 (b) otherwise—you cannot deduct such expenditure.

7 **54 At the end of subsection 40-755(1)**

8 Add:

9 Note: If Division 250 applies to you and an asset that is land:

- 10 (a) if section 250-150 applies—you can deduct expenditure you
11 incur in relation to the land to the extent specified in a
12 determination made under subsection 250-150(3); or
13 (b) otherwise—you cannot deduct such expenditure.

14 **55 At the end of section 40-835**

15 Add:

16 Note: If Division 250 applies to you and an asset:

- 17 (a) if section 250-150 applies—you are taken to be using the asset
18 for taxable purposes to the extent specified in a determination
19 made under subsection 250-150(3); or
20 (b) otherwise—you are taken not to be using the asset for such
21 purposes.

22 **56 At the end of subsection 40-880(1)**

23 Add:

24 Note: If Division 250 applies to you and an asset:

- 25 (a) if section 250-150 applies—you can deduct an amount for capital
26 expenditure you incur in relation to the asset to the extent
27 specified in a determination made under subsection 250-150(3);
28 or
29 (b) otherwise—you cannot deduct an amount for such expenditure.

30 **57 Subsection 43-140(1) (note)**

31 Omit “Note”, substitute “Note 1”.

32 **58 At the end of subsection 43-140(1)**

33 Add:

34 Note 2: If Division 250 applies to you and an asset that is a capital work:

1 (a) if section 250-150 applies—you are taken to be using the capital
2 work for the purpose of producing assessable income, or for the
3 purpose of carrying on research and development activities, to
4 the extent specified in a determination made under subsection
5 250-150(3); or

6 (b) otherwise—you are taken not to be using the capital work for
7 such a purpose.

8 **59 Section 112-97 (before table item 25)**

9 Insert:

23	The arrangement period for the tax preferred use of an asset ends	The total cost base and reduced cost base	subsection 250-285(3)
----	---	--	--------------------------

10 **60 After section 118-25**

11 Insert:

12 **118-27 Financial arrangements to which Subdivision 250-E applies**

13 A *capital gain or *capital loss you make from a *CGT asset is
14 disregarded if, at the time of the *CGT event, the asset is, or is part
15 of, a *financial arrangement to which Subdivision 250-E applies.

16 **61 Subsection 396-75(2) (example)**

17 Repeal the example, substitute:

18 Example: The Commissioner may advise the Minister that:

- 19 • a lender is a foreign resident; or
- 20 • section 51AD of the *Income Tax Assessment Act 1936* may
21 apply to the project; or
- 22 • Division 250 may apply in relation to the land transport
23 facilities.

24 **62 Paragraph 396-85(1)(c)**

25 Repeal the paragraph, substitute:

26 (c) that the borrower will not do anything that:

- 27 (i) will cause Division 250 of this Act to apply to any of
28 the facilities concerned; or
- 29 (ii) will cause section 51AD of the Tax Act or Division 16D
30 of Part III of that Act to apply to any of the facilities
31 concerned; or

1 ; or (iii) a scheme or arrangement for the payment of royalties in
2 relation to an asset if Division 250 of this Act applies to
3 a person and the asset.

4 ***Taxation Administration Act 1953***

5 **68 Subsection 45-5(3) in Schedule 1**

6 After “(2A)”, insert “or the net capital gains specified in subsection
7 45-120(2B)”.

8 **69 After subsection 45-120(2A) in Schedule 1**

9 Insert:

10 *Net gains under Subdivision 250-E of the Income Tax Assessment*
11 *Act 1997 included in instalment income*

12 (2B) Your ***instalment income*** for a period also includes the difference
13 between:

14 (a) a gain (or gains) you make from a *financial arrangement to
15 the extent to which it is (or they are):

16 (i) assessable under Subdivision 250-E of the *Income Tax*
17 *Assessment Act 1997*; and

18 (ii) reasonably attributable to that period; and

19 (b) a loss (or losses) you make from a financial arrangement to
20 the extent to which it is (or they are):

21 (i) allowable to you as a deduction under
22 Subdivision 250-E of the *Income Tax Assessment Act*
23 *1997*; and

24 (ii) reasonably attributable to that period.

25 This is so only if the gain (or gains) referred to in paragraph (a)
26 exceeds the loss (or losses) referred to in paragraph (b).

27 **70 After subsection 45-330(2A) in Schedule 1**

28 Insert:

Schedule 1 Tax preferred entities (asset financing)

Part 2 Consequential amendments

1 *Amounts assessable under Subdivision 250-E of the Income Tax*
2 *Assessment Act 1997*

3 (2AA) To avoid doubt, paragraph (1)(a) does not apply to a *net capital
4 gain that is included in your assessable income under
5 Subdivision 250-E of the *Income Tax Assessment Act 1997*.

1

2 **Part 3—Application**

3 **71 Application**

4 (1) Subject to subitems (4), (6) and (8), Division 250 applies in relation to a
5 tax preferred use of an asset if, and only if, the tax preferred use:

- 6 (a) starts on or after 1 July 2007; and
7 (b) does not occur under a legally enforceable arrangement that
8 was entered into before 1 July 2007.

9 (2) This subitem applies to an asset that is put to a tax preferred use if:

- 10 (a) the tax preferred use starts on or after 1 July 2007; and
11 (b) the tax preferred use occurs under a legally enforceable
12 arrangement that was entered into before 1 July 2007; and
13 (c) but for this subitem:
14 (i) section 51AD would apply to the asset in relation to a
15 taxpayer; or
16 (ii) Division 16D would apply to the asset; and
17 (d) you elect to have this subitem apply to the asset.

18 (3) An election under paragraph (2)(d) in relation to an asset that is put to a
19 tax preferred use:

- 20 (a) must be made by the day you lodge your income tax return
21 for the income year in which the tax preferred use starts; and
22 (b) must be made for the whole of the arrangement period for the
23 tax preferred use of the asset; and
24 (c) must extend to all assets that are, or are to be, put to a tax
25 preferred use under the arrangement under which the asset is
26 put to that use; and
27 (d) is irrevocable.

28 (4) If subitem (2) applies:

- 29 (a) section 51AD and Division 16D do not apply to the asset;
30 and
31 (b) Division 250 applies to the tax preferred use of the asset.

32 (5) This subitem applies to an asset that is put to a tax preferred use if:

- 33 (a) the tax preferred use starts on or after 1 July 2007; and
-

- 1 (b) the tax preferred use occurs under a legally enforceable
2 arrangement that was entered into before 1 July 2007; and
3 (c) immediately before 1 July 2007:
4 (i) section 51AD did not apply to the asset in relation to a
5 taxpayer; and
6 (ii) Division 16D did not apply to the asset; and
7 (d) the arrangement referred to in paragraph (b) is materially
8 altered on or after 1 July 2007; and
9 (e) but for this subitem and subitem (6):
10 (i) section 51AD would apply to the asset in relation to a
11 taxpayer immediately after the alteration; or
12 (ii) Division 16D would apply to the asset immediately after
13 the alteration.

14 For the purposes of applying paragraph (c), assume that the asset was in
15 existence and was being put to the tax preferred use immediately before
16 1 July 2007.

- 17 (6) If subitem (5) applies:
18 (a) section 51AD and Division 16D do not apply to the asset;
19 and
20 (b) Division 250 applies to the tax preferred use of the asset after
21 the alteration instead.

- 22 (7) This subitem applies to an asset that is put to a tax preferred use if:
23 (a) the tax preferred use started before 1 July 2007; and
24 (b) immediately before 1 July 2007:
25 (i) section 51AD did not apply to the asset in relation to a
26 taxpayer; and
27 (ii) Division 16D did not apply to the asset; and
28 (c) the arrangement under which the tax preferred use of the
29 asset occurs is materially altered on or after 1 July 2007; and
30 (d) but for this subitem and subitem (8):
31 (i) section 51AD would apply to the asset in relation to a
32 taxpayer immediately after the alteration; or
33 (ii) Division 16D would apply to the asset immediately after
34 the alteration.

- 35 (8) If subitem (7) applies:
36 (a) section 51AD and Division 16D do not apply to the asset;
37 and
-

- 1 (b) Division 250 applies to the tax preferred use of the asset after
2 the alteration instead.
- 3 (9) For the purposes of applying subparagraphs (5)(c)(ii) and (e)(ii) and
4 (7)(b)(ii) and (d)(ii), disregard the operation of section 159GL of the
5 *Income Tax Assessment Act 1936*.
- 6 (10) For the purposes of applying Division 250 to the tax preferred use of an
7 asset in accordance with subitem (6) or (8), the **arrangement period** for
8 the tax preferred use of the asset is taken to start on the day on which
9 the alteration referred to in paragraph (5)(d) or (7)(c) occurs.
- 10 (11) Section 51AD does not apply to an asset for the income year
11 commencing on 1 July 2007, or a later income year, if:
12 (a) the asset is put to a tax preferred use under a legally
13 enforceable arrangement; and
14 (b) the arrangement was entered into before 1 July 2007; and
15 (c) the tax preferred use of the asset starts on or after 1 July 2003
16 and before 1 July 2007.
- 17 (12) The amendment made by item 69 of this Schedule applies in relation to
18 an income year that begins on or after 1 July 2008.
- 19 (13) In this item:
20 **arrangement** has the same meaning as in the *Income Tax Assessment*
21 *Act 1997*.
22 **asset** includes property (within the meaning of section 51AD and
23 Division 16D).
24 **Division 16D** means Division 16D of Part III of the *Income Tax*
25 *Assessment Act 1936*.
26 **Division 250** means Division 250 of the *Income Tax Assessment Act*
27 *1997*.
28 **section 51AD** means section 51AD of the *Income Tax Assessment Act*
29 *1936*.
30 **tax preferred use** has the same meaning as in the *Income Tax*
31 *Assessment Act 1997*.

1
2
3
4

Schedule 2—Thin capitalisation: excluded equity interests

Income Tax Assessment Act 1997

1 At the end of subsection 820-946(2A)

7

Add:

8

However, the interest is taken *not* to have been an *excluded equity*

9

interest at the time if the total period for which the interest remains

10

on issue is 180 days or more.

11

2 Application

12

The amendment made by this Schedule applies to income years starting

13

on or after 1 July 2002.

1
2 **Schedule 3—Thin capitalisation: groups**
3 **containing certain ADIs**
4

5 *Income Tax Assessment Act 1997*

6 **1 At the end of section 820-585**

7 Add:

- 8 (3) Subsection (1) does not apply if, at each time in the period
9 mentioned in subsection (2), all the *ADIs that are *members of the
10 group then are *specialist credit card institutions.

11 **2 After section 820-587**

12 Insert:

13 **820-588 Choice to treat specialist credit card institutions as being**
14 **financial entities and not ADIs**

- 15 (1) If the conditions in subsection (2) are met in relation to a
16 *consolidated group or *MEC group and a period that is all or part
17 of an income year, this Division (except this section) has effect as
18 if:
19 (a) none of the *members of the group were an *ADI at any time
20 in the period; and
21 (b) each member of the group that is an ADI (ignoring
22 paragraph (a)) at any time in the period were a financial
23 entity at that time.

24 Note 1: One result of this Division having effect in that way is that
25 Subdivision 820-D (and related provisions, such as section 820-589)
26 will not apply in relation to the head company, because:

- 27 (a) the head company of the group will not be classified under
28 section 820-583 as an outward investing entity (ADI); and
29 (b) section 820-587 will not apply that Subdivision.

30 Note 2: Another result of this Division having effect in that way is that
31 Subdivision 820-B or 820-C may apply in relation to the head
32 company, because it may be classified under section 820-583 as
33 either:

- 34 (a) an outward investing entity (non-ADI) and an outward investor
35 (financial); or

- 1 (b) an inward investing entity (non-ADI) and an inward investment
2 vehicle (financial).
- 3 (2) The conditions are that:
- 4 (a) at all times in the period at least one *member of the
5 *consolidated group or *MEC group is an *ADI; and
- 6 (b) each ADI that is a member of the group at any time in the
7 period is a *specialist credit card institution at that time; and
- 8 (c) the *head company of the group for the period chooses,
9 before lodging its *income tax return for the income year,
10 that this Division should have effect in that way in relation to
11 the group and every period for which the conditions in
12 paragraphs (a) and (b) are met in the income year.
- 13 (3) An *ADI is a *specialist credit card institution* at a time if, at that
14 time, the ADI's authority under section 9 of the *Banking Act 1959*
15 to carry on banking business (as defined in that Act) authorises the
16 ADI to carry on only banking business that:
- 17 (a) is participation in a payment system (as defined in the
18 *Payment Systems (Regulation) Act 1998*) that is a credit card
19 scheme and is designated under section 11 of that Act; and
- 20 (b) is either or both of the following:
- 21 (i) credit card acquiring (as defined in regulations made for
22 the purposes of the *Banking Act 1959*);
- 23 (ii) credit card issuing (as defined in those regulations).
- 24 (4) To avoid doubt, a choice for the purposes of paragraph (2)(c)
25 cannot be revoked.

26 **3 Paragraph 820-609(2)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) section 820-585 would prevent the disallowance of a *debt
29 deduction for the income year including the trial period; or

30 **4 At the end of subsection 820-609(7)**

31 Add "and section 820-610".

32 **5 After section 820-609**

33 Insert:

1 **820-610 Choice not to be outward investing entity (ADI) or inward**
2 **investing entity (ADI)**

3 (1) This section applies if:

- 4 (a) apart from this section, the *head company or single company
5 would, under section 820-609, be an *outward investing
6 entity (ADI) or an *inward investing entity (ADI) for the trial
7 period; and
8 (b) at all times in the trial period, each of the following entities
9 that is an *ADI is a *specialist credit card institution:
10 (i) the head company or single company;
11 (ii) an establishment entity whose *Australian permanent
12 establishments the head company or single company has
13 chosen under section 820-597 or 820-599 to have
14 treated as part of the company for the period.

15 (2) The *head company or single company is an *outward investing*
16 *entity (non-ADI)* and an *outward investor (financial)* for the trial
17 period if:

- 18 (a) apart from this section, the company would, under
19 section 820-609, be an *outward investing entity (ADI) for
20 the trial period; and
21 (b) the company chooses, before lodging its *income tax return
22 for the income year including the trial period, to be an
23 outward investing entity (non-ADI) and an outward investor
24 (financial) for that period.

25 (3) The *head company or single company is an *inward investing*
26 *entity (non-ADI)* and an *inward investment vehicle (financial)* for
27 the trial period if:

- 28 (a) apart from this section, the company would, under
29 section 820-609, be an *inward investing entity (ADI) for the
30 trial period; and
31 (b) the company chooses, before lodging its *income tax return
32 for the income year including the trial period, to be an inward
33 investing entity (non-ADI) and an inward investment vehicle
34 (financial) for that period.

35 (4) This section has effect despite sections 820-85, 820-185 and
36 820-609.

1 **6 Subsection 995-1(1) (definition of *inward investing entity***
2 ***(non-ADI)*)**

3 Omit “and 820-609”, substitute “, 820-609 and 820-610”.

4 **7 Subsection 995-1(1) (definition of *inward investment***
5 ***vehicle (financial)*)**

6 Omit “and 820-609”, substitute “, 820-609 and 820-610”.

7 **8 Subsection 995-1(1) (definition of *outward investing entity***
8 ***(non-ADI)*)**

9 Omit “and 820-609”, substitute “, 820-609 and 820-610”.

10 **9 Subsection 995-1(1) (definition of *outward investor***
11 ***(financial)*)**

12 Omit “and 820-609”, substitute “, 820-609 and 820-610”.

13 **10 Subsection 995-1(1)**

14 Insert:

15 *specialist credit card institution* has the meaning given by
16 section 820-588.

17 **11 Application**

18 The amendments made by this Schedule apply to income years starting
19 on or after 1 January 2004.

1
2 **Schedule 4—Extending the CGT small**
3 **superannuation funds roll-over on**
4 **marriage breakdown**
5

6 *Income Tax Assessment Act 1997*

7 **1 Section 112-150 (table item 7)**

8 Omit “one small superannuation fund to another”, substitute “a small
9 superannuation fund to another complying superannuation fund”.

10 **2 Subparagraph 126-5(1)(f)(ii)**

11 Repeal the subparagraph, substitute:

- 12 (ii) that, because of such a law, prevents a court making an
13 order about matters to which the agreement applies, or
14 that is inconsistent with the terms of the agreement in
15 relation to those matters, unless the agreement is varied
16 or set aside.

17 **3 Subparagraph 126-15(1)(f)(ii)**

18 Repeal the subparagraph, substitute:

- 19 (ii) that, because of such a law, prevents a court making an
20 order about matters to which the agreement applies, or
21 that is inconsistent with the terms of the agreement in
22 relation to those matters, unless the agreement is varied
23 or set aside.

24 **4 Paragraph 126-140(1)(c)**

25 Omit “small”, substitute “*complying”.

26 **5 Paragraph 126-140(2)(b)**

27 Omit “small”, substitute “*complying”.

28 **6 After subsection 126-140(2)**

29 Insert:

Transfer of own interest in a small superannuation fund

1
2 (2A) There is also a roll-over if:

- 3 (a) an individual has an interest in a *small superannuation fund
4 (the **first fund**); and
5 (b) the individual's *spouse, or former spouse, also has an
6 interest in the first fund; and
7 (c) the trustee (the **transferor**) of the first fund transfers a *CGT
8 asset to the trustee (the **transferee**) of another *complying
9 superannuation fund for the benefit of the individual; and
10 (d) the transfer is in accordance with an award, order or
11 agreement mentioned in subsection (2B); and
12 (e) if the transfer is part of a series of transfers in accordance
13 with the award, order or agreement—the individual will no
14 longer have an interest in the first fund when the series of
15 transfers is complete; and
16 (f) if the transfer is not part of a series of transfers in accordance
17 with the award, order or agreement—as a result of the
18 transfer, the individual no longer has an interest in the first
19 fund; and
20 (g) there has not been a roll-over under subsection (1) or (2) or
21 this subsection in relation to the transfer of another CGT
22 asset from the first fund, where the transfer was:
23 (i) made because of the award, order or agreement; and
24 (ii) for the benefit of that spouse, or former spouse; and
25 (h) if the transfer is in accordance with an agreement mentioned
26 in paragraph (2B)(d) or (e), the conditions in subsection (2C)
27 are satisfied.

28 Note: CGT event E2 may apply to the transfer.

29 (2B) The awards, orders and agreements are:

- 30 (a) an award made in an arbitration referred to in section 13H of
31 the *Family Law Act 1975* or a corresponding award made in
32 an arbitration under a corresponding *State law, *Territory
33 law or *foreign law; or
34 (b) a court order made under section 79 or subsection 90AE(2)
35 or 90AF(2) of the *Family Law Act 1975* or a corresponding
36 foreign law; or
37 (c) a court order made under a State law, Territory law or foreign
38 law relating to de facto marriage breakdowns that

-
- 1 corresponds to an order made under section 79 or subsection
2 90AE(2) or 90AF(2) of the *Family Law Act 1975*; or
3 (d) a financial agreement made under Part VIIIA of the *Family*
4 *Law Act 1975* that is binding because of section 90G of that
5 Act or a corresponding written agreement that is binding
6 because of a corresponding foreign law; or
7 (e) a written agreement:
8 (i) that is binding under a State law, Territory law or
9 foreign law relating to de facto marriage breakdowns;
10 and
11 (ii) that, because of such a law, prevents a court making an
12 order about matters to which the agreement applies, or
13 that is inconsistent with the terms of the agreement in
14 relation to those matters, unless the agreement is varied
15 or set aside.
- 16 (2C) The conditions are that:
17 (a) at the time of the transfer:
18 (i) the *spouses, or former spouses, involved are separated;
19 and
20 (ii) there is no reasonable likelihood of cohabitation being
21 resumed; and
22 (b) the transfer happened because of reasons directly connected
23 with the breakdown of the marriage or de facto marriage.
- 24 (2D) For the purposes of subsection (2C), the question whether
25 *spouses, or former spouses, have separated is to be determined in
26 the same way as it is for the purposes of section 48 of the *Family*
27 *Law Act 1975* (as affected by sections 49 and 50 of that Act).

28 **7 Application**

29 The amendments made by this Schedule apply in relation to CGT
30 events that happen on or after 1 July 2007, regardless of when the
31 award, court order or agreement was made.

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Schedule 5—Prime Minister's Prizes

Income Tax Assessment Act 1997

1 Section 11-10 (after table item headed "non-cash benefits")

Insert:

prizes

Prime Minister's Prize for Australian History	51-60
Prime Minister's Prize for Science	51-60

2 At the end of Division 51

Add:

51-60 Prime Minister's Prizes

- (1) To the extent that the Prime Minister's Prize for Australian History would otherwise be assessable income, it is exempt from income tax.
- (2) To the extent that the Prime Minister's Prize for Science would otherwise be assessable income, it is exempt from income tax.

3 Application

The amendments made by this Schedule apply to assessments for the 2006-07 income year and later income years.

1
2 **Schedule 6—Removal of the same business**
3 **test cap**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1997*

6 **1 Sections 165-212A, 165-212B and 165-212C**

7 Repeal the sections.

8 **2 Section 716-805**

9 Repeal the section.

1

2 **Part 2—Consequential amendments**

3 *Income Tax Assessment Act 1997*

4 **3 Section 165-5**

5 Omit:

6 (Companies whose total income for the income year is more than
7 \$100 million cannot satisfy the same business test for that year.)

8 **4 Section 165-10 (note 1)**

9 Omit “Note 1”, substitute “Note”.

10 **5 Section 165-10 (note 2)**

11 Repeal the note.

12 **6 Subsection 165-13(1)**

13 Omit “(other than a company covered by section 165-212A)”.

14 **7 Subsection 165-13(1) (note 1)**

15 Omit “Note 1”, substitute “Note”.

16 **8 Subsection 165-13(1) (note 2)**

17 Repeal the note.

18 **9 Subsection 165-15(2) (note)**

19 Repeal the note.

20 **10 Subsection 165-23**

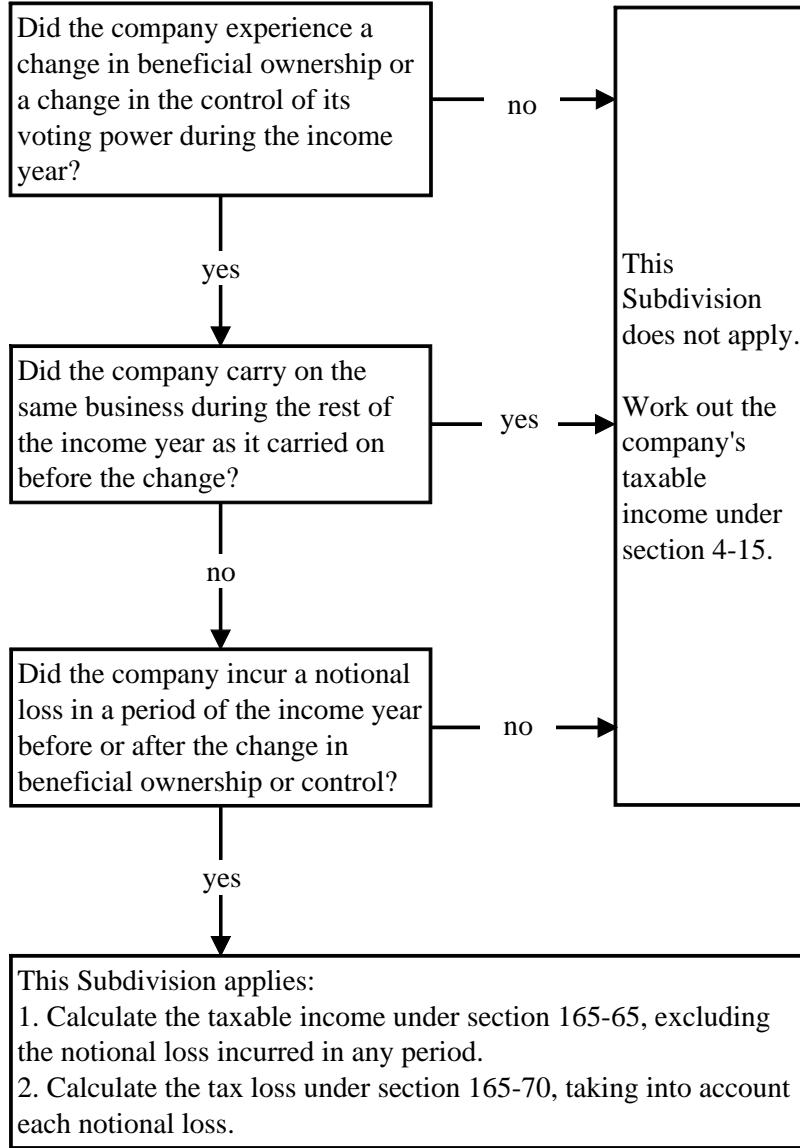
21 Omit:

22 (Companies whose total income for an income year is more than
23 \$100 million cannot satisfy the same business test for that year.)

24 **11 Section 165-30**

1 Repeal the section, substitute:

2 **165-30 Flow chart showing the application of this Subdivision**
3



4
5
6
7

Note: If the company was a partner during the income year, special rules apply to calculating a notional loss or notional taxable income.

1 **12 Section 165-35 (note 3)**

2 Repeal the note.

3 **13 Subsection 165-40(2) (note)**

4 Repeal the note.

5 **14 Subsection 165-45(4) (note 3)**

6 Repeal the note.

7 **15 Section 165-93**

8 Omit:

9 (Companies whose total income for the income year is more than
10 \$100 million cannot satisfy the same business test for that year.)

11 **16 Section 165-99**

12 Omit:

13 (Companies whose total income for an income year is more than
14 \$100 million cannot satisfy the same business test for that year.)

15 **17 Section 165-115**

16 Omit:

17 (Companies whose total income for an income year is more than
18 \$100 million cannot satisfy the same business test for that year.)

19 **18 Subsection 165-115B(4) (note)**

20 Repeal the note.

21 **19 Subsection 165-115BA(4) (note)**

22 Repeal the note.

23 **20 Section 165-117**

24 Omit:

1 (Companies whose total income for the income year is more than
2 \$100 million cannot satisfy the same business test for the second
3 continuity period.)

4 **21 Subsection 165-120(1) (note 4)**

5 Repeal the note.

6 **22 Subsection 165-126(1)**

7 Omit “(other than a company covered by section 165-212A)”.

8 **23 Subsection 165-126(1) (note 1)**

9 Omit “Note 1”, substitute “Note:”.

10 **24 Subsection 165-126(1) (note 2)**

11 Repeal the note.

12 **25 Subsection 165-129(2) (note)**

13 Repeal the note.

14 **26 Subsection 165-132(1) (note)**

15 Repeal the note.

16 **27 Subsection 165-210(1)**

17 Omit “(other than a company covered by section 165-212A)”.

18 **28 Subsection 165-210(1) (note)**

19 Repeal the note.

20 **29 Subsection 166-5(5) (note 2)**

21 Repeal the note.

22 **30 Subsection 166-5(5) (note 3)**

23 Omit “Note 3”, substitute “Note 2”.

24 **31 Subsection 166-20(4) (note 2)**

25 Repeal the note.

26 **32 Subsection 166-20(4) (note 3)**

1 Omit “Note 3”, substitute “Note 2”.

2 **33 Subsection 166-40(5) (note 2)**

3 Repeal the note.

4 **34 Subsection 166-40(5) (note 3)**

5 Omit “Note 3”, substitute “Note 2”.

6 **35 Subsection 175-5(2) (note)**

7 Repeal the note.

8 **36 Subsection 175-40(2) (note 1)**

9 Omit “Note 1”, substitute “Note”.

10 **37 Subsection 175-40(2) (note 2)**

11 Repeal the note.

12 **38 Subsection 175-80(2) (note)**

13 Repeal the note.

14 **39 Subsection 701-30(3A) (note 1)**

15 Omit “Note 1”, substitute “Note:”.

16 **40 Subsection 701-30(3A) (note 2)**

17 Repeal the note.

18 **41 Subsection 707-120(3) (note)**

19 Repeal the note.

20 **42 Subsection 707-125(2) (note)**

21 Repeal the note.

22 **43 Subsection 707-125(3) (note)**

23 Repeal the note.

24 **44 Subsection 707-125(4) (note 1)**

25 Omit “Note 1”, substitute “Note”.

26 **45 Subsection 707-125(4) (note 2)**

1 Repeal the note.

2 **46 Subsection 707-135(2) (note)**

3 Repeal the note.

4 **47 Subsection 707-210(6) (note)**

5 Repeal the note.

6 **48 Subsection 715-15(1) (note 1)**

7 Omit “Note 1”, substitute “Note”.

8 **49 Subsection 715-15(1) (note 2)**

9 Repeal the note.

10 **50 Subsection 715-50(1) (note)**

11 Repeal the note.

12 **51 Subsection 715-55(1) (note 1)**

13 Omit “Note 1”, substitute “Note”.

14 **52 Subsection 715-55(1) (note 2)**

15 Repeal the note.

16 **53 Subsection 715-60(1) (note 1)**

17 Omit “Note 1”, substitute “Note”.

18 **54 Subsection 715-60(1) (note 2)**

19 Repeal the note.

20 **55 Subsection 715-70(2) (note 1)**

21 Omit “Note 1”, substitute “Note”.

22 **56 Subsection 715-70(2) (note 2)**

23 Repeal the note.

24 **57 Subsection 715-95(3) (note 1)**

25 Omit “Note 1”, substitute “Note”.

26 **58 Subsection 715-95(3) (note 2)**

1 Repeal the note.

2 **59 Subsection 715-355(3) (note 1)**

3 Omit “Note 1”, substitute “Note”.

4 **60 Subsection 715-355(3) (note 2)**

5 Repeal the note.

6 **61 Subsection 715-360(3) (note 3)**

7 Repeal the note.

8 **62 Subsection 716-850(1) (note 1)**

9 Omit “Note 1”, substitute “Note”.

10 **63 Subsection 716-850(1) (note 2)**

11 Repeal the note.

12 **64 Subsection 719-260(2) (note)**

13 Omit “(However, companies whose total income for the claim year is
14 more than \$100 million cannot satisfy the same business test for that
15 year: see section 165-212A.)”.

16 **65 Subsection 719-260(3) (note)**

17 Repeal the note.

18 **66 Section 719-285 (note 1)**

19 Omit “(Companies whose total income for an income year is more than
20 \$100 million cannot satisfy the same business test for the same business
21 test period: see section 165-212A.)”.

22 **67 Subsection 995-1(1) (definition of *total income*)**

23 Repeal the definition.

1

2 **Part 3—Application**

3 **68 Application**

4 The amendments made by this Schedule apply to:

- 5 (a) any tax loss that is incurred in an income year commencing
6 on or after 1 July 2005; and
7 (b) any net capital loss that is made in an income year
8 commencing on or after 1 July 2005; and
9 (c) any deduction in respect of a bad debt that is incurred in an
10 income year commencing on or after 1 July 2005.

1
2 **Schedule 7—Statutory licences**

3 **Part 1—Main amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Section 124-140 (heading)**

6 Repeal the heading, substitute:

7 **124-140 New statutory licences**

8 **2 Subsection 124-140(1)**

9 Repeal the subsection, substitute:

10 (1) There is a roll-over if:

- 11 (a) your ownership of one or more *statutory licences (each of
12 which is an *original licence*) ends, resulting in *CGT event
13 C2 happening to the licence (or to each of the licences as part
14 of an *arrangement); and
15 (b) as a result of the CGT event or events, you are issued one or
16 more new licences (each of which is a *new licence*) for the
17 original licence (or original licences); and
18 (c) the new licence authorises (or the new licences taken together
19 authorise) substantially similar activity as that authorised by
20 the original licence (or by the original licences taken
21 together).

22 Note: If there has been a capital improvement to the original licence: see
23 section 108-75.

24 (1A) If:

- 25 (a) you are a foreign resident just before the *CGT event happens
26 (or just before one or more of the CGT events happens); or
27 (b) you are the trustee of a trust that is a *foreign trust for CGT
28 purposes for the income year in which the event happens (or
29 for an income year in which one or more of those events
30 happens);

31 there is no roll-over under this section unless the conditions in
32 subsection (1B) are satisfied.

1 (1B) The conditions are that:

- 2 (a) if there was only one original licence—the licence must be
3 *taxable Australian property just before the *CGT event
4 happens; and
5 (b) if there was more than one original licence—each original
6 licence must be taxable Australian property just before the
7 CGT event in relation to it happens; and
8 (c) if there is only one new licence—the licence must be taxable
9 Australian property just after you *acquire it; and
10 (d) if there is more than one new licence—each new licence
11 must be taxable Australian property just after you acquire it.

12 **3 At the end of Subdivision 124-C**

13 Add:

14 **124-145 Rollover consequences—capital gain or loss disregarded**

15 A *capital gain or *capital loss you make from the original licence
16 (or from each of the original licences) is disregarded.

17 **124-150 Rollover consequences—partial roll-over**

- 18 (1) You can obtain only a partial roll-over in relation to an original
19 licence if the *capital proceeds for that licence includes something
20 (the *ineligible proceeds*) other than a new licence or new licences.
21 There is no roll-over for that part (the *ineligible part*) of the licence
22 for which you received the ineligible proceeds.

23 Note: If there is more than one original licence, some or all of those original
24 licences may each have an ineligible part.

- 25 (2) The *cost base of the ineligible part is that part of the cost base of
26 the original licence as is reasonably attributable to the ineligible
27 part.
28 (3) The *reduced cost base of the ineligible part is that part of the
29 reduced cost base of the original licence as is reasonably
30 attributable to the ineligible part.
31 (4) For the purposes of sections 124-155 and 124-165, for each
32 original licence that has an ineligible part:

- 1 (a) reduce the *cost base of that licence (just before the *CGT
2 event that happened in relation to it) by so much of that cost
3 base as is attributable to that ineligible part; and
4 (b) reduce the *reduced cost base of that licence (just before the
5 CGT event that happened in relation to it) by so much of that
6 reduced cost base as is attributable to that ineligible part.

7 **124-155 Roll-over consequences—all original licences were**
8 **post-CGT**

- 9 (1) This section applies if you *acquired the original licence (or all of
10 the original licences) on or after 20 September 1985.
- 11 (2) The first element of the *cost base of the new licence (or of each of
12 the new licences) is such amount as is reasonable having regard to:
13 (a) the total of the cost bases of all the original licences; and
14 (b) the number, *market value and character of the original
15 licences; and
16 (c) the number, market value and character of the new licences.
- 17 (3) The first element of the *reduced cost base of the new licence (or
18 of each of the new licences) is such amount as is reasonable having
19 regard to:
20 (a) the total of the reduced cost bases of all the original licences;
21 and
22 (b) the number, *market value and character of the original
23 licences; and
24 (c) the number, market value and character of the new licences.

25 **124-160 Roll-over consequences—all original licences were pre-CGT**

26 If you *acquired the original licence (or all of the original licences)
27 before 20 September 1985, you are taken to have acquired the new
28 licence (or all of the new licences) before that day.

29 **124-165 Roll-over consequences—some original licences were**
30 **pre-CGT, others were post-CGT**

- 31 (1) This section applies if:
32 (a) there was more than one original licence; and
-

- 1 (b) you *acquired one or more of the original licences before
2 20 September 1985; and
3 (c) you acquired one or more of the original licences on or after
4 that day.
- 5 (2) Each new licence is taken to be 2 separate *CGT assets that are
6 both *statutory licences:
- 7 (a) one (which you are taken to have *acquired on or after
8 20 September 1985) representing the extent to which you
9 acquired the original licences on or after that day; and
10 (b) another (which you are taken to have acquired before that
11 day) representing the extent to which you acquired the
12 original licences before that day.
- 13 (3) The first element of the *cost base and *reduced cost base of the
14 *CGT asset mentioned in paragraph (2)(a) in relation to a new
15 licence is worked out under the formula:

16
$$\text{Total post-CGT cost base} \times \frac{\text{Market value of new licence}}{\text{Market value of all new licences}}$$

17 where:

18 *market value of all new licences* is the total of the *market values
19 of all of the new licences.

20 *market value of new licence* is the *market value of the new
21 licence to which the *CGT asset mentioned in paragraph (2)(a)
22 relates.

23 *total post-CGT cost base* is the total of the *cost bases of all the
24 original licences that you *acquired on or after 20 September 1985.

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

26 **4 Before Division 126**

27 Insert:

1 **Division 124—Replacement-asset roll-overs**

2 **Subdivision 124-C—Statutory licences**

3 **124-140 New statutory licence—ASGE licence etc.**

4 (1) Sections 124-141 and 124-142 apply if:

5 (a) there are one or more roll-overs under section 124-140 of the
6 *Income Tax Assessment Act 1997* where:

7 (i) your ownership of one or more statutory licences (each
8 of which is an **original licence**) ends, resulting in CGT
9 event C2 happening to the licence (or to each of the
10 licences as part of an arrangement); and

11 (ii) you are issued one or more new licences (each of which
12 is a **new licence**) for the original licence (or original
13 licences); and

14 (b) if there was only one original licence—that licence is covered
15 under subsection (2); and

16 (c) if there was more than one original licence—at least one of
17 the original licences was covered under subsection (2); and

18 (d) if there is only one new licence—that licence is covered
19 under subsection (3); and

20 (e) if there is more than one new licence—only one of the new
21 licences is covered under subsection (3); and

22 (f) the original licence (or at least one of the original licences)
23 has an ineligible part (as described in section 124-150 of the
24 *Income Tax Assessment Act 1997*).

25 (2) A licence is covered under this subsection if it is:

26 (a) a bore licence issued under the *Water Act 1912* of New South
27 Wales; or

28 (b) a licence of a kind specified in the regulations.

29 (3) A licence is covered under this subsection if it is:

30 (a) an aquifer access licence under the *Water Management Act*
31 *2000* of New South Wales issued in accordance with the New
32 South Wales Achieving Sustainable Groundwater
33 Entitlements program (the **ASGE program**); or

34 (b) a licence of a kind specified in the regulations.

1 **124-141 ASGE licence etc.—cost base of ineligible part**

- 2 (1) For an original licence that has an ineligible part, the cost base of
3 the ineligible part is the cost base of the original licence multiplied
4 by the amount worked out under the formula:

5
$$\frac{\text{Total ineligible proceeds}}{\text{Total ineligible proceeds} + \text{Value of new licence}}$$

6 where:

7 ***total ineligible proceeds*** is the total of the ineligible proceeds (as
8 described in section 124-150 of the *Income Tax Assessment Act*
9 *1997*) in relation to all of the original licences that have an
10 ineligible part.

11 ***value of new licence*** is:

- 12 (a) if the new licence is an aquifer access licence mentioned in
13 paragraph 124-40(3)(a)—the 2002 value assigned under the
14 ASGE program to the new licence; or
15 (b) otherwise—the value of the new licence worked out in
16 accordance with the regulations.
- 17 (2) The regulations may specify one or more ways of working out the
18 value of a licence (other than an aquifer access licence mentioned
19 in paragraph 124-40(3)(a)) for the purposes of this section.
- 20 (3) For an original licence that has an ineligible part, the reduced cost
21 base of the ineligible part is the reduced cost base of the original
22 licence multiplied by the amount worked under the formula set out
23 in subsection (1).

24 **124-142 ASGE licence etc.—cost base of aquifer access licence etc.**

- 25 (1) The first element of the cost base and reduced cost base of the new
26 licence that is covered under subsection 124-140(3) is the total of
27 the cost bases of the original licences.

28 Note: For the purposes of this section, the cost base of each original licence
29 that has an ineligible part is reduced in accordance with subsection
30 124-150(4) of the *Income Tax Assessment Act 1997*.

- 31 (2) The cost base and reduced cost base of any new licence that is *not*
32 covered under subsection 124-140(3) is nil.

Schedule 7 Statutory licences

Part 1 Main amendments

- 1 (3) Subsections (4) and (5) apply if:
- 2 (a) there was more than one original licence; and
- 3 (b) some of the original licences were acquired before
- 4 20 September 1985; and
- 5 (c) subsection 124-165(2) of the *Income Tax Assessment Act*
- 6 1997 applies in relation to the new licence that is covered
- 7 under subsection 124-140(3) (splitting that licence into 2
- 8 separate CGT assets).
- 9 (4) For the purposes of subsection (2), treat the asset that is taken
- 10 under paragraph 124-165(2)(a) of that Act to have been acquired
- 11 on or after 20 September 1985 as a new licence that is covered
- 12 under subsection 124-140(3) of this Act.
- 13 (5) Work out the first element of the cost base and reduced cost base
- 14 of that asset in accordance with subsection 124-165(3) of that Act.

1

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

3 *Income Tax Assessment Act 1997*

4 **5 After section 112-53**

5 Insert:

6 **112-53AA Statutory licences**

7

New statutory licence

Item	In this situation:	Element affected:	See section:
1	New statutory licences	First element of cost base and reduced cost base	124-150, 124-155 and 124-160

8 **6 Section 112-115 (table item 5)**

9 Omit “Renewal or extension of a statutory licence”, substitute “New
10 statutory licences”.

11 **7 After subsection 116-30(2)**

12 Insert:

13 (2A) Subsection (2) does not apply if there is a partial roll-over for the
14 *CGT event because of section 124-150.

15 **8 Subsection 124-5(2) (note)**

16 After “The consequences of a scrip for scrip roll-over are set out in
17 Subdivision 124-M.”, insert “The consequences of replacing a statutory
18 licence by a new statutory licence are set out in Subdivision 124-C.”.

19 **9 Subsection 124-10(1) (example)**

20 Repeal the example.

21 **10 Subsection 124-10(3) (example)**

22 Repeal the example.

23 **11 Subsection 124-10(3) (note 1)**

1 Omit “Subdivisions 124-C (about statutory licences),”.

2 **12 Subsection 124-140(2) (note)**

3 Repeal the note.

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

5 **13 After Chapter 4**

6 Insert:

7 **Chapter 5—Administration**

8 **Part 5-35—Miscellaneous**

9 **Division 909—Regulations**

10 **909-1 Regulations**

11 The Governor-General may make regulations prescribing matters:

- 12 (a) required or permitted by this Act to be prescribed; or
13 (b) necessary or convenient to be prescribed for carrying out or
14 giving effect to this Act.

1

2 **Part 3—Application**

3 **14 Application**

4 The amendments made by this Schedule apply to CGT events that
5 happen in the 2006-2007 income year and later income years.

1
2 **Schedule 8—Australian property trusts and**
3 **stapled securities**

4 **Part 1—Main amendments**

5 *Income Tax Assessment Act 1936*

6 **1 At the end of section 102F**

7 Add:

- 8 (4) Ownership interests in a unit trust or a company that is part of a
9 scheme for reorganising the affairs of stapled entities referred to in
10 Subdivision 124-Q of the *Income Tax Assessment Act 1997* is not
11 property for the purposes of applying subsections (1) and (2).

12 **2 Section 102N**

13 Before “For”, insert “(1)”.

14 **3 At the end of section 102N**

15 Add:

- 16 (2) Despite paragraph (1)(b), a unit trust is not a trading trust only
17 because it has acquired ownership interests (including a controlling
18 interest) in, or controls:
19 (a) a foreign entity whose business, when considered together
20 with the businesses of entities that the foreign entity controls
21 or is able to control, directly or indirectly, consists primarily
22 of investing in land outside Australia for the purpose, or
23 primarily for the purpose, of deriving rent; or
24 (b) a foreign entity controlled, or able to be controlled, directly
25 or indirectly, by an entity covered by paragraph (a).

- 26 (3) In this section:

27 *entity* has the same meaning as in the *Income Tax Assessment Act*
28 *1997*.

29 **4 After section 102N**

30 Insert:

1 **102NA Certain interposed trusts not trading trusts**

- 2 (1) A unit trust is not a trading trust for the purposes of this Division in
3 relation to a year of income if:
- 4 (a) the trust is an interposed trust in relation to a scheme for
5 reorganising the affairs of stapled entities referred to in
6 Subdivision 124-Q of the *Income Tax Assessment Act 1997* in
7 relation to the year of income or an earlier year of income;
8 and
 - 9 (b) a roll-over was obtained by any entity under that Subdivision
10 of that Act in relation to the scheme for the year of income or
11 that earlier year of income; and
 - 12 (c) the condition in subsection (2) is satisfied.
- 13 (2) The trustee of the trust must not, at any time during the year of
14 income:
- 15 (a) carry on a trading business; or
 - 16 (b) control, or be able to control, directly or indirectly, the affairs
17 or operations of another entity that carries on a trading
18 business, other than:
 - 19 (i) a company that was, before the scheme was completed,
20 one of the stapled entities referred to in
21 Subdivision 124-Q of the *Income Tax Assessment Act*
22 *1997*; or
 - 23 (ii) a subsidiary of one of those stapled entities that is a
24 company, or an entity that is controlled or able to be
25 controlled, directly or indirectly, by that company;
26 in relation to the year of income or an earlier year of income.
- 27 (3) In this section:

28 *entity* has the same meaning as in the *Income Tax Assessment Act*
29 *1997*.

30 **5 Subsection 102P(10)**

31 After “a unit trust”, insert “(except a foreign entity to which subsection
32 102N(2) applies)”.

33 ***Income Tax Assessment Act 1997***

34 **6 At the end of Division 124**

1 Add:

2 **Subdivision 124-Q—Exchange of stapled ownership interests**
3 **for ownership interests in a unit trust**

4 **Guide to Subdivision 124-Q**

5 **124-1040 What this Subdivision is about**

6

7 There is a roll-over if you own ownership interests that are stapled
8 and, as a result of a reorganisation, you stop owning those interests
9 and you acquire or own ownership interests in an interposed unit
trust.

10 **Table of sections**

11 **Operative provisions**

12	124-1045	Exchange of stapled securities
13	124-1050	Conditions
14	124-1055	Consequences of the roll-over for exchanging members
15	124-1060	Consequences of the roll-over for interposed trust
16	124-1065	Certain foreign holders disregarded

17 **Operative provisions**

18 **124-1045 Exchange of stapled securities**

- 19 (1) There is a roll-over if:
- 20 (a) you own *ownership interests in 2 or more trusts, or in one or
21 more companies and one or more trusts, and those interests
22 are stapled together to form stapled securities; and
 - 23 (b) at least one of the trusts is a trust whose trustee is not
24 assessed and liable to pay tax under Division 6B or 6C of
25 Part III of the *Income Tax Assessment Act 1936*; and
 - 26 (c) if no company is involved—at least one of the trusts is a trust
27 whose trustee is assessed and liable to pay tax under
28 Division 6B or 6C of Part III of that Act; and
 - 29 (d) under a *scheme for reorganising the affairs of the relevant
30 *stapled entities, you and the other entities that own the

1 ownership interests in the stapled entities (together the
2 ***exchanging members***):

- 3 (i) stop being the owner of those ownership interests and
4 acquire ownership interests in a new unit trust (the
5 ***interposed trust***) and nothing else (a ***new trust case***); or
6 (ii) retain their ownership interests in one of those trusts
7 (also the ***interposed trust***), stop being the owner of the
8 remaining ownership interests that form the stapled
9 securities and receive nothing other than ownership
10 interests in the interposed trust, or an increase in value
11 of their existing ownership interests in the interposed
12 trust, or both (an ***existing trust case***); and
13 (e) under the scheme, the interposed trust becomes the owner of:
14 (i) for a new trust case—all of the ownership interests in
15 the stapled entities; or
16 (ii) for an existing trust case—all of the ownership interests
17 in the other stapled entities; and
18 (f) the conditions in section 124-1050 are satisfied.

19 Note: Division 6B of Part III of the *Income Tax Assessment Act 1936* deals
20 with taxing corporate unit trusts in the same way as companies.
21 Division 6C has the same effect in relation to public trading trusts.

- 22 (2) An entity is a ***stapled entity*** in relation to stapled securities if
23 *ownership interests in the entity form part of the stapled securities.
24 (3) Ignore for the purposes of subsection (1) *ownership interests held
25 by one *stapled entity in another stapled entity as at the start of the
26 day on which the Bill for this Act was introduced into the
27 Parliament.

28 **124-1050 Conditions**

- 29 (1) Just after the *scheme is completed (the ***completion time***), each
30 exchanging member must own a percentage of the *ownership
31 interests in the interposed trust that reasonably equates to the
32 percentage of the ownership interests that the member owned in the
33 *stapled entities.

34 Example: Public Company A, Unit Trust No. 1 and Unit Trust No. 2 are stapled
35 entities. Each stapled entity has 4,000 ownership interests on issue.
36 There are no ownership interests in any of the stapled entities other
37 than shares in the company and units in the trusts.

Schedule 8 Australian property trusts and stapled securities
Part 1 Main amendments

1 Under a scheme for reorganising the stapled entities, Unit Trust No. 3
2 is interposed between the stapled entities and the owners of the
3 interests in those entities. Unit Trust No. 3 (the interposed trust)
4 becomes the owner of all of the interests in each of the three stapled
5 entities. Exchanging members receive one unit in the interposed trust
6 for each stapled security they owned. All units in the interposed trust
7 are of the same class.

8 Naomi owned 200 shares in Public Company A, 200 units in Unit
9 Trust No. 1 and 200 units in Unit Trust No. 2. Naomi therefore owned
10 5% of the ownership interests in each of the stapled entities. Under the
11 scheme, Naomi receives 100 units in Unit Trust No. 3 (out of a total of
12 2,000 units) in exchange for her ownership interests in the stapled
13 entities. Naomi now owns 5% of the ownership interests in the
14 interposed trust and meets the condition in subsection (1).

15 (2) Just after the completion time, each exchanging member must have
16 the same, or as nearly as practicable the same, proportionate
17 *market value of *ownership interests in the interposed trust as the
18 member had in the *stapled entities just before that time.

19 (3) In working out whether an exchanging member complies with
20 subsection (2), an anticipated reasonable approximation of the
21 *market value of *ownership interests just after the completion time
22 is sufficient.

23 Note: An anticipated reasonable approximation of market values of
24 ownership interests may include valuations provided to exchanging
25 members in scheme documents.

26 (4) You must be an Australian resident at the completion time or, if
27 you are a foreign resident at that time:

28 (a) some or all of your *ownership interests in the *stapled
29 entities must have been *taxable Australian property just
30 before that time; and

31 (b) your ownership interests in the interposed trust must be
32 taxable Australian property just after that time.

33 **124-1055 Consequences of the roll-over for exchanging members**

34 (1) A *capital gain or *capital loss you make as a result of the *scheme
35 from each of your *ownership interests is disregarded.

36 (2) If you *acquired all of your *ownership interests in the *stapled
37 entities on or after 20 September 1985, the first element of the
38 *cost base and *reduced cost base of each of your ownership

1 interests in the interposed trust is such amount as is reasonable
2 having regard to:

- 3 (a) the total of the *cost bases of all of your ownership interests
4 in the *stapled entities; and
5 (b) the number, *market value and character of your ownership
6 interests in the interposed trust.

7 Example: Naomi had a cost base of \$2.00 for each of her 200 Public Company A
8 shares, \$1.50 for each of her 200 Unit Trust No. 1 units and \$0.50 for
9 each of her 200 Unit Trust No. 2 units. The total of the cost bases of
10 all of her membership interests is \$800.00.

11 It is reasonable to allocate \$8.00 to each of the 100 units in the
12 interposed trust that she receives under the reorganisation.

13 (3) If you *acquired all of your *ownership interests in the *stapled
14 entities before 20 September 1985, you are taken to have acquired
15 all of your ownership interests in the interposed trust before that
16 day.

17 (4) If you *acquired some of your *ownership interests in the *stapled
18 entities before 20 September 1985, you are taken to have acquired
19 so many of your ownership interests in the interposed trust as is
20 reasonable before that day having regard to:

- 21 (a) the number, *market value and character of your ownership
22 interests in the stapled entities; and
23 (b) the number, market value and character of your ownership
24 interests in the interposed trust.

25 Note: Generally, a capital gain or capital loss from a CGT asset acquired
26 before 20 September 1985 can be disregarded: see Division 104.

27 (5) The first element of the *cost base and *reduced cost base of each
28 of your *ownership interests in the interposed trust that is not taken
29 by subsection (4) to have been *acquired before 20 September
30 1985 (your *post-CGT interests*) is such amount as is reasonable
31 having regard to:

- 32 (a) the total of the cost bases of your ownership interests in the
33 *stapled entities that you acquired on or after 20 September
34 1985; and
35 (b) the number, *market value and character of your post-CGT
36 interests.

1 **124-1060 Consequences of the roll-over for interposed trust**

2 (1) Apply this section separately for the interposed trust in relation to
3 the *ownership interests in each *stapled entity that the trustee of
4 the interposed trust *acquires under the *scheme.

5 (2) A whole number of *ownership interests in a *stapled entity that
6 the trustee *acquires under the *scheme are taken to have been
7 acquired before 20 September 1985 if any of the stapled entity's
8 assets as at the completion time were acquired by it before that
9 day.

10 Note: Generally, a capital gain or capital loss from a CGT asset acquired
11 before 20 September 1985 can be disregarded: see Division 104.

12 (3) The number (worked out as at the completion time) is the greatest
13 possible that (when expressed as a percentage of all the *ownership
14 interests in the *stapled entity *acquired by the trustee) does not
15 exceed:

16 (a) the *market value of the stapled entity's assets that it acquired
17 before 20 September 1985; less

18 (b) its liabilities (if any) in respect of those assets;

19 expressed as a percentage of the market value of all the stapled
20 entity's assets less all of its liabilities. The amounts in
21 paragraphs (a) and (b) are to be worked out as at the completion
22 time.

23 (4) The first element of the *cost base and *reduced cost base of each
24 of the trustee's *ownership interests in that *stapled entity that are
25 not taken by subsection (3) to have been *acquired before
26 20 September 1985 is such proportion as is reasonable of the total
27 of the cost bases (as at the completion time) of that stapled entity's
28 assets that it acquired on or after that day less its liabilities (if any)
29 in respect of those assets.

30 (5) In applying this section:

31 (a) a liability of a *stapled entity that is not a liability in respect
32 of a specific asset or assets of the stapled entity is a liability
33 in respect of all the assets of the stapled entity; and

34 (b) if a liability is in respect of 2 or more assets, the proportion
35 of the liability that is in respect of any one of those assets is
36 such amount as is reasonable having regard to the *market
37 values of each of those assets.

1 **124-1065 Certain foreign holders disregarded**

2 (1) This section has effect if:

- 3 (a) *ownership interests are owned by a foreign holder within the
4 meaning of the *Corporations Act 2001*; and
5 (b) an agent or nominee is appointed by (or on behalf of) the
6 foreign holder; and
7 (c) the interests are *disposed of to the interposed trust, or are
8 cancelled; and
9 (d) as a result, the agent or nominee acquires new units or new
10 options, rights or similar interests, or both, in the interposed
11 trust; and
12 (e) the agent or nominee disposes of those ownership interests in
13 the interposed trust (whether separately or together with other
14 ownership interests covered by paragraph (d)); and
15 (f) the agent or nominee:
16 (i) gives the foreign holder an amount equivalent to the
17 *capital proceeds of the disposal (less expenses); or
18 (ii) if the ownership interests are disposed of together with
19 other ownership interests covered by paragraph (d)—
20 gives the foreign holder an amount equivalent to the
21 foreign holder's proportion of the capital proceeds of
22 the disposal (less expenses).

23 (2) This Subdivision has effect as if the foreign holder were not an
24 exchanging member.

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Part 2—Consequential amendments

Income Tax Assessment Act 1997

7 After section 112-53A

Insert:

112-53B Exchange of stapled ownership interests for units in a unit trust

Exchange of stapled ownership interests for units in a unit trust			
Item	In this situation:	Element affected:	See section:
1	Exchange of stapled ownership interests	First element of cost base and reduced cost base	124-1055 and 124-1060

8 Section 112-115 (after table item 14BB)

Insert:

14BC Exchange of stapled ownership interests Subdivision 124-Q

9 After paragraph 115-285(3)(b)

Insert:

(ba) Subdivision 124-Q (exchange of stapled ownership interests);

10 Subsection 124-5(1)

Omit “124-P”, substitute “124-Q”.

11 Subsection 124-5(2) (at the end of the note)

Add “The consequences of an exchange of stapled ownership interests are set out in Subdivision 124-Q.”.

12 Subsection 995-1(1)

Insert:

stapled entity has the meaning given by section 124-1045.

1

2 **Part 3—Application**

3 **13 Application**

4 (1) The amendments made by items 1 to 5 of this Schedule apply to the
5 2006-07 year of income and later years of income.

6 (2) The amendments made by items 6 to 12 of this Schedule apply to CGT
7 events happening on or after 1 July 2006.

Schedule 9—Deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-45(2) (at the end of the table)

Add:

4.2.32	Kidsafe ACT (Inc.)	the gift must be made after 2 August 2007
4.2.33	Kidsafe New South Wales (Inc.)	the gift must be made after 2 August 2007
4.2.34	Kidsafe NT (Inc.)	the gift must be made after 2 August 2007
4.2.35	Kidsafe Qld (Inc.)	the gift must be made after 2 August 2007
4.2.36	Kidsafe SA Incorporated	the gift must be made after 2 August 2007
4.2.37	Kidsafe Tasmania (Inc)	the gift must be made after 2 August 2007
4.2.38	Kidsafe Vic (Inc.)	the gift must be made after 2 August 2007
4.2.39	Kidsafe Western Australia (Inc)	the gift must be made after 2 August 2007

2 Subsection 30-50(2) (table item 5.2.1)

Omit “2007”, substitute “2009”.

3 Application

The amendment of table item 5.2.1 in subsection 30-50(2) of the *Income Tax Assessment Act 1997* made by this Schedule applies to gifts made on or after 1 July 2007.

4 Subsection 30-50(2) (at the end of the table)

Add:

5.2.28	The Bathurst War Memorial Carillon Public Fund Trust	the gift must be made after 2 August 2007 and
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before 3 August 2009

1 **5 Subsection 30-315(2) (after table item 27)**

2 Insert:

3

27AA Bathurst War Memorial Carillon Public item 5.2.28
Fund Trust

4 **6 Subsection 30-315(2) (after table item 64)**

5 Insert:

6

64A Kidsafe items 4.2.32 to 4.2.39
(inclusive)

1
2 **Schedule 10—Streamlining concessions for**
3 **Australian films and Australian film**
4 **production**

5 **Part 1—Main amendments**

6 *Income Tax Assessment Act 1997*

7 **1 Division 376**

8 Repeal the Division, substitute:

9 **Division 376—Films generally (tax offsets for Australian**
10 **production expenditure)**

11 **Table of Subdivisions**

12 376-A Guide to Division 376
13 376-B Tax offsets for Australian expenditure in making a film
14 376-C Production expenditure and qualifying Australian production
15 expenditure
16 376-D Certificates for films and other matters

17 **Subdivision 376-A—Guide to Division 376**

18 **376-1 What this Division is about**

19 Companies may be entitled to 1 of 3 refundable tax offsets in
20 relation to Australian expenditure incurred in making films. The
21 offsets are designed to support and develop the Australian screen
22 media industry by providing concessional tax treatment for
23 Australian expenditure.

24 **Table of sections**

25 376-2 Key features of the tax offsets for Australian production expenditure on
26 films
27 376-5 Structure of this Division

376-2 Key features of the tax offsets for Australian production expenditure on films

- (1) The 3 tax offsets are:
- (a) a refundable tax offset for Australian expenditure in making an Australian film (the producer offset); and
 - (b) a refundable tax offset for Australian expenditure in making any film (the location offset); and
 - (c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).
- (2) A company is only entitled to one of these offsets in relation to a film.
- (3) The amount of the offset is determined as a percentage of certain Australian expenditure incurred by a company in producing the film:
- (a) the amount of the producer offset is 40% of the company's qualifying Australian production expenditure on the film if the film is a feature film, and 20% of such expenditure if the film is not a feature film; and
 - (b) the amount of the location offset is 15% of the company's qualifying Australian production expenditure on the film; and
 - (c) the amount of the PDV offset is 15% of the company's qualifying Australian production expenditure on the film that relates to post, digital and visual effects production for the film.
- (4) One of the requirements for entitlement to these offsets is that a company must be issued with a certificate for the film. The certificate will state the amount of Australian expenditure on which the offset will be determined.
- (5) The offset is claimed by a company in its income tax return.

376-5 Structure of this Division

- (1) Subdivision 376-B tells you about the different tax offsets available for films, who can get each offset and what conditions must be met to get each offset. It also tells you how to work out the amount of each offset.

Schedule 10 Streamlining concessions for Australian films and Australian film production

Part 1 Main amendments

- 1 (2) Subdivision 376-C explains what is meant by:
2 (a) production expenditure on a film; and
3 (b) qualifying Australian production expenditure on a film.
4 It also contains some rules for quantifying expenditure.
- 5 (3) Subdivision 376-D deals with a number of administrative matters:
6 (a) applying for a certificate for a film; and
7 (b) the issue and revocation of a certificate for a film; and
8 (c) the making of rules by the Arts Minister (including rules for
9 the establishment of the Film Certification Advisory Board)
10 and the film authority; and
11 (d) review of decisions of the Arts Minister and the film
12 authority; and
13 (e) amendment of assessments following the revocation of a
14 certificate for a film.

15 **Subdivision 376-B—Tax offsets for Australian expenditure in**
16 **making a film**

17 **Table of sections**

Refundable tax offset for Australian expenditure in making a film (location offset)	
18	
19	
20	376-10 Film production company entitled to refundable tax offset for Australian
21	expenditure in making a film (location offset)
22	376-15 Amount of the location offset
23	376-20 Minister must issue certificate for a film for the location offset
24	376-25 Company may nominate one individual whose remuneration is to be
25	disregarded for the location offset
26	376-30 Minister to determine a company's qualifying Australian production
27	expenditure for the location offset
Refundable tax offset for post, digital and visual effects production for a film (PDV offset)	
28	
29	
30	376-35 Film production company entitled to refundable tax offset for post, digital
31	and visual effects production for a film (PDV offset)
32	376-40 Amount of the PDV offset
33	376-45 Minister must issue certificate for a film for the PDV offset
34	376-50 Minister to determine a company's qualifying Australian production
35	expenditure for the PDV offset

1		Refundable tax offset for Australian expenditure in making an Australian
2		film (producer offset)
3	376-55	Film production company entitled to refundable tax offset for Australian
4		expenditure in making an Australian film (producer offset)
5	376-60	Amount of the producer offset
6	376-65	Film authority must issue certificate for an Australian film for the producer
7		offset
8	376-70	Determination of content of film
9	376-75	Film authority to determine a company's qualifying Australian production
10		expenditure for the producer offset

11 **Refundable tax offset for Australian expenditure in making a**
12 **film (location offset)**

13 **376-10 Film production company entitled to refundable tax offset**
14 **for Australian expenditure in making a film (location**
15 **offset)**

- 16 (1) A company is entitled to a *tax offset under this section (the
17 *location offset*) for an income year in respect of a *film if:
- 18 (a) if the total of the company's *qualifying Australian
19 production expenditure on the film (as determined by the
20 *Arts Minister under section 376-30) is less than \$50
21 million—the company's *production expenditure on the film
22 ceased being incurred in the income year; and
 - 23 (b) if the total of the company's qualifying Australian production
24 expenditure on the film (as determined by the *Arts Minister
25 under section 376-30) is at least \$50 million—the company's
26 qualifying Australian production expenditure on the film
27 ceased being incurred in the income year; and
 - 28 (c) the *Arts Minister has issued a certificate to the company for
29 the film under section 376-20 (certificate for the location
30 offset); and
 - 31 (d) the company claims the offset in its *income tax return for
32 the income year; and
 - 33 (e) the company:
 - 34 (i) is an Australian resident; or
 - 35 (ii) is a foreign resident but does have a *permanent
36 establishment in Australia and does have an *ABN;

Schedule 10 Streamlining concessions for Australian films and Australian film production

Part 1 Main amendments

1 when the company lodges the income tax return and when
2 the tax offset is due to be credited to the company.

3 The claim referred to in paragraph (d) is irrevocable.

4 Note: The location offset is a refundable tax offset: see subsection
5 67-25(2A).

6 (2) The company is not entitled to the location offset if:

7 (a) the company or someone else claims a deduction in relation
8 to a unit of industrial property that relates to copyright in the
9 *film under Division 10B of Part III of the *Income Tax*
10 *Assessment Act 1936*; or

11 (b) a final certificate for the film has been issued at any time
12 under Division 10BA of Part III of the *Income Tax*
13 *Assessment Act 1936* (whether or not the certificate is still in
14 force); or

15 (c) a certificate for the film has been issued at any time under
16 section 376-45 (certificate for the PDV offset) (whether or
17 not the certificate is still in force); or

18 (d) a certificate for the film has been issued at any time under
19 section 376-65 (certificate for the producer offset) (whether or
20 not the certificate is still in force).

21 **376-15 Amount of the location offset**

22 The amount of the location offset is 15% of the total of the
23 company's *qualifying Australian production expenditure on the
24 *film (as determined by the *Arts Minister under section 376-30).

25 **376-20 Minister must issue certificate for a film for the location**
26 **offset**

27 (1) The *Arts Minister must issue a certificate to a company for a *film
28 in relation to the location offset if the Minister is satisfied that the
29 conditions in subsections (2), (3) and (5) are met.

30 *Type of film*

31 (2) The conditions in this subsection are that:

32 (a) the *film was produced for:

33 (i) exhibition to the public in cinemas or by way of
34 television broadcasting (including broadcasting by way

- 1 of the delivery of a television program by a
2 broadcasting service within the meaning of the
3 *Broadcasting Services Act 1992*); or
4 (ii) distribution to the public as a video recording (whether
5 on video tapes, digital video disks or otherwise); and
6 (b) the film is:
7 (i) a *feature film or a film of a like nature; or
8 (ii) a mini-series of television drama; or
9 (iii) a television series that is not covered by
10 subparagraph (i) or (ii); and
11 (c) the film is not, or is not to a substantial extent:
12 (i) if the film is covered by subparagraph (b)(i) or (ii)—a
13 documentary; or
14 (ii) a film for exhibition as an advertising program or a
15 commercial; or
16 (iii) a film for exhibition as a discussion program, a quiz
17 program, a panel program, a variety program or a
18 program of a like nature; or
19 (iv) a film of a public event; or
20 (v) if the film is covered by subparagraph (b)(i) or (ii)—a
21 film forming part of a drama program series that is, or is
22 intended to be, of a continuing nature; or
23 (vi) a training film; or
24 (vii) a computer game (within the meaning of the
25 *Classification (Publications, Films and Computer*
26 *Games) Act 1995*).

27 *Television series*

- 28 (3) The conditions in this subsection are that:
29 (a) if the *film is a television series that is not covered by
30 subparagraph (2)(b)(i) or (ii), it is made up of 2 or more
31 episodes that:
32 (i) are produced wholly or principally for exhibition to the
33 public on television under a single title; and
34 (ii) contain a common theme or themes; and
35 (iii) contain dramatic elements that form a narrative
36 structure; and

Schedule 10 Streamlining concessions for Australian films and Australian film production

Part 1 Main amendments

- 1 (iv) are produced wholly or principally for exhibition
2 together, for a national market or national markets; and
- 3 Note: A documentary can be a television series.
- 4 (b) if the film is a television series that is not covered by
5 subparagraph (2)(b)(i) or (ii):
- 6 (i) for a television series that is predominantly a digital
7 animation or other animation—the *making of the
8 television series (other than a pilot episode, if any, or
9 activities mentioned in paragraph 376-125(3)(a)) takes
10 place within a period of not longer than 36 months; or
- 11 (ii) otherwise—all principal photography for the television
12 series (other than a pilot episode, if any) takes place
13 within a period of not longer than 12 months; and
- 14 (c) if the film is a television series that is not covered by
15 subparagraph (2)(b)(i) or (ii)—the amount worked out for the
16 film under subsection (6) is at least \$1 million.
- 17 (4) To avoid doubt, and without limiting subparagraph (3)(a)(iii), a
18 *film satisfies the requirement in that subparagraph if:
- 19 (a) the sole or dominant purpose of the film is to depict actual
20 events, people or situations; and
- 21 (b) the film depicts those events, people or situations in a
22 dramatic or entertaining way, with a heavy emphasis on
23 dramatic impact or entertainment value.

24 *Conditions relating to expenditure thresholds*

- 25 (5) The conditions in this subsection are that:
- 26 (a) the total of the company's *qualifying Australian production
27 expenditure on the *film (as determined by the *Arts Minister
28 under section 376-30) is at least \$15 million; and
- 29 (b) if the total of the company's qualifying Australian production
30 expenditure on the film is less than \$50 million:
- 31 (i) the total of the company's qualifying Australian
32 production expenditure on the film is at least 70% of the
33 total of all the company's *production expenditure on
34 the film; and
- 35 (ii) the company either carried out, or made the
36 *arrangements for the carrying out of, all the activities
37 that were necessary for the *making of the film; and

1 (c) if the total of the company's qualifying Australian production
2 expenditure on the film is at least \$50 million, the company
3 either carried out, or made the arrangements for the carrying
4 out of, all the activities in Australia that were necessary for
5 the making of the film.

6 Note: The operation of subparagraph (b)(ii) and paragraph (c) is affected by
7 paragraph 376-180(1)(d) (which deals with the situation where one
8 company takes over the making of a film from another company).

9 (6) For the purposes of paragraph (3)(c), the amount for a *film is
10 worked out by using the formula:

$$11 \frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

12 where:

13 *duration of film in hours* means the total length of the *film,
14 measured in hours.

15 *total QAPE* means the total of the company's *qualifying
16 Australian production expenditure on the *film (as determined by
17 the *Arts Minister under section 376-30).

18 **376-25 Company may nominate one individual whose remuneration** 19 **is to be disregarded for the location offset**

20 (1) In its application for the certificate under section 376-230, the
21 company may nominate one individual as an individual to whom
22 this section applies.

23 (2) If the company nominates an individual under subsection (1),
24 disregard the following for the purposes of this Division, to the
25 extent that it relates to the location offset:

- 26 (a) the remuneration and other benefits provided to the
27 individual for the individual's services in relation to the
28 *making of the *film;
29 (b) travel and other costs associated with the services the
30 individual provides in relation to the making of the film.

31 Note: This means that, for the purposes of the location offset, the
32 individual's remuneration and benefits, and associated costs, are
33 disregarded both in working out the total of the company's qualifying
34 Australian production expenditure on the film and in working out the
35 company's total production expenditure on the film.

1 **376-30 Minister to determine a company's qualifying Australian**
2 **production expenditure for the location offset**

- 3 (1) If a company applies to the *Arts Minister for the issue of a
4 certificate to the company for a *film under section 376-20
5 (certificate for the location offset), the Arts Minister must, as soon
6 as practicable after receiving the application, determine in writing
7 the total of the company's *qualifying Australian production
8 expenditure on the film for the purposes of the location offset.
- 9 (2) In making a determination under subsection (1), the *Arts Minister
10 must have regard to the matters in Subdivision 376-C.
- 11 (3) The *Arts Minister must give the company written notice of the
12 determination.
- 13 (4) A determination made under subsection (1) is not a legislative
14 instrument.

15 **Refundable tax offset for post, digital and visual effects**
16 **production for a film (PDV offset)**

17 **376-35 Film production company entitled to refundable tax offset**
18 **for post, digital and visual effects production for a film**
19 **(PDV offset)**

- 20 (1) A company is entitled to a *tax offset under this section (the *PDV*
21 *offset*) for an income year in respect of a *film if:
- 22 (a) the company's *qualifying Australian production expenditure
23 on the film, to the extent that it relates to *post, digital and
24 visual effects production for the film, ceased being incurred
25 in the income year; and
- 26 (b) the *Arts Minister has issued a certificate to the company for
27 the post, digital and visual effects production for the film
28 under section 376-45 (certificate for the PDV offset); and
- 29 (c) the company claims the offset in its *income tax return for
30 the income year; and
- 31 (d) the company:
- 32 (i) is an Australian resident; or
- 33 (ii) is a foreign resident but does have a *permanent
34 establishment in Australia and does have an *ABN;

1 when the company lodges the income tax return and when
2 the tax offset is due to be credited to the company.

3 The claim referred to in paragraph (c) is irrevocable.

4 Note: The PDV offset is a refundable tax offset: see subsection 67-25(2A).

5 (2) ***Post, digital and visual effects production*** for a *film means:

6 (a) the creation of audio or visual elements (other than principal
7 photography, pick ups or the creation of physical elements
8 such as sets, props or costumes) for the film; and

9 (b) the manipulation of audio or visual elements (other than pick
10 ups or physical elements such as sets, props or costumes) for
11 the film; and

12 (c) activities that are necessarily related to the activities
13 mentioned in paragraph (a) or (b).

14 Note: 3D animation, digital compositing and music composition and
15 recording are examples of post, digital and visual effects production.

16 (3) The company is not entitled to the PDV offset if:

17 (a) the company or someone else claims a deduction in relation
18 to a unit of industrial property that relates to copyright in the
19 *film under Division 10B of Part III of the *Income Tax*
20 *Assessment Act 1936*; or

21 (b) a final certificate for the film has been issued at any time
22 under Division 10BA of Part III of the *Income Tax*
23 *Assessment Act 1936* (whether or not the certificate is still in
24 force); or

25 (c) a certificate for the film has been issued at any time under
26 section 376-20 (certificate for the location offset) (whether or
27 not the certificate is still in force); or

28 (d) a certificate for the film has been issued at any time under
29 section 376-65 (certificate for the producer offset) (whether
30 or not the certificate is still in force).

31 **376-40 Amount of the PDV offset**

32 The amount of the PDV offset is 15% of the total of the company's
33 *qualifying Australian production expenditure (as determined by
34 the *Arts Minister under section 376-50) on a *film, to the extent
35 that it relates to *post, digital and visual effects production for the
36 film.

1 **376-45 Minister must issue certificate for a film for the PDV offset**

2 (1) The *Arts Minister must issue a certificate to a company for the
3 *post, digital and visual effects production for a *film in relation to
4 the PDV offset if the Minister is satisfied that the conditions in
5 subsections (2), (3) and (5) are met.

6 *Type of film*

7 (2) The conditions in this subsection are that:

8 (a) the *film was produced for:

9 (i) exhibition to the public in cinemas or by way of
10 television broadcasting (including broadcasting by way
11 of the delivery of a television program by a
12 broadcasting service within the meaning of the
13 *Broadcasting Services Act 1992*); or

14 (ii) distribution to the public as a video recording (whether
15 on video tapes, digital video disks or otherwise); and

16 (b) the film is:

17 (i) a *feature film or a film of a like nature; or

18 (ii) a mini-series of television drama; or

19 (iii) a television series that is not covered by
20 subparagraph (i) or (ii); and

21 (c) the film is not, or is not to a substantial extent:

22 (i) if the film is covered by subparagraph (b)(i) or (ii)—a
23 documentary; or

24 (ii) a film for exhibition as an advertising program or a
25 commercial; or

26 (iii) a film for exhibition as a discussion program, a quiz
27 program, a panel program, a variety program or a
28 program of a like nature; or

29 (iv) a film of a public event; or

30 (v) if the film is covered by subparagraph (b)(i) or (ii)—a
31 film forming part of a drama program series that is, or is
32 intended to be, of a continuing nature; or

33 (vi) a training film; or

34 (vii) a computer game (within the meaning of the
35 *Classification (Publications, Films and Computer
36 Games) Act 1995*).

1 *Television series*

- 2 (3) The condition in this subsection is that, if the *film is a television
3 series that is not covered by subparagraph (2)(b)(i) or (ii), it is
4 made up of 2 or more episodes that:
5 (a) are produced wholly or principally for exhibition to the
6 public on television under a single title; and
7 (b) contain a common theme or themes; and
8 (c) contain dramatic elements that form a narrative structure; and
9 (d) are produced wholly or principally for exhibition together,
10 for a national market or national markets.

11 Note: A documentary can be a television series.

- 12 (4) To avoid doubt, and without limiting paragraph (3)(c), a *film
13 satisfies the requirement in that paragraph if:
14 (a) the sole or dominant purpose of the film is to depict actual
15 events, people or situations; and
16 (b) the film depicts those events, people or situations in a
17 dramatic or entertaining way, with a heavy emphasis on
18 dramatic impact or entertainment value.

19 *Conditions relating to expenditure thresholds*

- 20 (5) The conditions of this subsection are that:
21 (a) the total of the company's *qualifying Australian production
22 expenditure on the *film (as determined by the *Arts Minister
23 under section 376-50), to the extent that it relates to *post,
24 digital and visual effects production for the film, is at least \$5
25 million; and
26 (b) the company either carried out, or made the arrangements for
27 the carrying out of, all the activities in Australia that were
28 necessary for the post, digital and visual effects production
29 for the film.

30 Note: The operation of paragraph (b) is affected by paragraph 376-180(1)(d)
31 (which deals with the situation where one company takes over the
32 making of a film from another company).

1 **376-50 Minister to determine a company's qualifying Australian**
2 **production expenditure for the PDV offset**

- 3 (1) If a company applies to the *Arts Minister for the issue of a
4 certificate to the company for the *post, digital and visual effects
5 production for a *film under section 376-45 (certificate for the
6 PDV offset), the Arts Minister must, as soon as practicable after
7 receiving the application, determine in writing the total of the
8 company's *qualifying Australian production expenditure, to the
9 extent that it relates to post, digital and visual effects production
10 for the film, for the purposes of the PDV offset.
- 11 (2) In making a determination under subsection (1), the *Arts Minister
12 must have regard to the matters in Subdivision 376-C.
- 13 (3) The *Arts Minister must give the company written notice of the
14 determination.
- 15 (4) A determination made under subsection (1) is not a legislative
16 instrument.

17 **Refundable tax offset for Australian expenditure in making an**
18 **Australian film (producer offset)**

19 **376-55 Film production company entitled to refundable tax offset**
20 **for Australian expenditure in making an Australian film**
21 **(producer offset)**

- 22 (1) A company is entitled to a *tax offset under this section (the
23 *producer offset*) for an income year in respect of a *film if:
24 (a) the film was *completed in the income year; and
25 (b) the *film authority has issued a certificate to the company
26 under section 376-65 (certificate for the producer offset) for
27 the film; and
28 (c) the company claims the offset in its *income tax return for
29 the income year; and
30 (d) the company:
31 (i) is an Australian resident; or
32 (ii) is a foreign resident but does have a *permanent
33 establishment in Australia and does have an *ABN;

1 when the company lodges the income tax return and when
2 the tax offset is due to be credited to the company.

3 The claim referred to in paragraph (c) is irrevocable.

4 Note: The producer offset is a refundable tax offset: see subsection
5 67-25(2A).

6 (2) A **film* is **completed**:

7 (a) for a film that is not a series or a season of a series—when it
8 is first in a state where it could reasonably be regarded as
9 ready to be distributed, broadcast or exhibited to the general
10 public; or

11 (b) for a series—at the earlier of:

12 (i) the time when the 65th episode is first in a state where it
13 could reasonably be regarded as ready to be distributed,
14 broadcast or exhibited to the general public; and

15 (ii) the time when the series is first in such a state; and

16 (c) for a season of a series—at the earlier of:

17 (i) the time when the 65th episode of the series is first in a
18 state where it could reasonably be regarded as ready to
19 be distributed, broadcast or exhibited to the general
20 public; and

21 (ii) the time when the season is first in such a state.

22 (3) **Film authority** means the Film Finance Corporation Australia
23 Limited (incorporated under the *Companies Act 1981* on 12 July
24 1988).

25 (4) The company is not entitled to the producer offset if:

26 (a) the company or someone else claims a deduction in relation
27 to a unit of industrial property that relates to copyright in the
28 **film* under Division 10B of Part III of the *Income Tax*
29 *Assessment Act 1936*; or

30 (b) a final certificate for the film has been issued at any time
31 under Division 10BA of Part III of the *Income Tax*
32 *Assessment Act 1936* (whether or not the certificate is still in
33 force); or

34 (c) a certificate for the film has been issued at any time under
35 section 376-20 (certificate for the location offset) (whether or
36 not the certificate is still in force); or

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- 1 (d) a certificate for the film has been issued at any time under
2 section 376-45 (certificate for the PDV offset) (whether or
3 not the certificate is still in force); or
- 4 (e) the company or someone else has deducted money paid for
5 *shares in a *film licensed investment company under
6 Subdivision 375-H and the film licensed investment company
7 has invested in the film; or
- 8 (f) production assistance (other than *development assistance)
9 for the film has been received by the company or anyone else
10 before 1 July 2007 from any of the following bodies:
- 11 (i) the Film Finance Corporation Australia Limited;
12 (ii) Film Australia Limited;
13 (iii) the Australian Film Commission;
14 (iv) the Australian Film, Television and Radio School.
- 15 (5) **Development assistance** for a *film means financial assistance
16 provided to assist with meeting the development costs for the film,
17 and includes assistance to the extent to which it is provided in
18 relation to any of the following:
- 19 (a) location surveys and other activities undertaken to assess
20 locations for possible use in the film;
21 (b) storyboarding for the film;
22 (c) scriptwriting for the film;
23 (d) research for the film;
24 (e) casting actors for the film;
25 (f) developing a budget for the film;
26 (g) developing a shooting schedule for the film.

27 **376-60 Amount of the producer offset**

- 28 The amount of the producer offset is:
- 29 (a) if the *film is a *feature film—40%; or
30 (b) if the film is not a feature film—20%;
- 31 of the total of the company's *qualifying Australian production
32 expenditure on the film (as determined by the *film authority under
33 section 376-75).

376-65 Film authority must issue certificate for an Australian film for the producer offset

- (1) The *film authority must issue a certificate to a company for a *film in relation to the producer offset if the film authority is satisfied that:
- (a) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the *making of the film; and
 - (b) the conditions in subsections (2) to (6) are met.

Note: The operation of paragraph (a) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

Type of film

- (2) The conditions in this subsection are that:
- (a) the *film:
 - (i) has a significant Australian content (see section 376-70); or
 - (ii) has been made under an *arrangement entered into between the Commonwealth or an authority of the Commonwealth and a foreign country or an authority of the foreign country; and
 - (b) the film was produced for:
 - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
 - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
 - (c) the film is:
 - (i) a *feature film; or
 - (ii) a single episode program; or
 - (iii) a series; or
 - (iv) a season of a series; or
 - (v) a short form animated drama that is not covered by subparagraph (i), (ii), (iii) or (iv); and
 - (d) the film is not, or is not to a substantial extent:

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- 1 (i) a film for exhibition as an advertising program or a
2 commercial; or
3 (ii) a film for exhibition as a discussion program, a quiz
4 program, a panel program, a variety program or a
5 program of a like nature; or
6 (iii) a film of a public event (other than a documentary); or
7 (iv) a training film; or
8 (v) a computer game (within the meaning of the
9 *Classification (Publications, Films and Computer*
10 *Games) Act 1995*); or
11 (vi) a news or current affairs program; or
12 (vii) a reality program (other than a documentary).

13 *Single episode programs*

- 14 (3) The conditions in this subsection are that, if the *film is a single
15 episode program, it:
16 (a) is of a like nature to a *feature film; and
17 (b) is produced for:
18 (i) exhibition to the public by way of television
19 broadcasting (including broadcasting by way of the
20 delivery of a television program by a broadcasting
21 service within the meaning of the *Broadcasting Services*
22 *Act 1992*); or
23 (ii) distribution to the public as a video recording (whether
24 on video tapes, digital video disks or otherwise); and
25 (c) if the program is a documentary—is of at least one half of a
26 commercial hour in duration; and
27 (d) if the program is not a documentary—is of at least one
28 commercial hour in duration.

29 *Short form animated drama*

- 30 (4) The conditions in this subsection are that, if the *film is a short
31 form animated drama, it:
32 (a) is a drama program comprising one or more episodes which
33 are produced wholly or principally for exhibition together,
34 for a national market or national markets under a single title;
35 and

- 1 (b) is predominantly made using cell, stop motion, digital or
 2 other animation; and
 3 (c) contains a common theme or themes; and
 4 (d) is of at least one quarter of a commercial hour in duration.

5 *Series and seasons of series*

- 6 (5) The conditions in this subsection are that:
 7 (a) if the application for the certificate is for a *film that is a
 8 series and not for a film that is a season of that series:
 9 (i) the series is made up of at least 2 episodes; and
 10 (ii) each episode of the series is at least one half of a
 11 commercial hour in duration; and
 12 (iii) the series has a new creative concept (see
 13 section 376-70); and
 14 (b) if the application for the certificate is for a film that is a
 15 season of a series:
 16 (i) the season is made up of at least 2 episodes; and
 17 (ii) each episode of the season is at least one half of a
 18 commercial hour in duration; and
 19 (iii) the series has a new creative concept (see
 20 section 376-70).

21 *Expenditure thresholds*

- 22 (6) The conditions in this subsection are as set out in the table.
 23

Expenditure thresholds

Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
1	A *feature film	\$1 million	not applicable
2	A single episode program other than a documentary	\$1 million	\$800,000

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Expenditure thresholds			
Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
3	A single episode program that is a documentary	not applicable	\$250,000
4	A short form animated drama that is not a *feature film, a single episode program, a series or a season of a series	\$250,000	\$1,000,000
5	A *film where the application for the certificate is for a series and not for a season of that series, and the series is not a documentary	\$1 million	\$500,000
6	A *film where the application for the certificate is for a series and not for a season of that series, and the series is a documentary	not applicable	\$250,000
7	A * film where the application for the certificate is for a season of a series, and the series is not a documentary	\$1 million	\$500,000
8	A *film where the application for the certificate is for a	not applicable	\$250,000

Expenditure thresholds

Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
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season of a series, and
the series is a
documentary

(7) The amount worked out for a *film under this subsection is the amount worked out using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

duration of film in hours means the total length of the *film, measured in hours.

total QAPE means the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *film authority under section 376-75).

376-70 Determination of content of film

- (1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following:
- (a) the subject matter of the film;
 - (b) the place where the film was made;
 - (c) the nationalities and places of residence of the persons who took part in the *making of the film;
 - (d) the details of the *production expenditure incurred in respect of the film;
 - (e) any other matters that the film authority considers to be relevant.

- 1 (2) In determining for the purposes of section 376-65 (certificate for
2 the producer offset) whether a *film that is a series has a new
3 creative concept, the *film authority must have regard to the
4 following:
5 (a) the title of the series;
6 (b) whether the series has substantially different characters,
7 settings, production locations and individuals involved in the
8 *making of the series than any other series;
9 (c) any other matters that the film authority considers to be
10 relevant.

11 **376-75 Film authority to determine a company's qualifying**
12 **Australian production expenditure for the producer offset**

- 13 (1) If a company applies to the *film authority for the issue of a
14 certificate to the company for a *film under section 376-65
15 (certificate for the producer offset), the film authority must, as soon
16 as practicable after receiving the application, determine in writing
17 the total of the company's *qualifying Australian production
18 expenditure on the film for the purposes of the producer offset.
19 (2) In making a determination under subsection (1), the *film authority
20 must have regard to the matters in Subdivision 376-C.
21 (3) The *film authority must give the company written notice of the
22 determination.
23 (4) A determination made under subsection (1) is not a legislative
24 instrument.

25 **Subdivision 376-C—Production expenditure and qualifying**
26 **Australian production expenditure**

27 **Table of sections**

28 **Production expenditure—common rules**

29	376-125	Production expenditure—general test
30	376-130	Production expenditure—special qualifying Australian production 31 expenditure
32	376-135	Production expenditure—specific exclusions

1 Production expenditure—special rules for the location offset

2 376-140 Production expenditure—special rules for the location offset

3 Qualifying Australian production expenditure—common rules

4 376-145 Qualifying Australian production expenditure—general test

5 376-150 Qualifying Australian production expenditure—specific inclusions

6 376-155 Qualifying Australian production expenditure—specific exclusions

7 376-160 Qualifying Australian production expenditure—treatment of services
8 embodied in goods

**9 Qualifying Australian production expenditure—special rules for the
10 location offset and the PDV offset**

11 376-165 Qualifying Australian production expenditure—special rules for the
12 location offset and the PDV offset

**13 Qualifying Australian production expenditure—special rules for the
14 producer offset**

15 376-170 Qualifying Australian production expenditure—special rules for the
16 producer offset

17 Expenditure generally—common rules

18 376-175 Expenditure to be worked out on an arm's length basis

19 376-180 Expenditure incurred by prior production companies

20 Production expenditure—common rules**21 376-125 Production expenditure—general test**

22 (1) A company's *production expenditure* on a *film is expenditure
23 that the company incurs to the extent to which it:

24 (a) is incurred in, or in relation to, the *making of the film; or

25 (b) is reasonably attributable to:

26 (i) the use of equipment or other facilities for; or

27 (ii) activities undertaken in;

28 the making of the film.

29 (2) The *making* of a *film means the doing of the things necessary for
30 the production of the first copy of the film.

31 (3) The *making* of a *film includes:

32 (a) pre-production activities in relation to the film; and

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- 1 (b) post-production activities in relation to the film; and
2 (c) any other activities undertaken to bring the film up to the
3 state where it could reasonably be regarded as ready to be
4 distributed, broadcast or exhibited to the general public.
- 5 (4) The **making** of a *film does not include:
6 (a) developing the proposal for the *making of the film; or
7 (b) arranging or obtaining finance for the film; or
8 (c) distributing the film; or
9 (d) promoting the film.
- 10 (5) Without limiting subsection (1), a company's **production**
11 **expenditure** on a *film:
12 (a) may be expenditure that is incurred in the income year for
13 which the *tax offset is sought or in an earlier income year;
14 and
15 (b) may be expenditure of either a capital or a revenue nature;
16 and
17 (c) may be expenditure that gives rise to a deduction.
18 Paragraph (c) has effect subject to item 10 of the table in
19 section 376-135 (which deals with capital allowances).
- 20 (6) If:
21 (a) a company:
22 (i) *holds a *depreciating asset; and
23 (ii) uses the asset, while held, in the *making of a *film; and
24 (b) deductions in relation to the asset are available under
25 Division 40 (which deals with capital allowances);
26 the **production expenditure** of the company on the film includes an
27 amount equal to the decline in the value of the asset to the extent to
28 which that decline is reasonably attributable to the use of the asset
29 in the making of the film (the **film proportion**). The decline in
30 value of the asset is to be worked out using Division 40.
- 31 Note: Under item 10 of the table in section 376-135, expenditure that sets or
32 increases the cost of the asset does not count as production
33 expenditure.
- 34 (7) If a *balancing adjustment event occurs for the asset before the film
35 is *completed:
36 (a) if the asset's *termination value is more than its *adjustable
37 value just before the event occurred—the **production**
-

- 1 *expenditure* of the company on the film is reduced by the
 2 film proportion of the difference; or
 3 (b) if the asset's termination value is less than its adjustable
 4 value just before the event occurred—the *production*
 5 *expenditure* of the company on the film includes the film
 6 proportion of the difference.

7 **376-130 Production expenditure—special qualifying Australian**
 8 **production expenditure**

9 Expenditure of a company is also *production expenditure* of the
 10 company on a *film if it is *qualifying Australian production
 11 expenditure of the company on the film under section 376-150 or
 12 376-165.

13 Note: This means that the special qualifying Australian production
 14 expenditure in sections 376-150 and 376-165 is taken into account
 15 both in working out the total amount of the company's qualifying
 16 Australian production expenditure and in working out the total amount
 17 of all the company's production expenditure on the film. The total
 18 amount of all production expenditure is relevant to a company's
 19 eligibility for the location offset: see the test in paragraph
 20 376-20(5)(b).

21 **376-135 Production expenditure—specific exclusions**

22 Despite sections 376-125 and 376-130, the following expenditure
 23 of a company is not *production expenditure* of the company on a
 24 *film, except to the extent, if any, as mentioned in column 3 of the
 25 table:
 26

Expenditure that does not count as production expenditure on a film

Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
------	---	--

1	<i>Financing expenditure</i> expenditure incurred by way of, or in relation to, the financing of the *film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)	
---	---	--

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Expenditure that does not count as production expenditure on a film		
Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
2	<i>Development expenditure</i> *development expenditure on the *film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1)
3	<i>Copyright acquisition expenditure</i> expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
4	<i>General business overheads</i> expenditure incurred to meet the general business overheads of the company that: (a) are not incurred in, or in relation to, the *making of the *film; and (b) are not reasonably attributable to: (i) the use of equipment or other facilities for; or (ii) activities undertaken in; the making of the film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-165(1) or item 1 of the table in subsection 376-170(2)
5	<i>Publicity and promotion expenditure</i> expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)	*qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1)
6	<i>Deferments</i> amounts that are payable only out of the receipts, earnings or profits from the *film	

Expenditure that does not count as production expenditure on a film		
Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
7	<i>Profit participation</i> amounts that: (a) depend on the receipts, earnings or profits from the *film; or (b) are otherwise dependent on the commercial performance of the film	
8	<i>Residuals</i> amounts payable in satisfaction of the residual rights of a person who is a member of the cast	paid out by the company before the *film is *completed
9	<i>Advances</i> amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	
10	<i>Acquisition of depreciating asset</i> expenditure to the extent to which it sets, or increases, the *cost of a *depreciating asset This item has effect subject to subsections 376-125(6) and (7).	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
11	<i>Regulations</i> expenditure specified in regulations	

1 **Production expenditure—special rules for the location offset**

2 **376-140 Production expenditure—special rules for the location**
3 **offset**

4 Despite sections 376-125 and 376-130, the expenditure of a
5 company is not *production expenditure* of the company on a *film
6 in relation to the location offset if:

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-
- 1 (a) the film is a television series that is not a *feature film or a
2 mini-series of television drama; and
3 (b) the expenditure is reasonably attributable to the production of
4 a pilot episode to the television series; and
5 (c) the expenditure, apart from this subsection, would be
6 production expenditure that was not *qualifying Australian
7 production expenditure.

8 Note: The total amount of all production expenditure is relevant to the test in
9 paragraph 376-20(5)(b).

10 **Qualifying Australian production expenditure—common rules**

11 **376-145 Qualifying Australian production expenditure—general test**

12 A company's *qualifying Australian production expenditure* on a
13 *film is the company's *production expenditure on the film to the
14 extent to which it is incurred for, or is reasonably attributable to:

- 15 (a) goods and services provided in Australia; or
16 (b) the use of land located in Australia; or
17 (c) the use of goods that are located in Australia at the time they
18 are used in the *making of the film.

19 **376-150 Qualifying Australian production expenditure—specific
20 inclusions**

- 21 (1) The following expenditure of a company is also *qualifying
22 Australian production expenditure* of the company on a *film:
23

Special Australian expenditure

Item Type of expenditure

- 1 *Australian development expenditure*
*development expenditure on the *film to the extent to which it is incurred
for, or is reasonably attributable to:
(a) goods and services provided in Australia; or
(b) the use of land located in Australia; or
(c) the use of goods that are located in Australia at the time they are used
in the *making of the film
[see subsection (2)]
-

- 2 *Expenditure incurred in acquiring Australian copyright*
-

Special Australian expenditure**Item Type of expenditure**

expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film if the copyright is held by an individual or a company that is an Australian resident

3 *Expenditure incurred in producing Australian copyrighted promotional material*

expenditure incurred in producing material for use in publicising or otherwise promoting the *film if the copyright in the material is held by an individual or a company that is an Australian resident

4 *Expenditure incurred in producing additional content*

expenditure incurred in producing audio or visual content for the *film otherwise than for use in the first copy of the film, to the extent that the expenditure is incurred in Australia prior to the *completion of the film

5 *Regulations*

expenditure prescribed by the regulations

- (2) Legal costs are covered by item 1 of the table in subsection (1) only if they relate to:
- (a) writers' contracts; or
 - (b) chain of title and other copyright issues.

376-155 Qualifying Australian production expenditure—specific exclusions

Despite sections 376-145, 376-150, 376-165 and 376-170, the following expenditure of a company is not *qualifying Australian production expenditure* of a company on a *film:

- (a) expenditure that is incurred when:
 - (i) the company is a foreign resident; and
 - (ii) the company does not have both a *permanent establishment in Australia and an *ABN;
- (b) expenditure in relation to:
 - (i) remuneration and other benefits provided to an individual for the individual's services in relation to the *making of the film; or
 - (ii) travel and other costs associated with the services an individual provides in relation to the making of the film; if the individual:

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-
- 1 (iii) is not a member of the cast; and
2 (iv) enters Australia to work on the film for less than 2
3 consecutive calendar weeks;
4 (c) expenditure prescribed by the regulations.

5 **376-160 Qualifying Australian production expenditure—treatment**
6 **of services embodied in goods**

- 7 If:
- 8 (a) a company incurs expenditure for the provision of what is
9 essentially a service; and
10 (b) the results of the service are provided to the company by
11 being embodied in goods that are delivered to the company;
12 and
13 (c) the service that is embodied in the goods was predominantly
14 performed outside Australia;
15 the service is not provided to the company in Australia merely
16 because the goods are delivered to the company in Australia.

17 Note: Paragraph (b)—a document, for example, might set out legal or other
18 professional advice or a computer disk might contain a program that
19 has been made or data that has been compiled.

20 **Qualifying Australian production expenditure—special rules**
21 **for the location offset and the PDV offset**

22 **376-165 Qualifying Australian production expenditure—special**
23 **rules for the location offset and the PDV offset**

- 24 (1) For the purposes of the location offset and the PDV offset, the
25 following expenditure of a company is also *qualifying Australian*
26 *production expenditure* of the company on a *film:

Special Australian expenditure—location offset and PDV offset

Item Type of expenditure

- 1 *Australian business overheads*
general business overheads of the company that:
(a) are not incurred in, or in relation to, the *making of the *film; and
(b) are not reasonably attributable to:
(i) the use of equipment or other facilities for; or
-

Special Australian expenditure—location offset and PDV offset**Item Type of expenditure**

- (ii) activities undertaken in;
the making of the film;
to the extent to which they:
- (c) are incurred for, or are reasonably attributable to:
- (i) goods and services provided in Australia; or
(ii) the use of land located in Australia; or
(iii) the use of goods that are located in Australia at the time they
are used in the making of the film; and
- (d) represent a reasonable apportionment of those overheads between the
making of the film and the other activities undertaken by the company
- This item has effect subject to subsection (2).

2 *Travel to Australia*

expenditure of the company in relation to an individual's travel to
Australia to undertake activities in Australia in relation to the *making of
the *film, if the remuneration paid to the individual for those activities is
*qualifying Australian production expenditure of the company

3 *Expenditure incurred in freighting goods to Australia*

expenditure incurred in freighting goods to Australia, to the extent that the
goods will be used in the *making of the *film

- 1 (2) General business overheads of the company are covered by item 1
2 of the table in subsection (1) only to the extent to which they do
3 not exceed the lesser of:
- 4 (a) 2% of the total of all the company's *production expenditure
5 on the *film; and
6 (b) \$500,000.

**Qualifying Australian production expenditure—special rules
for the producer offset****376-170 Qualifying Australian production expenditure—special
rules for the producer offset**

Expenditure that is qualifying Australian production expenditure

- (1) For the purposes of subsections 376-65(6) and (7), expenditure on
a *film incurred in a foreign country is ***qualifying Australian
production expenditure*** of a company on the film if:

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- 1 (a) the expenditure is incurred by the company claiming the
2 offset, or by another entity that is involved in the *making of
3 the film; and
4 (b) the expenditure would be qualifying Australian production
5 expenditure if it had been incurred for, or reasonably
6 attributable to:
7 (i) goods and services provided in Australia; or
8 (ii) the use of land located in Australia; or
9 (iii) the use of goods that are located in Australia at the time
10 they are used in the *making of the film; and
11 (c) the film is made under an *arrangement entered into between
12 the Commonwealth or an authority of the Commonwealth
13 and the foreign country or an authority of the foreign country.

14 Note: This means that such expenditure is taken into account for the
15 purposes of determining whether to issue a certificate for the producer
16 offset to the company under section 376-65. It is not taken into
17 account in working out the amount of the producer offset to which the
18 company is entitled.

- 19 (2) For the purposes of the producer offset, the following expenditure
20 of a company is also *qualifying Australian production*
21 *expenditure* of the company on a *film:

22

Special Australian expenditure—producer offset

Item Type of expenditure

- 1 *Australian business overheads*
general business overheads of the company that:
(a) are not incurred in, or in relation to, the *making of the *film; and
(b) are not reasonably attributable to:
(i) the use of equipment or other facilities for; or
(ii) activities undertaken in;
the making of the film;
to the extent to which they:
(c) are incurred for, or are reasonably attributable to:
(i) goods and services provided in Australia; or
(ii) the use of land located in Australia; or
(iii) the use of goods that are located in Australia at the time they
are used in the making of the film; and
(d) represent a reasonable apportionment of those overheads between the
making of the film and the other activities undertaken by the company
-

Special Australian expenditure—producer offset**Item Type of expenditure**

This item has effect subject to subsection (3).

2 *Travel to Australia and other countries*

expenditure of the company in relation to an individual's travel:

- (a) to Australia, to undertake activities in relation to the *making of the *film; and
- (b) to or within any other country, to undertake activities in relation to the making of the film, if the remuneration paid to the individual for those activities would be *qualifying Australian production expenditure of the company under item 4 of this table.

3 *Expenditure incurred in freighting goods within and between countries*

expenditure incurred in freighting goods within and between countries, to the extent that the goods will be used in the *making of the *film.

4 *Expenditure incurred in other countries*

expenditure incurred outside Australia:

- (a) for the remuneration of an Australian resident, or the purchase of goods or services from companies or *permanent establishments that have an *ABN; and
- (b) during the period in which principal photography for the film takes place outside Australia

if the subject matter of the film reasonably requires the location in which the expenditure is incurred to be used for principal photography.

(3) General business overheads of the company are covered by item 1 of the table in subsection (2) only to the extent to which they do not exceed the lesser of:

- (a) 5% of the total of all the company's *total film expenditure on the *film; and
- (b) \$500,000.

Expenditure that is not qualifying Australian production expenditure

(4) For the purposes of the producer offset, the following expenditure of a company is not ***qualifying Australian production expenditure*** of a company on a *film:

- (a) expenditure on the film that is paid for with *development assistance received from any of the following bodies:

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- 1 (i) the Film Finance Corporation Australia Limited;
2 (ii) Film Australia Limited;
3 (iii) the Australian Film Commission;
4 (iv) the Australian Film, Television and Radio School;
5 unless the amount or value of the assistance has been repaid;
6 (b) the following expenditure:
7 (i) *development expenditure on the film;
8 (ii) remuneration provided to the principal director,
9 producers and principal cast associated with the film;
10 to the extent that such expenditure comprises greater than
11 20% of the company's *total film expenditure on the film;
12 (c) for a series or a season of a series—expenditure on an
13 episode beyond the 65th episode of the series.
- 14 (5) In applying paragraph (4)(c), episodes completed before 1 July
15 2007 count towards the limit in that paragraph.
- 16 (6) **Total film expenditure** on a film means:
17 (a) expenditure covered by sections 376-125, 376-130, 376-150
18 and 376-170; and
19 (b) expenditure mentioned in column 2 of the table in
20 section 376-135, to the extent that it is not covered by
21 paragraph (a).

22 **Expenditure generally—common rules**

23 **376-175 Expenditure to be worked out on an arm's length basis**

- 24 For the purposes of this Division, if any 2 or more parties to:
25 (a) an *arrangement under which a company incurs expenditure
26 in relation to a *film; or
27 (b) any act or transaction directly or indirectly connected with
28 expenditure that a company incurs in relation to a film;
29 do not deal with each other at *arm's length in relation to the
30 arrangement, or in relation to the act or transaction, the expenditure
31 is taken to be only so much (if any) of the expenditure as would
32 have been incurred if they had been dealing with each other at
33 arm's length in relation to the arrangement, or in relation to the act
34 or transaction.

376-180 Expenditure incurred by prior production companies

- 1
- 2 (1) For the purposes of this Division, if a company (the *incoming*
- 3 *company*) takes over the *making of a *film from another company
- 4 (the *outgoing company*):
- 5 (a) expenditure incurred in relation to the film by the outgoing
- 6 company is taken to have been incurred in relation to the film
- 7 by the incoming company; and
- 8 (b) for the purposes of determining the extent to which that
- 9 expenditure is *qualifying Australian production expenditure
- 10 of the incoming company, the incoming company is taken:
- 11 (i) to have been an Australian resident at any time when the
- 12 outgoing company was an Australian resident; and
- 13 (ii) to have had a *permanent establishment in Australia at
- 14 any time when the outgoing company had a permanent
- 15 establishment in Australia; and
- 16 (iii) to have had an *ABN at any time when the outgoing
- 17 company had an ABN; and
- 18 (c) expenditure that the incoming company incurs in order to be
- 19 able to take over the making of the film is to be disregarded
- 20 for the purposes of this Division; and
- 21 (d) any activities carried out, and arrangements made, by the
- 22 outgoing company in relation to the film are taken, for the
- 23 purposes of subparagraph 376-20(5)(b)(ii) and paragraphs
- 24 376-20(5)(c), 376-45(5)(b) and 376-65(1)(a), to have been
- 25 carried out or made by the incoming company in relation to
- 26 the film.
- 27 (2) For the purposes of subsection (1):
- 28 (a) expenditure incurred on the *film by the outgoing company
- 29 includes expenditure that the outgoing company is itself
- 30 taken to have incurred on the film because of the operation of
- 31 subsection (1); and
- 32 (b) the outgoing company is taken:
- 33 (i) to have been an Australian resident at any time when the
- 34 outgoing company is taken to have been an Australian
- 35 resident because of the operation of subsection (1); and
- 36 (ii) to have had a *permanent establishment in Australia at
- 37 any time when the outgoing company is taken to have
- 38 had a permanent establishment in Australia because of
- 39 the operation of subsection (1); and

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- 1 (iii) to have had an *ABN at any time when the outgoing
2 company is taken to have had an ABN because of the
3 operation of subsection (1); and
4 (c) activities carried out by the outgoing company in relation to
5 the film include activities that the outgoing company is taken
6 to have carried out in relation to the film because of the
7 operation of subsection (1); and
8 (d) arrangements made by the outgoing company for the carrying
9 out of activities in relation to the film include arrangements
10 that the outgoing company is taken to have made because of
11 the operation of subsection (1).
- 12 Example: If Uncle Carty Ltd starts out making a film and then Mr Grouble Ltd
13 takes over the making of the film, Mr Grouble Ltd is taken to have
14 incurred the expenditure that Uncle Carty Ltd incurred on the film. If
15 Lousie Ltd subsequently takes over the making of the film from Mr
16 Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that
17 Mr Grouble Ltd incurred on the film (including the expenditure of
18 Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

19 **Subdivision 376-D—Certificates for films and other matters**

20 **Table of sections**

21	376-230	Production company may apply for certificate
22	376-235	Notice of refusal to issue certificate
23	376-240	Issue of certificate
24	376-245	Revocation of certificate
25	376-250	Notice of decision or determination
26	376-255	Review of decisions by the Administrative Appeals Tribunal
27	376-260	Minister may make rules about the location offset and the PDV offset
28	376-265	Film authority may make rules about the producer offset
29	376-270	Amendment of assessments

30 **376-230 Production company may apply for certificate**

31 *Application for location offset certificate*

- 32 (1) A company may apply to the *Arts Minister for the issue of a
33 certificate to the company for a *film under section 376-20
34 (certificate for the location offset):
35 (a) if the total of the company's *qualifying Australian
36 production expenditure on the film (as determined by the
37 *Arts Minister under section 376-30) is less than \$50
-

-
- 1 million—when all of the company’s *production expenditure
2 has been incurred; and
- 3 (b) if the total of the company’s qualifying Australian production
4 expenditure on the film (as determined by the *Arts Minister
5 under section 376-30) is at least \$50 million—when all of the
6 company’s qualifying Australian production expenditure has
7 been incurred.

8 *Application for PDV offset certificate*

- 9 (2) Once all of a company’s *qualifying Australian production
10 expenditure on a *film, to the extent that it relates to *post, digital
11 and visual effects production for the film, has been incurred, the
12 company may apply to the *Arts Minister for the issue of a
13 certificate to the company for the film under section 376-45
14 (certificate for the PDV offset).

15 *Application for producer offset certificate*

- 16 (3) Once a *film is *completed, a company may apply to the *film
17 authority for the issue of a certificate to the company for the film
18 under section 376-65 (certificate for the producer offset).

19 *Form of application*

- 20 (4) An application under subsection (1) or (2) must be made in
21 accordance with the rules determined by the *Arts Minister under
22 section 376-260 so far as they relate to the requirements for
23 applications.
- 24 (5) An application under subsection (3) must be made in accordance
25 with the rules determined by the *film authority under
26 section 376-265 so far as they relate to the requirements for
27 applications.

28 **376-235 Notice of refusal to issue certificate**

- 29 (1) If the *Arts Minister decides not to issue a certificate under
30 section 376-20 (certificate for the location offset) or 376-45
31 (certificate for the PDV offset) for a *film, the Minister must give
32 the applicant written notice of the decision (including reasons for
33 the decision).

- 1 (2) If the *film authority decides not to issue a certificate under
2 section 376-65 (certificate for the producer offset) for a *film, the
3 authority must give the applicant written notice of the decision
4 (including reasons for the decision).

5 **376-240 Issue of certificate**

- 6 (1) A certificate issued to a company under section 376-20 (certificate
7 for the location offset), 376-45 (certificate for the PDV offset) or
8 376-65 (certificate for the producer offset) must:
9 (a) be in writing; and
10 (b) specify the company's *ABN; and
11 (c) specify the date of issue of the certificate; and
12 (d) if the certificate is issued under section 376-20—specify the
13 total of the company's *qualifying Australian production
14 expenditure on the *film, as determined by the *Arts Minister
15 under section 376-30; and
16 (e) if the certificate is issued under section 376-45—specify the
17 total of the company's qualifying Australian production
18 expenditure on the film, to the extent that it relates to *post,
19 digital and visual effects production for the film, as
20 determined by the Arts Minister under section 376-50; and
21 (f) if the certificate is issued under section 376-65—specify the
22 total of the company's qualifying Australian production
23 expenditure on the film, as determined by the *film authority
24 under section 376-75.
- 25 (2) If the certificate is issued under section 376-20 (certificate for the
26 location offset) or 376-45 (certificate for the PDV offset), the *Arts
27 Minister must give the Commissioner notice of the issue of a
28 certificate for a *film within 30 days after issuing the certificate.
- 29 (3) The notice under subsection (2) must specify:
30 (a) the company's name; and
31 (b) the company's address; and
32 (c) the total of the company's *qualifying Australian production
33 expenditure on the *film, as determined by the *Arts Minister
34 under section 376-30 or 376-50, as the case may be; and
35 (d) other matters agreed to between the *Arts Minister and the
36 Commissioner.
37 The notice must be accompanied by a copy of the certificate.
-

-
- 1 (4) If the certificate is issued under section 376-65 (certificate for the
2 producer offset), the *film authority must give the Commissioner
3 notice of the issue of a certificate for a *film within 30 days after
4 issuing the certificate.
- 5 (5) The notice under subsection (4) must specify:
- 6 (a) the company's name; and
7 (b) the company's address; and
8 (c) the total of the company's *qualifying Australian production
9 expenditure on the *film, as determined by the *film authority
10 under section 376-75; and
11 (d) other matters agreed to between the film authority and the
12 Commissioner.
- 13 The notice must be accompanied by a copy of the certificate.

14 **376-245 Revocation of certificate**

- 15 (1) The *Arts Minister may revoke a certificate issued to a company
16 for a *film under section 376-20 (certificate for the location offset)
17 or 376-45 (certificate for the PDV offset) if:
- 18 (a) the Minister is satisfied that the issue of the certificate was
19 obtained by fraud or serious misrepresentation; or
20 (b) the company does not provide a copy of the film to the
21 Minister within 30 days of when the film is *completed.
- 22 (2) If the *Arts Minister revokes a certificate under subsection (1), the
23 Minister must give the company to whom the certificate was issued
24 written notice of the revocation (including reasons for the decision
25 to revoke the certificate).
- 26 (3) The *film authority may revoke a certificate issued to a company
27 for a *film under section 376-65 (certificate for the producer offset)
28 if the authority is satisfied that the issue of the certificate was
29 obtained by fraud or serious misrepresentation.
- 30 (4) If the *film authority revokes a certificate under subsection (3), the
31 authority must give the company to whom the certificate was
32 issued written notice of the revocation (including reasons for the
33 decision to revoke the certificate).
- 34 (5) If a certificate is revoked under subsection (1) or (3), it is taken, for
35 the purposes of this Division, never to have been issued.

376-255 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:

- (a) a decision made by the *Arts Minister to refuse an application for a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); or
- (b) a decision made by the Arts Minister under section 376-245 to revoke a certificate; or
- (c) a decision made by the *film authority to refuse an application for a certificate under section 376-65 (certificate for the producer offset); or
- (d) a decision made by the film authority under section 376-245 to revoke a certificate; or
- (e) a determination by the Arts Minister in relation to the total of a company's *qualifying Australian production expenditure under section 376-30 or 376-50; or
- (f) a determination by the film authority in relation to the total of a company's *qualifying Australian production expenditure under section 376-75.

376-260 Minister may make rules about the location offset and the PDV offset

Rules establishing the Film Certification Advisory Board

- (1) The *Arts Minister may, by legislative instrument, make rules:
 - (a) establishing a Film Certification Advisory Board to:
 - (i) consider applications under subsection 376-230(1) (application for a certificate for the location offset) or (2) (application for a certificate for the PDV offset) and advise the Minister on whether to issue certificates under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); and
 - (ii) perform such other functions in relation to the operation of this Division as are specified in the rules; and
 - (b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and
 - (c) specifying procedures to be followed by the Board in performing its functions.

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1 *Rules providing for provisional certificates in relation to location*
2 *offset and the PDV offset*

- 3 (2) The *Arts Minister may, by legislative instrument, make rules
4 providing for the issue of provisional certificates in relation to the
5 location offset or the PDV offset.

6 *Rules about applications for certificates in relation to the location*
7 *offset and the PDV offset*

- 8 (3) The *Arts Minister may, by legislative instrument, make rules
9 specifying how applications for certificates (including provisional
10 certificates) in relation to the location offset or the PDV offset are
11 to be made, including:
12 (a) the form in which applications are to be made; and
13 (b) the information to be provided in applications; and
14 (c) methods for verifying such information; and
15 (d) procedures for providing, at the Minister's request, additional
16 information in support of an application.
- 17 (4) Rules under paragraph (3)(c) can include rules requiring reports by
18 auditors or independent line producers.

19 **376-265 Film authority may make rules about the producer offset**

20 *Rules providing for provisional certificates in relation to the*
21 *producer offset*

- 22 (1) The *film authority may, by legislative instrument, make rules
23 providing for the issue of provisional certificates in relation to the
24 producer offset.

25 *Rules about applications for certificates in relation to the producer*
26 *offset*

- 27 (2) The *film authority may, by legislative instrument, make rules
28 specifying how applications for certificates (including provisional
29 certificates) in relation to the producer offset are to be made,
30 including:
31 (a) the form in which applications are to be made; and
32 (b) the information to be provided in applications; and
33 (c) methods for verifying such information; and
-

1 (d) procedures for providing, at the authority's request,
2 additional information in support of an application.

3 (3) Rules under paragraph (2)(c) can include rules requiring reports by
4 auditors or independent line producers.

5 **376-270 Amendment of assessments**

6 Section 170 of the *Income Tax Assessment Act 1936* does not
7 prevent the amendment of an assessment for the purposes of giving
8 effect to this Division for an income year if:

- 9 (a) a certificate issued to a company for a *film is revoked under
10 section 376-245 after the time the company lodged its
11 *income tax return for an income year; and
12 (b) the amendment is made at any time during the period of 4
13 years starting immediately after the revocation of the
14 certificate.

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

1

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

3 ***Income Tax Assessment Act 1936***

4 **2 Paragraph 124L(1A)(b) (note)**

5 Repeal the note, substitute:

6 ; and (c) an application for a certificate of the kind referred to in the
7 definition of ***Australian film*** in subsection 124K(1) in
8 respect of the film is made before the day on which the *Tax*
9 *Laws Amendment (2007 Measures No. 5) Act 2007* receives
10 the Royal Assent; and

11 (d) the owner claims a deduction in respect of the film under this
12 Division in relation to the 2008-09 year of income or an
13 earlier year of income.

14 Note 1: For other kinds of intellectual property, see Division 40 of the *Income*
15 *Tax Assessment Act 1997*.

16 Note 2: Paragraph (d) means that, if a taxpayer claims a deduction in respect
17 of a film under this Division in relation to the 2008-09 year of income,
18 the taxpayer can claim a deduction in respect of the film in relation to
19 the 2009-10 year of income as well.

20 **3 After subsection 124ZAB(2)**

21 Insert:

22 (2A) An application under subsection (1) must be made before the day
23 on which the *Tax Laws Amendment (2007 Measures No. 5) Act*
24 *2007* receives the Royal Assent.

25 **4 Subsection 124ZAB(6A) (note)**

26 Omit “the tax offset”, substitute “a tax offset”.

27 **5 After subsection 124ZAC(1)**

28 Insert:

29 (1A) The applicant cannot apply for a certificate in respect of a film
30 under subsection (1) unless a certificate has been issued to the
31 applicant in respect of the film under section 124ZAB.

32 **6 After subsection 124ZAF(1)**

1 Insert:

2 (1A) A deduction under subsection (1) is not allowable in relation to the
3 2009-10 year of income or a later year of income.

4 ***Income Tax Assessment Act 1997***

5 **7 Subsection 36-17(5) (example)**

6 Omit “subject to the refundable tax offset rules in Division 67”,
7 substitute “stated in Division 67 to be subject to the refundable tax
8 offset rules”.

9 **8 Subsection 36-55(1) (note)**

10 After “Division 67 sets out”, insert “which tax offsets are subject to”.

11 **9 Subsection 36-55(1) (example)**

12 Omit “subject to the refundable tax offset rules in Division 67”,
13 substitute “stated in Division 67 to be subject to the refundable tax
14 offset rules”.

15 **10 At the end of section 40-45**

16 Add:

17 (6) This Division applies to a *depreciating asset that is copyright in a
18 *film where a company is entitled to a *tax offset under
19 section 376-55 in respect of the film as if the asset’s *cost were
20 reduced by the amount of that offset.

21 **11 Subsection 63-10(1) (table item 40, column headed “Tax 22 offset”)**

23 Omit “in Division 67”, substitute “(see Division 67)”.

24 **12 Section 67-10**

25 Repeal the section, substitute:

26 **67-10 What this Division is about**

27

If your total tax offsets exceed your basic income tax liability, and
28 some of those offsets are subject to the refundable tax offset rules,

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you may get a refund instead of paying income tax (see section 63-10). This Division tells you which tax offsets are subject to the refundable tax offset rules.

4 **13 Subsection 67-25(2A)**

5 Omit “The *tax offset available under Division 376 is”, substitute “The
6 *tax offsets available under Division 376 are”.

7 **14 Subsection 219-15(2) (table item 5, column headed “If:”)**

8 Omit “in Division 67”, substitute “(see Division 67)”.

9 **15 Subsection 219-15(2) (table item 6, column headed “If:”)**

10 Omit “in Division 67”, substitute “(see Division 67)”.

11 **16 Subsection 960-50(6) (table item 9)**

12 Repeal the table item, substitute:

9	an amount that is relevant for the purposes of quantifying: (a) the total of all of a company’s *production expenditure on a *film; or (b) the total of the company’s *qualifying Australian production expenditure on a film; or (c) the company’s *total film expenditure on a film; to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-20 or 376-65	the amount is to be translated to Australian currency at the exchange rate applicable at the time when principal photography commences or production of the animated image commences.
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9A	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of issuing a certificate under section 376-45</p>	<p>the amount is to be translated to Australian currency at the exchange rate applicable when *post, digital and visual effects production for the film commences.</p>
<hr/>		
9B	<p>an amount that is relevant for the purposes of quantifying:</p> <p>(a) the total of all of a company's *production expenditure on a *film; or</p> <p>(b) the total of the company's *qualifying Australian production expenditure on a film; or</p> <p>(c) the company's *total film expenditure on a film;</p> <p>to the extent to which the amount is relevant for the purposes of calculating an amount of a *tax offset under section 376-15, 376-40 or 376-60</p>	<p>the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that qualifying Australian production expenditure is incurred on the film.</p>

1 **17 Subsection 995-1(1) (definition of *completed*)**

2 Omit "376-15(2)", substitute "376-55(2)".

3 **18 Subsection 995-1(1)**

4 Insert:

5 *development assistance* for a *film has the meaning given by
6 section 376-55.

7 **19 Subsection 995-1(1)**

8 Insert:

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1 *film authority* has the meaning given by section 376-55.

2 **20 Subsection 995-1(1) (definition of *make*)**

3 Omit “subsections 376-25(2), (3) and (4)”, substitute “section 376-125”.

4 **21 Subsection 995-1(1)**

5 Insert:

6 *post, digital and visual effects production* for a *film has the
7 meaning given by section 376-35.

8 **22 Subsection 995-1(1) (definition of *production expenditure*)**

9 Omit “sections 376-25 to 376-35”, substitute “Subdivision 376-C”.

10 **23 Subsection 995-1(1) (definition of *qualifying Australian*
11 *production expenditure*)**

12 Omit “sections 376-40 to 376-55”, substitute “Subdivision 376-C”.

13 **24 Subsection 995-1(1) (definition of *television series*)**

14 Repeal the definition.

15 **25 Subsection 995-1(1)**

16 Insert:

17 *total film expenditure* has the meaning given by section 376-170.

1

2 **Part 3—Repeal of Divisions 10B and 10BA**

3 *Income Tax Assessment Act 1936*

4 **26 Paragraph 26AG(1)(a)**

5 Before “section”, insert “former”.

6 **27 Paragraph 26AG(1)(c)**

7 Omit “under section”.

8 **28 Paragraph 26AG(12)(b)**

9 Repeal the paragraph, substitute:

10 (b) by reason of that disposal, an amount would, but for former
11 subsection 124T(3), be included in the assessable income of
12 the taxpayer of a year of income under former section 124P
13 or would be applied, under former section 124N or 124S, in
14 reducing the residual value, for the purposes of former
15 Division 10B, of a unit of industrial property owned by the
16 taxpayer; and

17 **29 Subsection 26AG(12)**

18 After “applied under”, insert “former”.

19 **30 Subsection 82KH(1) (paragraph (h) of the definition of**
20 *relevant expenditure*)

21 Before “subsections 124R(2)”, insert “former”.

22 **31 Subsection 82KH(1) (paragraph (h) of the definition of**
23 *relevant expenditure*)

24 Before “section 124M”, insert “former”.

25 **32 Subsection 82KH(1) (paragraph (n) of the definition of**
26 *relevant expenditure*)

27 Before “subsection 124R(3)”, insert “former”.

28 **33 Subsection 82KH(1) (paragraph (n) of the definition of**
29 *relevant expenditure*)

1 Before “section 124M”, insert “former”.

2 **34 Subsection 82KH(1) (paragraph (v) of the definition of**
3 ***relevant expenditure*)**

4 Before “subsections 124R(2)”, insert “former”.

5 **35 Subsection 82KH(1) (paragraph (v) of the definition of**
6 ***relevant expenditure*)**

7 Before “section 124M”, insert “former”.

8 **36 Subsection 82KH(1) (definition of *unit of industrial***
9 ***property*)**

10 Before “Division”, insert “former”.

11 **37 Paragraph 82KH(1AD)(a)**

12 Before “section 124M”, insert “former”.

13 **38 Subsection 82KH(1BA)**

14 Before “Subdivision 375-G”, insert “former”.

15 **39 Subsection 82KH(1S)**

16 Before “section 124KA”, insert “former”.

17 **40 Paragraph 82KH(1T)(b)**

18 Before “subsection 124KA(2)”, insert “former”.

19 **41 Divisions 10B and 10BA of Part III**

20 Repeal the Divisions.

21 **42 Subsection 170(10) (table item 23, column headed**
22 **“Provision”)**

23 Before “Division 10BA”, insert “Former”.

24 **43 Subsection 170(10AA) (table item 185, column headed**
25 **“Provision”)**

26 Before “Subdivision 375-H”, insert “Former”.

27 **44 Subsection 262A(4AA)**

1 Omit “or 124AO or under section 124W”, substitute “, 124AO or
2 124W”.

3 **45 Subsection 262A(4AC)**

4 Omit “, former subsection 122JAA(1), 122JG(1), 123BBA(1),
5 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) or subsection
6 124PA(1)”, substitute “or former subsection 122JAA(1), 122JG(1),
7 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1), 124JD(1) or
8 124PA(1)”.

9 **46 Paragraph 262A(4AC)(a)**

10 Omit “, former section 122JAA, 122JG, 123BBA, 123BF, 124AMAA,
11 124GA or 124JD or section 124PA”, substitute “or former
12 section 122JAA, 122JG, 123BBA, 123BF, 124AMAA, 124GA, 124JD
13 or 124PA”.

14 **47 Subparagraph 570(1)(a)(ii)**

15 After “meaning of”, insert “former”.

16 **48 Paragraph 57-25(4)(e) in Schedule 2D**

17 Before “Division 10B”, insert “former”.

18 **49 Paragraph 57-25(4)(f) in Schedule 2D**

19 Before “Division 10BA”, insert “former”.

20 **50 Subsection 57-85(3) in Schedule 2D (table item 5, column
21 3)**

22 Before “Division 10BA”, insert “Former”.

23 **51 Subsection 57-85(3) in Schedule 2D (table item 7, column
24 3)**

25 Before “Division 10B”, insert “Former”.

26 **52 Paragraph 57-100(b) in Schedule 2D**

27 Before “subsection 124ZADA(1)”, insert “former”.

28 **53 Subsection 57-110(2) in Schedule 2D (table item 5, column
29 headed “Balancing adjustment provision”)**

30 Omit “Sections”, substitute “Former sections”.

1 **54 Subsection 57-110(2) in Schedule 2D (table item 5, column**
2 **headed “Deduction rule to which the balancing**
3 **adjustment provision relates”)**

4 Before “**Division 10B**”, insert “**Former**”.

5 **55 Paragraph 268-35(2)(d) in Schedule 2F (note)**

6 Before “section 124ZAFA”, insert “former”.

7 **56 Paragraph 272-140 in Schedule 2F (note to the definition**
8 **of tax loss)**

9 Repeal the note.

10 ***Income Tax Assessment Act 1997***

11 **57 Section 10-5 (table item headed “industrial property”)**

12 Repeal the item, substitute:

industrial property

see intellectual property and research and development

13 **58 Section 12-5 (table item headed “film income”)**

14 Repeal the item.

15 **59 Section 12-5 (table item headed “industrial property”)**

16 Repeal the item, substitute:

industrial property

see intellectual property and research and development

17 **60 Section 12-5 (table item headed “shares”)**

18 Omit:

film licensed investment companies, deduction for

subscription for shares in Subdivision 375-H

19 **61 Section 12-5 (table item headed “tax losses”)**

20 Omit:

film losses Subdivision 375-G

1 **62 Section 36-25 (column 3 of table item 3 in the table headed**
 2 **“Tax losses of entities generally)**

3 Before “Subdivision”, insert “Former”.

4 **63 At the end of section 36-40**

5 Add:

6 (3) A *film loss* is the *film component (if any) of a *tax loss.

7 (4) Your *tax loss for an income year has a *film component* if your
 8 *film deductions for the year exceed the sum of:

- 9 (a) your *assessable film income for the year; and
- 10 (b) your *net exempt film income for the year.

11 The amount of the *film component* is the excess or the tax loss,
 12 whichever is lesser.

13 (5) However, if your *tax loss worked out under a provision listed in
 14 the table, the *film component* is what that tax loss would have been
 15 if:

- 16 (a) your *film deductions for the *loss year had been your only
 17 deductions; and
- 18 (b) your *assessable film income for the loss year had been your
 19 only assessable income; and
- 20 (c) your *net exempt film income for the loss year had been your
 21 only *net exempt income.

22 However, the *film component* cannot exceed the actual tax loss.

23

Working out film component of tax loss		
Item	Provision	Type of entity
1	165-70	Company—income year when ownership or control changed
2	175-35	Company—deductions that have been used to obtain a tax benefit disallowed
3	268-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>	Trust—income year when ownership or control changed

24 **64 Paragraph 40-45(5)(a)**

Schedule 10 Streamlining concessions for Australian films and Australian film production

Part 3 Repeal of Divisions 10B and 10BA

1 Before “Division”, insert “former”.

2 **65 Paragraph 40-45(5)(b)**

3 Before “Division” (first occurring), insert “former”.

4 **66 Paragraph 165-55(2)(d) (note)**

5 Before “section 124ZAFA”, insert “former”.

6 **67 Subsection 170-5(6) (note)**

7 Repeal the note.

8 **68 Subsection 175-10(1)**

9 Before “Subdivision”, insert “former”.

10 **69 Paragraph 175-15(1)(b)**

11 Before “Subdivision”, insert “former”.

12 **70 Subsection 170-105(7) (note)**

13 Repeal the note.

14 **71 Division 375**

15 Repeal the Division.

16 **72 Paragraphs 376-10(2)(a) and (b)**

17 Before “Division”, insert “former”.

18 **73 Paragraphs 376-35(3)(a) and (b)**

19 Before “Division”, insert “former”.

20 **74 Paragraphs 376-55(4)(a) and (b)**

21 Before “Division”, insert “former”.

22 **75 Paragraph 376-55(4)(e)**

23 Before “Subdivision”, insert “former”.

24 **76 Subsection 995-1(1) (definition of assessable film income)**

25 Repeal the definition, substitute:

1 *assessable film income* for an income year is so much of the
2 amount, or the sum of the amounts, to which section 26AG of the
3 *Income Tax Assessment Act 1936* applies in relation to you for the
4 income year as is assessable income.

5 **77 Subsection 995-1(1) (subparagraphs (d) and (e) of the**
6 **definition of *capital allowance*)**

7 Before “Division”, insert “former”.

8 **78 Subsection 995-1(1) (definition of *dividend*)**

9 Omit “and section 375-872 of this Act”.

10 **79 Subsection 995-1(1) (definition of *exempt film income*)**

11 Repeal the definition, substitute:

12 *exempt film income* for an income year is so much of the amount,
13 or the sum of the amounts, to which section 26AG of the *Income*
14 *Tax Assessment Act 1936* applies in relation to you for the income
15 year as is *exempt income.

16 **80 Subsection 995-1(1) (definition of *film component*)**

17 Repeal the definition, substitute:

18 *film component* has the meaning given by section 36-40.

19 **81 Subsection 995-1(1) (definition of *film deductions*)**

20 Repeal the definition, substitute:

21 *film deductions* for an income year are the following:

- 22 (a) amounts you could deduct for the income year under former
23 section 124ZAF of the *Income Tax Assessment Act 1936*;
24 (b) amounts that you could deduct for the income year and to
25 which former section 124ZAO of that Act applied in relation
26 to you for the income year.

27 **82 Subsection 995-1(1) (definition of *film licensed investment***
28 ***company*)**

29 Repeal the definition, substitute:

30 *film licensed investment company* means a company that has been
31 granted a licence to raise concessional capital under the Film

1 Licensed Investment Company Act 2005 (whether or not the
2 licence has ceased to be in force).

3 **83 Subsection 995-1(1) (definition of *film loss*)**

4 Repeal the definition, substitute:

5 *film loss* has the meaning given by section 36-40.

6 Note: Section 701-30 (rules about where an entity is not a subsidiary
7 member for the whole of an income year) may affect a film loss.

8 **84 Subsection 995-1(1) (definition of *FLIC concessional*
9 *capital*)**

10 Repeal the definition.

11 **85 Subsection 995-1(1) (definition of *FLIC*)**

12 Repeal the definition.

13 **86 Subsection 995-1(1) (definition of *net assessable film*
14 *income*)**

15 Repeal the definition, substitute:

16 *net assessable film income* for an income year is your *assessable
17 film income for that year reduced by your *film deductions for that
18 year.

19 **87 Subsection 995-1(1) (definition of *net exempt film income*)**

20 Repeal the definition, substitute:

21 *net exempt film income* for an income year is your *exempt film
22 income for that year reduced by:

- 23 (a) any taxes payable in respect of that income in a country or
24 place outside Australia; and
25 (b) any expenses (not of a capital nature) so far as you incurred
26 them during that year in deriving that income.

27 **88 Subsection 995-1(1) (note to the definition of *tax loss*)**

28 Repeal the note.

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

1 **89 Section 375-100**

2 Before “section 375-805”, insert “former”.

3 **90 Subsection 375-110(1)**

4 Before “section 375-810”, insert “former”.

1

2 **Part 4—Application and saving provisions**

3 **91 Application**

4 (1) The amendments made by this Schedule, to the extent that they relate to
5 a tax offset under section 376-10 of the *Income Tax Assessment Act*
6 *1997*, apply to films commencing principal photography or production
7 of the animated image on or after 8 May 2007.

8 (2) The amendments made by this Schedule, to the extent that they relate to
9 a tax offset under section 376-35 of the *Income Tax Assessment Act*
10 *1997*, apply to post, digital and visual effects production for a film that
11 commences on or after 1 July 2007.

12 (3) The amendments made by this Schedule, to the extent that they relate to
13 a tax offset under section 376-55 of the *Income Tax Assessment Act*
14 *1997*, apply to qualifying Australian production expenditure incurred:
15 (a) on or after 1 July 2007; and
16 (b) before 1 July 2007, to the extent that such expenditure is
17 attributable to goods or services provided on or after 1 July
18 2007.

19 **92 Saving provisions relating to amendment at item 1**

20 (1) Despite the repeal and substitution of Division 376 of the *Income Tax*
21 *Assessment Act 1997* by this Schedule, that Division continues to apply,
22 in relation to films that commenced principal photography or
23 production of the animated image before 8 May 2007, as if that repeal
24 and substitution had not happened.

25 (2) Despite the amendment made by item 1 of this Schedule, legislative
26 instruments that:
27 (a) were made under section 376-105 of the *Income Tax*
28 *Assessment Act 1997*; and
29 (b) were in force immediately before the commencement of that
30 item;
31 continue to have effect, and may be dealt with, in relation to films that
32 commenced principal photography or production of the animated image
33 before 8 May 2007, as if the amendment had not happened.

1
2 **Schedule 11—Research and development**

3 **Part 1—Amendment of the Income Tax Assessment**
4 **Act 1936**

5 **1 Subsection 73B(1AAA)**

6 After “deduction, to”, insert “encourage research and development
7 activities in Australia and”.

8 Note 1: The following heading to subsection 73B(1AAA) is inserted “*Object of this section*”.

9 Note 2: The following heading to subsection 73B(1AA) is inserted “*Relationship with*
10 *sections 73C and 73CA*”.

11 Note 3: The following heading to subsection 73B(1AB) is inserted “*What is core technology*”.

12 **2 Subsection 73B(1)**

13 Insert:

14 ***Australian-centred research and development activities*** means:

- 15 (a) Australian research and development activities that are
16 covered by paragraph (a) of the definition of ***research and***
17 ***development activities***; or
18 (b) Australian research and development activities covered by all
19 of the following:
20 (i) the activities are not covered by paragraph (a) of the
21 definition of ***research and development activities***;
22 (ii) the activities are carried on for a purpose directly related
23 to the carrying on of other Australian research and
24 development activities that are of the kind referred to in
25 paragraph (a) of that definition;
26 (iii) that purpose is the sole or dominant purpose for which
27 the activities are carried on.

28 Note: The following heading to subsection 73B(1) is inserted “*Definitions*”.

29 **3 Subsection 73B(1)**

30 Insert:

31 ***expenditure on foreign owned R&D*** by an eligible company for a
32 year of income has the meaning given by subsections (14C) and
33 (14D).

1 **4 Subsection 73B(1)**

2 Insert:

3 *foreign company* means a body corporate that:

- 4 (a) is incorporated under a law of a foreign country; and
5 (b) is a resident of a foreign country for the purposes of a double
6 tax agreement (as defined in Part X) that relates to that
7 foreign country.

8 Note 1: The following heading to subsection 73B(1A) is inserted “*What is eligible feedstock*
9 *expenditure*”.

10 Note 2: The following heading to subsection 73B(1B) is inserted “*Limit on what is contracted*
11 *expenditure*”.

12 **5 After subsection 73B(1B)**

13 Insert:

14 (1BA) Subsection (1B) does not apply to expenditure covered by
15 subsection (14C) (ignoring paragraphs (14C)(f) and (g)).

16 Note 1: The following heading to subsection 73B(1C) is inserted “*What use of plant counts for*
17 *definition of plant expenditure*”.

18 Note 2: The following heading to subsection 73B(2) is inserted “*Disregarding transfer of*
19 *property connected with security*”.

20 Note 3: The following heading to subsection 73B(2A) is inserted “*Limits on what are research*
21 *and development activities*”.

22 Note 4: The following heading to subsection 73B(3) is inserted “*Expenditure by eligible*
23 *company as trustee not counted*”.

24 Note 5: The following heading to subsection 73B(3A) is inserted “*Partnerships*”.

25 Note 6: The following heading to subsection 73B(4) is inserted “*Definition of qualifying plant*
26 *expenditure*”.

27 Note 7: The following heading to subsection 73B(4A) is inserted “*Definitions of written-down*
28 *value*”.

29 Note 8: The following heading to subsection 73B(4C) is inserted “*Definition of qualifying pilot*
30 *plant expenditure*”.

31 Note 9: The following heading to subsection 73B(4D) is inserted “*Deductible amount of*
32 *qualifying expenditure on post-23 July 1996 pilot plant*”.

33 Note 10: The following heading to subsection 73B(5) is inserted “*Limit on qualifying plant*
34 *expenditure*”.

35 Note 11: The following heading to subsection 73B(5A) is inserted “*Expenditure on building does*
36 *not count for this section*”.

37 Note 12: The following heading to subsection 73B(6) is inserted “*Cost of plant before 19 August*
38 *1992*”.

1 **6 Subsection 73B(9)**

2 After “this section” (first occurring), insert “(except subsection (14C))”.

3 Note: The following heading to subsection 73B(9) is inserted “*No deduction for expenditure*
4 *on activities for another person*”.

5 **7 Subsection 73B(9)**

6 After “this section” (last occurring), insert “(except subsections (14C)
7 and (14D))”.

8 Note 1: The following heading to subsection 73B(10) is inserted “*No deduction for unregistered*
9 *company*”.

10 Note 2: The following heading to subsection 73B(11) is inserted “*Advance R and D*
11 *expenditure*”.

12 Note 3: The following heading to subsection 73B(12) is inserted “*Deductions for core*
13 *technology expenditure*”.

14 Note 4: The following heading to subsection 73B(13) is inserted “*Deduction for contracted*
15 *expenditure*”.

16 Note 5: The following heading to subsection 73B(14) is inserted “*Deduction for research and*
17 *development expenditure*”.

18 Note 6: The following heading to subsection 73B(14AA) is inserted “*Reduced rate of deduction*
19 *under subsection (13) or (14)*”.

20 Note 7: The following heading to subsection 73B(14A) is inserted “*Deduction for interest*
21 *expenditure*”.

22 Note 8: The following heading to subsection 73B(14B) is inserted “*Deduction for residual*
23 *feedstock expenditure*”.

24 **8 After subsection 73B(14B)**

25 Insert:

26 *Deduction for expenditure on foreign owned R&D*

27 (14C) An eligible company may deduct for a year of income the amount
28 (the ***expenditure on foreign owned R&D*** by the eligible company
29 for the year of income) worked out under subsection (14D) if:

- 30 (a) the eligible company incurs expenditure in the year of
31 income at a time when the eligible company is grouped under
32 section 73L with a foreign company; and
33 (b) the expenditure is for the purpose of the carrying on of
34 Australian-centred research and development activities; and
35 (c) the activities are, are to be or were carried on wholly or
36 primarily on behalf of the foreign company; and

- 1 (d) the activities are, are to be or were carried on directly or
2 indirectly under a written agreement between the eligible
3 company and the foreign company and no other parties for
4 the activities to be performed:
5 (i) by the eligible company; or
6 (ii) by another person directly or indirectly under another
7 agreement to which the eligible company is, or will
8 become, a party; and
9 (e) the expenditure is not incurred in connection with an
10 agreement that:
11 (i) is between the eligible company and another eligible
12 company that is grouped under section 73L with the
13 eligible company when the expenditure is incurred; and
14 (ii) is an agreement for the activities to be performed either
15 by the eligible company or by a person who is not a
16 party to the agreement and is to perform the activities
17 directly or indirectly under another agreement to which
18 the eligible company is, or will become, a party; and
19 (f) the expenditure on foreign owned R&D by the eligible
20 company for the year of income is greater than \$20,000; and
21 (g) the eligible company, and each other eligible company (if
22 any) that is grouped under section 73L with that company at
23 any time in the year of income, is registered under
24 section 39J of the *Industry Research and Development Act*
25 *1986* in relation to the year of income and all activities that
26 meet both the following conditions:
27 (i) the activities are ones that, if subsection (2BA) had not
28 been enacted, would be Australian-centred research and
29 development activities carried on wholly or primarily on
30 behalf of a foreign company (whether or not the
31 activities would be such Australian-centred research and
32 development activities taking account of that
33 subsection);
34 (ii) the activities are ones in relation to which the eligible
35 company or the other eligible company (as appropriate)
36 incurred expenditure during the year of income.

37 Note 1: An example of the carrying on or performance of activities indirectly
38 under an agreement that is a contract is the carrying on or performance
39 of the activities under a subcontract, or one of a chain of subcontracts,
40 under the agreement.

- 1 Note 2: One effect of paragraph (14C)(e) is that, even if the eligible company
2 has an agreement with the foreign company for the carrying on of
3 Australian-centred research and development activities wholly or
4 primarily on behalf of the foreign company, the eligible company
5 cannot deduct its expenditure:
- 6 (a) for performing the activities as a subcontractor under a
7 subcontract with another eligible company grouped under
8 section 73L with the eligible company; or
- 9 (b) if the eligible company is a subcontractor to another eligible
10 company grouped under section 73L with the eligible company,
11 for further subcontracting the performance of the activities.
- 12 Note 3: The eligible company may get an extra deduction under section 73QB
13 if its expenditure on foreign owned R&D for the year of income is
14 greater than the average of the amounts that would be the expenditure
15 on foreign owned R&D by the eligible company for the 3 previous
16 years of income if subsection (2BA) of this section had not been
17 enacted.
- 18 (14D) The ***expenditure on foreign owned R&D*** by the eligible company
19 for the year of income is the amount that would be the eligible
20 company's incremental expenditure under section 73P for the year
21 of income if:
- 22 (a) the Australian-centred research and development activities
23 covered by subsection (14C) (ignoring paragraphs (14C)(f)
24 and (g)) of this section were carried on on behalf of the
25 eligible company (and not on behalf of the foreign company
26 mentioned in paragraph (14C)(c)); and
- 27 (b) the only expenditure incurred by the eligible company in the
28 year of income in relation to research and development
29 activities had been the expenditure covered by
30 subsection (14C) (ignoring paragraphs (14C)(f) and (g)) of
31 this section; and
- 32 (c) the total group markup (if any) of the eligible company for
33 the year of income were the amount (if any) that would be
34 worked out under subsection (14AC) of this section if the
35 company were working out the amount of a deduction under
36 subsection (13) or (14) of this section on the basis described
37 in paragraphs (a) and (b) of this subsection.
- 38 Note 1: Paragraphs (14D)(a) and (b) affect what would be the eligible
39 company's incremental expenditure by affecting expenditure
40 described in definitions of terms (e.g. ***contracted expenditure*** and
41 ***salary expenditure***) used in the definition of ***research and***
42 ***development expenditure***, on which incremental expenditure is based.

Schedule 11 Research and development
Part 1 Amendment of the Income Tax Assessment Act 1936

- 1 Note 2: Subsection 73P(5) excludes a company's total group markup (worked
2 out under subsection (14AC) of this section) from the company's
3 incremental expenditure. The markup is worked out to affect a
4 deduction by the company under subsection (13) or (14) of this section
5 for an amount of research and development expenditure to which
6 subsection (14AB) of this section applies.
- 7 Note 1: The following heading to subsection 73B(15) is inserted "*Deduction for qualifying plant
8 expenditure*".
- 9 Note 2: The following heading to subsection 73B(15AA) is inserted "*Deduction for qualifying
10 expenditure on post-23 July 1996 pilot plant*".
- 11 Note 3: The following heading to subsection 73B(15A) is inserted "*Reduction of deduction
12 under subsection (15)*".
- 13 Note 4: The following heading to subsection 73B(17A) is inserted "*Limit on deduction for
14 expenditure on overseas research and development activities*".
- 15 Note 5: The following heading to subsection 73B(18) is inserted "*Choice that this section not
16 apply to plant*".
- 17 Note 6: The following heading to subsection 73B(20) is inserted "*Limit on double deductions*".
- 18 Note 7: The following heading to subsection 73B(23) is inserted "*Balancing adjustments*".
- 19 Note 8: The following heading to subsection 73B(27) is inserted "*Amounts included in
20 assessable income*".

21 **9 Paragraph 73B(31)(a)**

22 Repeal the paragraph, substitute:

- 23 (a) an eligible company has:
- 24 (i) incurred an amount of research and development
25 expenditure; or
- 26 (ii) incurred an amount of core technology expenditure; or
- 27 (iii) incurred an amount of expenditure covered by
28 subsection (14C) (ignoring paragraphs (14C)(f) and
29 (g)); or
- 30 (iv) incurred an amount of expenditure in the acquisition or
31 construction of plant for use by the company
32 exclusively for the purpose of the carrying on by or on
33 behalf of the company of research and development
34 activities; and

35 Note 1: The following heading to subsection 73B(31) is inserted "*Amounts worked out on arm's
36 length basis*".

37 Note 2: The following heading to subsection 73B(33) is inserted "*Deductions denied if Board
38 gives certificates*".

39 **10 Subsection 73B(34)**

1 Repeal the subsection, substitute:

2 *Certificates from Board bind Commissioner*

3 (34) If the Board gives to the Commissioner:

4 (a) a certificate that:

5 (i) is given under section 39L of the *Industry Research and*
6 *Development Act 1986*; and

7 (ii) states whether particular activities were research and
8 development activities; and

9 (iii) relates to activities that were carried on by or on behalf
10 of an eligible company; or

11 (b) a certificate that:

12 (i) is given under section 39LAAA of the *Industry*
13 *Research and Development Act 1986*; and

14 (ii) states whether particular activities were
15 Australian-centred research and development activities;
16 and

17 (iii) relates to activities in relation to which an eligible
18 company incurred expenditure;

19 the certificate is binding on the Commissioner for the purpose of
20 making an assessment of the eligible company's taxable income of
21 any year of income in which those activities were carried on.

22 (34AA) If the Board gives to the Commissioner a certificate that:

23 (a) is given under section 39LAAB of the *Industry Research and*
24 *Development Act 1986*; and

25 (b) states whether particular activities were activities that would
26 have been Australian-centred research and development
27 activities if subsection (2BA) of this section had not been
28 enacted; and

29 (c) relates to activities in relation to which an eligible company
30 incurred expenditure;

31 the certificate is binding on the Commissioner for the purpose of
32 making an assessment of the eligible company's taxable income of
33 any year of income in which those activities were carried on and
34 any later year of income.

35 Note: The following heading to subsection 73B(36) is inserted "*Apportioning insurance*
36 *receipts etc.*".

1 **11 Paragraph 73BAC(1)(a)**

2 Omit “incremental expenditure (see section 73P)”, substitute
3 “expenditure”.

4 **12 At the end of subsection 73BAC(1)**

5 Add:
6 ; and (c) the head company of the group had received any
7 recoupments of, or grants in respect of, that expenditure that
8 the joining company or a person grouped with it under
9 section 73L received, or became entitled to receive, before
10 the joining company became a member of the group.

11 **13 Section 73BAC (note)**

12 Omit “the incremental expenditure provisions”, substitute “sections 73P
13 to 73Z (inclusive) of this Act”.

14 **14 Paragraph 73BAD(1)(a)**

15 Omit “incremental expenditure (see section 73P)”, substitute
16 “expenditure”.

17 **15 Section 73BAD (note)**

18 Omit “the incremental expenditure provisions”, substitute “sections 73P
19 to 73Z (inclusive) of this Act”.

20 **16 Subsection 73I(1)**

21 After “73B”, insert “(except subsection 73B(14C))”.

22 **17 Subsection 73I(1)**

23 Omit “73Y”, substitute “73QA”.

24 Note: The heading to section 73I is altered by omitting “73Y” and substituting “73QA”.

25 **18 Subsection 73I(3)**

26 After “73B”, insert “(except subsection 73B(14C))”.

27 **19 Subsection 73I(3)**

28 Omit “73Y”, substitute “73QA”.

29 **20 Subsection 73I(4)**

30 After “73B”, insert “(except subsection 73B(14C))”.

1 **21 Subsection 73I(4)**

2 Omit “73Y”, substitute “73QA”.

3 **22 Paragraph 73J(1)(a)**

4 After “73B”, insert “(except subsection 73B(14C))”.

5 **23 Paragraph 73J(1)(a)**

6 Omit “73Y”, substitute “73QA”.

7 **24 Subsection 73P(1)**

8 Omit “73Q”, substitute “73QA”.

9 **25 After subsection 73P(1)**

10 Insert:

11 (1A) Subsection (1) of this section and subsection 73B(9) do not prevent
12 a deduction under section 73QA or 73QB merely because those
13 sections require account to be taken of expenditure incurred by an
14 eligible company in relation to activities carried on wholly or
15 primarily on behalf of a foreign company.

16 (1B) Subsection (1) of this section does not cause any of section 73CA
17 to apply in relation to expenditure in respect of which deductions
18 are available under both subsection 73B(14C) and section 73QB.

19 **26 Subsection 73P(2)**

20 Omit “73Q”, substitute “73QA”.

21 **27 Subsection 73P(2) (definition of *incremental expenditure*)**

22 Repeal the definition, substitute:

23 ***incremental expenditure*** means expenditure that:

24 (a) is research and development expenditure except:

25 (i) expenditure to lease or hire plant; and

26 (ii) expenditure under a contract to the extent that it is, in
27 substance, for the acquisition of plant and not for the
28 receipt of services; and

29 (b) can be taken into account in working out the amount of a
30 deduction under subsection 73B(13) or (14) or could be taken

1 into account in working out the amount of a deduction under
2 subsection 73B(14) apart from paragraph 73B(14)(b).

3 Note: The effects of paragraph (b) of the definition of *incremental*
4 *expenditure* include preventing a company from counting as
5 incremental expenditure:

6 (a) expenditure that the company is required by subsection 73B(9) to
7 disregard because it was incurred by the company for the purpose
8 of carrying on research and development activities on behalf of
9 another person; and

10 (b) expenditure on overseas research and development activities that
11 is not certified expenditure and so is expenditure for which
12 subsection 73B(17A) denies a deduction under subsection
13 73B(13) or (14).

14 **28 Subsection 73P(2) (definition of *premium amount*)**

15 Repeal the definition.

16 **29 Subsection 73P(2) (definition of *R&D spend*)**

17 Repeal the definition, substitute:

18 *R&D spend* of an eligible company and its group members for a
19 year of income means the sum of:

20 (a) the amounts worked out for the year of income under steps 1,
21 2 and 3 of the method statement in subsection 73RA(1) as the
22 reduced expenditure on Australian owned R&D by each
23 eligible company in its group membership period for the year
24 of income; and

25 (b) the amounts worked out for the year of income under steps 4,
26 5 and 6 of the method statement in subsection 73RB(1) as the
27 reduced notional expenditure on foreign owned R&D by each
28 eligible company in its group membership period for the year
29 of income.

30 **30 Subsection 73P(2) (definition of *RA₀*)**

31 Repeal the definition.

32 **31 Subsection 73P(2) (definition of *RA₋₁*)**

33 Repeal the definition, substitute:

34 *RA₋₁* (short for Running Average for the Y_{-1} year of income) means
35 half the sum of the R&D spend of the eligible company and its
36 group members for the Y_{-2} and Y_{-3} years of income.

1 **32 Subsection 73P(2) (definition of *running average*)**

2 Repeal the definition.

3 **33 Subsection 73P(6)**

4 Omit “73Q, 73R, 73S, 73T, 73U, 73V, 73W, 73X and 73Y”, substitute
5 “73QA, 73QB, 73R, 73RA, 73RB, 73T and 73V”.

6 **34 Section 73Q**

7 Repeal the section, substitute:

8 **73QA Extra deduction for increase in expenditure on Australian**
9 **owned research and development**

10 *Prerequisites for deduction*

11 (1) An eligible company may deduct an amount for the Y_0 year of
12 income if:

- 13 (a) the company can deduct an amount for that year under
14 subsection 73B(13) or (14) for incremental expenditure
15 incurred in the company’s group membership period; and
16 (b) for each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, any of the
17 following conditions is met:
18 (i) the eligible company could deduct for the year of
19 income an amount under subsection 73B(13) or (14) for
20 expenditure incurred in its group membership period;
21 (ii) one of the eligible company’s other group members
22 could deduct for the year of income an amount under
23 subsection 73B(13) or (14) for expenditure incurred in
24 its group membership period;
25 (iii) the eligible company received a start grant or
26 commercial ready grant in respect of the year of income;
27 (iv) one of the eligible company’s other group members
28 received a start grant or commercial ready grant in
29 respect of the year of income;

30 (whether or not the same condition is met for 2 or more of
31 those years, and whether or not a condition is met by the
32 same company for 2 or more of those years); and

- 33 (c) the amount (the *eligible company’s share of the Australian*
34 *owned part of the adjusted increase in expenditure on R&D*

1 *by the group*) worked out under subsection (3) is more than
 2 zero.

3 *Amount of deduction*

- 4 (2) The amount of the eligible company's deduction for the Y₀ year of
 5 income is 50% of the eligible company's share of the Australian
 6 owned part of the adjusted increase in expenditure on R&D by the
 7 group.
- 8 (3) The *eligible company's share of the Australian owned part of the*
 9 *adjusted increase in expenditure on R&D by the group* is the
 10 amount worked out using the formula:

$$\begin{array}{c}
 \text{Increase in} \\
 \text{expenditure on} \\
 \text{Australian owned} \\
 \text{R\&D by the} \\
 \text{eligible company} \\
 \hline
 \text{Total increase in} \\
 \text{expenditure on} \\
 \text{Australian owned} \\
 \text{R\&D by the} \\
 \text{eligible companies} \\
 \text{in the group}
 \end{array}
 \times
 \frac{\begin{array}{c}
 \text{Net increase in} \\
 \text{expenditure on} \\
 \text{Australian owned} \\
 \text{R\&D by the group}
 \end{array}}{\begin{array}{c}
 \text{Net increase} \\
 \text{in expenditure} \\
 \text{on Australian} \\
 \text{owned R\&D} \\
 \text{by the group}
 \end{array}
 +
 \begin{array}{c}
 \text{Net increase} \\
 \text{in expenditure} \\
 \text{on foreign} \\
 \text{owned R\&D} \\
 \text{by the group}
 \end{array}}
 \times
 \begin{array}{c}
 \text{Adjusted} \\
 \text{increase in} \\
 \text{expenditure} \\
 \text{on R\&D} \\
 \text{by the group}
 \end{array}$$

12 where:

13 *adjusted increase in expenditure on R&D by the group* means the
 14 amount worked out under section 73RE.

15 *increase in expenditure on Australian owned R&D by the eligible*
 16 *company* means the amount worked out under subsection
 17 73RA(1).

18 *net increase in expenditure on Australian owned R&D by the*
 19 *group* means the amount worked out under section 73RC.

20 *net increase in expenditure on foreign owned R&D by the group*
 21 means the amount worked out under section 73RD.

22 *total increase in expenditure on Australian owned R&D by the*
 23 *eligible companies in the group* means the amount worked out
 24 under subsection 73RA(2).

25 Note: The amount worked out using the formula will not be more than zero
 26 if at least one of the following is zero:

- 1 (a) the increase in expenditure on Australian owned R&D by the
2 eligible company;
- 3 (b) the net increase in expenditure on Australian owned R&D by the
4 group;
- 5 (c) the adjusted increase in expenditure on R&D by the group.

6 *Solitary company may be able to deduct under subsection (1)*

- 7 (4) To avoid doubt, an eligible company for which there are no other
8 group members may be able to deduct an amount under
9 subsection (1).

10 Note: For an eligible company for which there are no other group members,
11 the values of the following components of the formula in
12 subsection (3) will all be the same:

- 13 (a) the increase in expenditure on Australian owned R&D by the
14 eligible company;
- 15 (b) the total increase in expenditure on Australian owned R&D by
16 the eligible companies in the group;
- 17 (c) the net increase in expenditure on Australian owned R&D by the
18 group.

19 **73QB Extra deduction for increase in expenditure on foreign owned**
20 **research and development**

21 *Prerequisites for deduction*

- 22 (1) An eligible company may deduct an amount for the Y_0 year of
23 income if:
- 24 (a) the company can deduct an amount for that year under
25 subsection 73B(14C) for expenditure incurred in the
26 company's group membership period; and
- 27 (b) for each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, any of the
28 following conditions is met:
- 29 (i) the eligible company could deduct for the year of
30 income an amount under subsection 73B(14C) for
31 expenditure in its group membership period;
- 32 (ii) one of the eligible company's other group members
33 could deduct for the year of income an amount under
34 subsection 73B(14C) for expenditure in its group
35 membership period;
- 36 (iii) the year of income is one (a *nil expenditure year*) for
37 which both the conditions in subsection (2) are met;

1 (whether or not the same condition in this paragraph is met
2 for 2 or more of those years, and whether or not such a
3 condition is met by the same company for 2 or more of those
4 years); and

5 (c) the amount (the *eligible company's share of the foreign*
6 *owned part of the adjusted increase in expenditure on R&D*
7 *by the group*) worked out under subsection (4) is more than
8 zero.

9 (2) For the purposes of subparagraph (1)(b)(iii), the conditions for a nil
10 expenditure year are as follows:

11 (a) neither the eligible company nor any other group member
12 (determined under section 73R) of the eligible company
13 existed at any time in the nil expenditure year or the 10
14 immediately preceding years of income;

15 (b) at no time in the nil expenditure year or the 10 immediately
16 preceding years of income did any of the following carry on
17 business in Australia:

18 (i) a foreign company that was grouped under section 73L
19 with the eligible company at any time in the Y_0 , Y_{-1} , Y_{-2}
20 or Y_{-3} year of income;

21 (ii) a foreign company that was grouped under section 73L
22 with another group member (under section 73R) of the
23 eligible company at any time during the other group
24 member's group membership period (under
25 section 73R);

26 (iii) a person who was grouped under section 73L with a
27 foreign company described in subparagraph (i) or (ii) at
28 any time in the nil expenditure year or the 10
29 immediately preceding years of income.

30 Note: Section 73R provides for:

31 (a) primary group members to be determined on the basis of the
32 relationship between companies at the end of the Y_0 year of
33 income; and

34 (b) secondary group members to be determined on the basis of the
35 relationship between a company and a primary group member
36 during the primary group member's group membership period
37 (which ends at the end of the Y_0 year of income and starts at or
38 after the start of the Y_{-3} year of income).

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Amount of deduction

- (3) The eligible company may deduct an amount for the Y₀ year of income equal to 75% of the eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group.
- (4) The *eligible company's share of the foreign owned part of the adjusted increase in expenditure on R&D by the group* is the amount worked out using the formula:

$$\frac{\text{Increase in expenditure on foreign owned R\&D by the eligible company}}{\text{Total increase in expenditure on foreign owned R\&D by the eligible companies in the group}} \times \frac{\text{Net increase in expenditure on foreign owned R\&D by the group}}{\text{Net increase in expenditure on Australian owned R\&D by the group} + \text{Net increase in expenditure on foreign owned R\&D by the group}} \times \text{Adjusted increase in expenditure on R\&D by the group}$$

where:

adjusted increase in expenditure on R&D by the group means the amount worked out under section 73RE.

increase in expenditure on foreign owned R&D by the eligible company means the amount worked out under subsection 73RB(1).

net increase in expenditure on Australian owned R&D by the group means the amount worked out under section 73RC.

net increase in expenditure on foreign owned R&D by the group means the amount worked out under section 73RD.

total increase in expenditure on foreign owned R&D by the eligible companies in the group means the amount worked out under subsection 73RB(2).

Note: The amount worked out using the formula will not be more than zero if at least one of the following is zero:

- (a) the increase in expenditure on foreign owned R&D by the eligible company;
- (b) the net increase in expenditure on foreign owned R&D by the group;

1 (c) the adjusted increase in expenditure on R&D by the group.

2 *Solitary company may be able to deduct under subsection (1)*

3 (5) To avoid doubt, an eligible company for which there are no other
4 group members may be able to deduct an amount under
5 subsection (1).

6 Note: For an eligible company for which there are no other group members,
7 the values of the following components of the formula in
8 subsection (4) will all be the same:

- 9 (a) the increase in expenditure on foreign owned R&D by the
10 eligible company;
- 11 (b) the total increase in expenditure on foreign owned R&D by the
12 eligible companies in the group;
- 13 (c) the net increase in expenditure on foreign owned R&D by the
14 group.

15 **35 Subsection 73R(1) (first sentence)**

16 Repeal the sentence, substitute:

17 This section sets out rules for determining which eligible
18 companies that have deducted or can deduct an amount under
19 subsection 73B(13), (14) or (14C), or that received a start grant or
20 commercial ready grant, are group members.

21 **36 Paragraph 73R(5)(c)**

22 Repeal the paragraph, substitute:

- 23 (c) the person or persons that disposed of control of the company
24 provide written details of the following needed to enable the
25 making of calculations required by sections 73QA, 73QB,
26 73RA, 73RB, 73RC, 73RD, 73RE, 73T and 73V:
- 27 (i) expenditure incurred by the company during the period
28 (its *history period*) it was a group member of its former
29 group;
- 30 (ii) receipts of grants and recoupments relating to that
31 expenditure;
- 32 (iii) entitlements to receive grants and recoupments relating
33 to that expenditure.

34 **37 After section 73R**

35 Insert:

1 **73RA Increases in expenditure on Australian owned R&D by**
2 **eligible companies**

- 3 (1) For the purposes of section 73QA, work out the *increase in*
4 *expenditure on Australian owned R&D by the eligible company*
5 as follows:

6 *Method statement*

7 *Step 1.* For each of the Y_0 , Y_{-1} , Y_{-2} and Y_{-3} years of income,
8 work out the eligible company's incremental expenditure
9 incurred in its group membership period.

10 *Step 2.* For each of the Y_0 , Y_{-1} , Y_{-2} and Y_{-3} years of income,
11 work out how much (if any) of the initial clawback
12 amount (if any) under section 73C relating to expenditure
13 incurred by the eligible company is attributable to
14 incremental expenditure incurred in the eligible
15 company's group membership period.

16 *Step 3.* For each of those years of income, reduce (but not below
17 zero) the result of step 1 for the year of income by the
18 result of step 2 for the year of income. The result is the
19 *reduced expenditure on Australian owned R&D* by the
20 eligible company in its group membership period for the
21 year of income.

22 *Step 4.* Add up:

- 23 (a) the reduced expenditure on Australian owned R&D
24 by the eligible company in its group membership
25 period for the Y_{-1} year of income; and
- 26 (b) the reduced expenditure on Australian owned R&D
27 by the eligible company in its group membership
28 period for the Y_{-2} year of income; and
- 29 (c) the reduced expenditure on Australian owned R&D
30 by the eligible company in its group membership
31 period for the Y_{-3} year of income.

32 *Step 5.* Divide the result of step 4 by 3.

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Step 6. Subtract the result of step 5 from the reduced expenditure on Australian owned R&D by the eligible company in its group membership period for the Y₀ year of income (see step 3). The result is the ***change in expenditure on Australian owned R&D by the eligible company.***

Note: The change in expenditure on Australian owned R&D by the eligible company may be a positive or negative number or zero.

Step 7. The ***increase in expenditure on Australian owned R&D by the eligible company*** is:

- (a) the change in expenditure on Australian owned R&D by the eligible company; or
- (b) zero, if the change in expenditure on Australian owned R&D by the eligible company is a negative number.

- (2) For the purposes of section 73QA, work out the ***total increase in expenditure on Australian owned R&D by the eligible companies in the group*** as follows:

Method statement

Step 1. For each group member that is an eligible company, work out the increase in expenditure on Australian owned R&D by the eligible company under subsection (1) of this section.

Step 2. Total the results of step 1.

73RB Increases in expenditure on foreign owned R&D by eligible companies

- (1) For the purposes of section 73QB, work out the ***increase in expenditure on foreign owned R&D by the eligible company*** as follows:

Method statement

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- Step 1.* For the Y_0 year of income, work out the amount of the expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) that was incurred by the company in its group membership period. The result is the ***expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income.
- Step 2.* For the Y_0 year of income, work out how much (if any) of the initial clawback amount (if any) under section 73C relating to expenditure incurred by the eligible company is attributable to the expenditure on foreign owned R&D by the eligible company in its group membership period for the year of income.
- Step 3.* Reduce (but not below zero) the result of step 1 for the year of income by the result of step 2 for the year of income. The result is the ***reduced expenditure on foreign owned R&D*** by the eligible company in its group membership period for the Y_0 year of income.
- Step 4.* For each of the Y_{-1} , Y_{-2} and Y_{-3} years of income, work out the amount (the ***notional expenditure on foreign owned R&D*** by the eligible company in its group membership period for the year of income) of expenditure that:
- (a) was incurred by the company in its group membership period; and
 - (b) would have been expenditure on foreign owned R&D by the eligible company for the year of income (see subsections 73B(14C) and (14D)) if subsection 73B(2BA) had not been enacted.
- Note 1: This requires counting of expenditure relating to all activities that would have been research and development activities had they been carried on in accordance with a plan described in subsection 73B(2BA) (whether or not they were carried on in that way).
- Note 2: If all relevant activities were carried on in accordance with such a plan, and the eligible company's group membership period includes the whole of the year of

1		income, the notional expenditure on foreign owned R&D
2		by the eligible company in its group membership period
3		for the year of income is the same as the expenditure on
4		foreign owned R&D by the company for the year of
5		income.
6	<i>Step 5.</i>	For each of the Y ₋₁ , Y ₋₂ and Y ₋₃ years of income, work out
7		what would have been the amount of the eligible
8		company's initial clawback amount (if any) under
9		section 73C attributable to the notional expenditure on
10		foreign owned R&D by the eligible company in its group
11		membership period for the year of income if subsection
12		73B(2BA) had not been enacted.
13	Note:	This requires counting of grants and recoupments
14		described in section 73C relating to expenditure on
15		projects involving activities that would have been
16		research and development activities had they been
17		carried on in accordance with a plan described in
18		subsection 73B(2BA) (whether or not they were carried
19		on in that way).
20	<i>Step 6.</i>	For each of the Y ₋₁ , Y ₋₂ and Y ₋₃ years of income, reduce
21		(but not below zero) the result of step 4 for the year of
22		income by the result of step 5 for the year of income. The
23		result is the reduced notional expenditure on foreign
24		owned R&D by the eligible company in its group
25		membership period for the year of income.
26	<i>Step 7.</i>	Add up:
27	(a)	the reduced notional expenditure on foreign owned
28		R&D by the eligible company in its group
29		membership period for the Y ₋₁ year of income; and
30	(b)	the reduced notional expenditure on foreign owned
31		R&D by the eligible company in its group
32		membership period for the Y ₋₂ year of income; and
33	(c)	the reduced notional expenditure on foreign owned
34		R&D by the eligible company in its group
35		membership period for the Y ₋₃ year of income.
36	<i>Step 8.</i>	Divide the result of step 7 by 3.

1 *Step 9.* Subtract the result of step 8 from the reduced expenditure
2 on foreign owned R&D by the eligible company for the
3 Y_0 year of income (see step 3). The result is the ***change***
4 ***in expenditure on foreign owned R&D by the eligible***
5 ***company.***

6 Note: The change in expenditure on foreign owned R&D by
7 the eligible company may be a positive or negative
8 number or zero.

9 *Step 10.* The ***increase in expenditure on foreign owned R&D by***
10 ***the eligible company*** is:

- 11 (a) the change in expenditure on foreign owned R&D
12 by the eligible company; or
- 13 (b) zero, if the change in expenditure on foreign
14 owned R&D by the eligible company is a negative
15 number.

- 16 (2) For the purposes of section 73QB, work out the ***total increase in***
17 ***expenditure on foreign owned R&D by the eligible companies in***
18 ***the group*** as follows:

19 *Method statement*

20 *Step 1.* For each group member that is an eligible company, work
21 out the increase in expenditure on foreign owned R&D
22 by the eligible company under subsection (1) of this
23 section.

24 *Step 2.* Total the results of step 1.

25 **73RC Net increase in expenditure on Australian owned R&D by the**
26 **group**

27 For the purposes of sections 73QA and 73QB, work out the ***net***
28 ***increase in expenditure on Australian owned R&D by the group***
29 as follows:

30 *Method statement*

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Step 1. For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in expenditure on Australian owned R&D by the eligible company.

Step 2. Total the results of step 1. If the result is a negative number, the *net increase in expenditure on Australian owned R&D by the group* is zero instead.

9 **73RD Net increase in expenditure on foreign owned R&D by the**
10 **group**

11 For the purposes of sections 73QA and 73QB, work out the *net*
12 *increase in expenditure on foreign owned R&D by the group* as
13 follows:

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Method statement

Step 1. For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

Step 2. Total the results of step 1. If the result is a negative number, the *net increase in expenditure on foreign owned R&D by the group* is zero instead.

23 **73RE Adjusted increase in expenditure on R&D by the group**

24 Work out the *adjusted increase in expenditure on R&D by the*
25 *group* as follows:

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Method statement

Step 1. For each eligible company that was a group member, work out under steps 1 to 6 (inclusive) of the method statement in subsection 73RA(1) the change in

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expenditure on Australian owned R&D by the eligible company.

Step 2. For each eligible company that was a group member, work out under steps 1 to 9 (inclusive) of the method statement in subsection 73RB(1) the change in expenditure on foreign owned R&D by the eligible company.

Step 3. Add up all the results of steps 1 and 2.

Note: If the sum is a negative number, the adjusted increase in expenditure on R&D by the group will be zero.

Step 4. Subtract the adjustment balance worked out under section 73V from the result of step 3. If the result is a negative number, the *adjusted increase in expenditure on R&D by the group* is zero instead.

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38 Section 73S

Omit “, 73V or 73W”, substitute “or 73V”.

39 Paragraphs 73T(3)(a) and (4)(a)

Omit “was eligible to claim an additional deduction under section 73Y”, substitute “could deduct an amount under section 73QA or 73QB”.

40 Section 73U

Repeal the section.

41 Paragraph 73V(3)(a)

Omit “was eligible to claim an additional deduction under section 73Y”, substitute “met the conditions either in paragraphs 73QA(1)(a) and (b) or in paragraphs 73QB(1)(a) and (b)”.

42 Sections 73W, 73X and 73Y

Repeal the sections.

43 Paragraph 73Z(1)(b)

Omit “73Y”, substitute “73QA or 73QB”.

44 At the end of subsection 73Z(2)

Schedule 11 Research and development

Part 1 Amendment of the Income Tax Assessment Act 1936

1 Add “or the notional expenditure on foreign owned R&D by the eligible
2 company in its group membership period for any year of income (see
3 step 4 of the method statement in subsection 73RB(1))”.

4 **45 Paragraphs 82KZM(1)(c), 82KZMA(1)(a), 82KZME(1)(a) and**
5 **82KZMF(2)(a)**

6 Omit “or 73Y”, substitute “, 73QA, 73QB or former section 73Y”.

7 **46 Subsection 170(10A)**

8 Omit “or 73Y”, substitute “, 73QA or 73QB”.

9 **47 Subsection 245-140(1) in Schedule 2C (definition of *table***
10 ***of deductible expenditure, table item 8, column 2*)**

11 Omit “and 73Y”, substitute “, 73QA and 73QB”.

12 **48 Subsection 57-85(3) in Schedule 2D (table item 13, column**
13 **3)**

14 Omit “and 73Y”, substitute “, 73QA and 73QB”.

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Part 2—Amendment of the Industry Research and Development Act 1986

49 Subsections 39AA(1) and (2)

Omit “and 73Y”, substitute “, 73QA and 73QB”.

50 Subsection 39AA(2)

After “deduction, to”, insert “encourage research and development activities in Australia and”.

51 Section 39D

Repeal the section, substitute:

39D Research and development activities for the benefit of the Australian economy

(1) Australian research and development activities are taken to be for the benefit of the Australian economy.

(2) Overseas research and development activities are taken to be for the benefit of the Australian economy if the Board has given a provisional certificate in respect of the activities.

52 Subparagraph 39EB(3)(c)(ii)

Omit “73Y”, substitute “73QA”.

53 Subsection 39EC(1)

Omit “73Y”, substitute “73QA”.

54 Subparagraph 39EC(2)(d)(iii)

Omit “73Y”, substitute “73QA”.

55 Paragraphs 39EE(1)(c) and (2)(b) and 39EF(2)(b)

Omit “73Y”, substitute “73QA”.

56 At the end of subsection 39F(1)

Add “or foreign companies”.

1 **57 Subsection 39HG(1)**

2 Omit “its”.

3 **58 Paragraph 39HG(2)(c)**

4 Omit “its”, substitute “the”.

5 **59 At the end of subsection 39HG(2)**

6 Add:

7 ; and (g) specify each company on behalf of which the activities will
8 be undertaken.

9 Note: A company on behalf of which the activities will be undertaken may
10 be the applicant or a foreign company with which the applicant is
11 grouped under section 73L of the *Income Tax Assessment Act 1936*.

12 **60 Paragraph 39HH(1)(b)**

13 Omit “its proposed research and development activities”, substitute “the
14 research and development activities proposed in the application”.

15 **61 Section 39HH (note)**

16 Omit “or 73Y”, substitute “, 73QA or 73QB”.

17 **62 Paragraph 39J(1)(a)**

18 Repeal the paragraph, substitute:

19 (a) an eligible company applies to the Board for registration in
20 relation to activities of either or both of the following kinds
21 in respect of a year of income:

22 (i) the eligible company’s research and development
23 activities;

24 (ii) activities described in paragraph 73B(14C)(g) of the
25 *Income Tax Assessment Act 1936* in relation to the
26 eligible company; and

27 **63 Paragraph 39J(1)(b)**

28 Omit “its research and development activities”, substitute “the activities
29 covered by the application”.

30 **64 Subsection 39J(1A)**

31 Omit “the company’s research and development”.

1 **65 Paragraph 39JD(1)(b)**

2 Omit “research and development”.

3 **66 Paragraph 39JD(1)(ba)**

4 Omit “carrying on the activities, maintained records that substantiate the
5 company’s carrying on of the activities”, substitute “the activities were
6 carried on, maintained records that substantiate the carrying on of the
7 activities”.

8 **67 After paragraph 39JD(1)(ba)**

9 Insert:

10 (bb) specify each company on behalf of which each of the
11 activities was undertaken; and

12 **68 Subsection 39JD(1) (note)**

13 Omit “Note”, substitute “Note 1”.

14 **69 At the end of subsection 39JD(1)**

15 Add:

16 Note 2: A company on behalf of which an activity was undertaken might be
17 the eligible company applying for registration or a foreign company
18 with which the applicant is grouped under section 73L of the *Income*
19 *Tax Assessment Act 1936*.

20 **70 After subsection 39K(1A)**

21 Insert:

22 (1B) The Board is entitled to refuse to register an eligible company, in
23 relation to activities described in paragraph 73B(14C)(g) of the
24 *Income Tax Assessment Act 1936* in relation to the company in
25 respect of a year of income, on the ground that the activities are not
26 activities that would be Australian-centred research and
27 development activities if subsection 73B(2BA) of that Act had not
28 been enacted.

29 **71 At the end of section 39L**

30 Add:

31 (3) If the activities were or are carried on on behalf of a foreign
32 company grouped under section 73L of the *Income Tax Assessment*
33 *Act 1936* with an eligible company that was or is incurring

1 expenditure in relation to the carrying on of the activities, the
2 Board must give a copy of the notice to the eligible company.

3 **72 After section 39L**

4 Insert:

5 **39LAAA Certificate as to Australian-centred research and**
6 **development activities**

- 7 (1) The Board may give to the Commissioner a certificate stating
8 whether particular activities were Australian-centred research and
9 development activities.
- 10 (2) The Board must give to the Commissioner a certificate described in
11 subsection (1) if the Commissioner gives the Board a written
12 request to do so.
- 13 (3) If:
- 14 (a) the activities covered by a certificate given under this section
15 were or are carried on on behalf of a foreign company
16 grouped under section 73L of the *Income Tax Assessment Act*
17 *1936* with an eligible company that incurred expenditure in
18 relation to the carrying on of the activities; and
19 (b) the certificate states that the activities were not
20 Australian-centred research and development activities;
21 the Board must give notice in writing to the eligible company,
22 stating the reasons for giving the certificate.

23 **39LAAB Certificate as to activities that would be Australian-centred**
24 **research and development activities apart from need for**
25 **plan**

- 26 (1) The Board may give to the Commissioner a certificate stating
27 whether particular activities were activities that would have been
28 Australian-centred research and development activities if
29 subsection 73B(2BA) of the *Income Tax Assessment Act 1936* had
30 not been enacted.

31 Note 1: Subsection 73B(2BA) of the *Income Tax Assessment Act 1936* says
32 activities are not research and development activities unless they are
33 carried on in accordance with a plan that complies with any guidelines
34 formulated by the Board under section 39KA of this Act that are in
35 force at the time.

1 Note 2: Activities may be ones that would have been Australian-centred
2 research and development activities if subsection 73B(2BA) of the
3 *Income Tax Assessment Act 1936* had not been enacted, whether or not
4 the activities were carried on in accordance with such a plan.

5 (2) The Board must give to the Commissioner a certificate described in
6 subsection (1) if the Commissioner gives the Board a written
7 request to do so.

8 (3) If:

9 (a) the activities covered by a certificate given under this section
10 were or are carried on on behalf of a foreign company
11 grouped under section 73L of the *Income Tax Assessment Act*
12 *1936* with an eligible company that incurred expenditure in
13 relation to the carrying on of the activities; and

14 (b) the certificate states that the activities were activities that
15 would have been Australian-centred research and
16 development activities if subsection 73B(2BA) of the *Income*
17 *Tax Assessment Act 1936* had not been enacted;

18 the Board must give notice in writing to the eligible company,
19 stating the reasons for giving the certificate.

20 **73 Subparagraph 39M(1)(b)(i)**

21 Repeal the subparagraph, substitute:

22 (i) any of the results of those research and development
23 activities have been exploited otherwise than on normal
24 commercial terms; or

25 (ia) those research and development activities are not for the
26 benefit of the Australian economy; or

27 **74 Paragraph 39N(1)(a)**

28 Omit “registered”.

29 **75 Paragraph 39N(1)(a)**

30 After “on behalf of the company,”, insert “or activities in relation to
31 which the company incurred expenditure,”.

32 **76 At the end of section 39N**

33 Add:

34 (4) To avoid doubt, a notice under subsection (1) has effect whether
35 the particular information that is the subject of the notice and the

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- 1 Board's request is identified in the notice or request wholly or
2 partly:
3 (a) by reference to the functions to be performed or the powers
4 to be exercised; or
5 (b) by another means.

6 **77 Subsection 39S(1)**

7 After "39L," insert "39LAAA, 39LAAB,".

1

2 **Part 3—Application and transitional provisions**

3 **78 Application**

- 4 (1) The amendments made by this Schedule apply in relation to:
- 5 (a) assessments for years of income starting after 30 June 2007;
- 6 and
- 7 (b) registrations under section 39J of the *Industry Research and*
- 8 *Development Act 1986* for those years of income.
- 9 (2) A term that is used in this item and has a meaning given by the *Income*
- 10 *Tax Assessment Act 1936* has the same meaning in this item.

11 **79 Transitional provisions—deductions under former**

12 **section 73Y of the *Income Tax Assessment Act 1936***

- 13 (1) This item modifies paragraphs 73T(3)(a) and (4)(a) and 73V(3)(a) of
- 14 the *Income Tax Assessment Act 1936* as amended by this Schedule for
- 15 the Y_0 year of income that is the first year of income starting after
- 16 30 June 2007.
- 17 (2) Those paragraphs have effect for that year of income as if an eligible
- 18 company or one of its group members could deduct an amount under
- 19 section 73QA for the Y_{-1} year of income if the company or group
- 20 member had been eligible to claim an additional deduction under
- 21 section 73Y of that Act (as in force before the commencement of this
- 22 Schedule) for that Y_{-1} year of income.
- 23 (3) A term that is used in this item and had a meaning given by any of
- 24 sections 73P to 73Z of the *Income Tax Assessment Act 1936*
- 25 immediately before the commencement of this Schedule has the same
- 26 meaning in this item.

27 **80 Transitional provisions—reduced notional expenditure on**

28 **foreign owned R&D**

- 29 (1) This item has effect for the purposes of the application of sections 73P
- 30 to 73Z (inclusive) of the *Income Tax Assessment Act 1936* as amended
- 31 by this Schedule, if:
- 32 (a) in its group membership period including all or part of the
- 33 year of income (the *initial year*) starting after 30 June 2007

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1 and before 1 July 2008, an eligible company has incurred an
 2 amount of expenditure that is expenditure on foreign owned
 3 R&D by the eligible company in its group membership
 4 period for the year of income; and
 5 (b) any of the 3 immediately preceding years of income were not
 6 nil expenditure years.

- 7 (2) For the purposes of paragraph 73QB(1)(b) of the *Income Tax*
 8 *Assessment Act 1936*, the eligible company is taken to have been able to
 9 deduct an amount under subsection 73B(14C) of that Act for each of the
 10 following years of income:
 11 (a) the year of income before the initial year;
 12 (b) the year of income 2 years before the initial year;
 13 (c) the year of income 3 years before the initial year.
- 14 (3) The reduced notional expenditure on foreign owned R&D by the
 15 eligible company in its group membership period for an earlier year of
 16 income described in the second column of an item of the table is taken
 17 to be the amount set out in the third column of that item.

Reduced notional expenditure on foreign owned R&D

Item	Earlier year of income	Amount of reduced notional expenditure on foreign owned R&D
1	The year of income before the initial year	90% of the amount described in paragraph (1)(a)
2	The year of income 2 years before the initial year	80% of the amount described in paragraph (1)(a)
3	The year of income 3 years before the initial year	70% of the amount described in paragraph (1)(a)

- 19 (4) To avoid doubt, this item has effect for the purposes of the application
 20 of sections 73P to 73Z (inclusive) of the *Income Tax Assessment Act*
 21 *1936* as amended by this Schedule not only for the initial year but also
 22 for the next 2 years of income.
- 23 Note: This item will be relevant only to years of income assessments for which can be
 24 affected by the amount of reduced notional expenditure on foreign owned R&D for
 25 years of income before the initial year.
- 26 (5) A term that is used in this item and has a meaning given by section 73B,
 27 or any of sections 73P to 73Z (inclusive), of the *Income Tax Assessment*

1 *Act 1936* as amended by this Schedule has the same meaning in this
2 item.

1
2 **Schedule 12—Innovation Australia**

3 **Part 1—Main amendments**

4 ***Industry Research and Development Act 1986***

5 **1 Section 3**

6 Omit “and innovation activities”, substitute “, innovation activities and
7 venture capital activities”.

8 **2 Subsection 4(1) (definition of *acting chairperson*)**

9 Repeal the definition.

10 **3 Subsection 4(1) (definition of *acting member*)**

11 Repeal the definition.

12 **4 Subsection 4(1) (definition of *Board*)**

13 Repeal the definition, substitute:

14 *Board* means Innovation Australia, established by section 6.

15 **5 Subsection 4(1) (definition of *chairperson*)**

16 Omit “, but does not include an acting Chairperson”.

17 **6 Subsection 4(1) (definition of *member*)**

18 Omit “, but does not include an acting member”.

19 **7 Subsection 4(1)**

20 Insert:

21 *PDF* has the same meaning as in the *Pooled Development Funds*
22 *Act 1992*.

23 **8 At the end of paragraph 4(7)(a)**

24 Add “and”.

25 **9 Paragraph 4(7)(b)**

26 Repeal the paragraph.

1 **10 At the end of section 4**

2 Add:

- 3 (8) For the purposes of this Act, the *Pooled Development Funds Act*
4 *1992*, the *Venture Capital Act 2002* and any other Act, a person
5 gives information, or produces a document, to the Board if the
6 person gives the information, or produces the document, to:
7 (a) the Board; or
8 (b) a member of the Board; or
9 (c) a committee; or
10 (d) a member of a committee; or
11 (e) a member of the staff assisting the Board or a committee (see
12 section 25); or
13 (f) a consultant assisting the Board or a committee (see
14 section 25).

15 **11 Section 6**

16 Repeal the section, substitute:

17 **6 Establishment of Innovation Australia**

18 There is established by this section a board by the name of
19 Innovation Australia.

20 **12 After paragraph 7(aa)**

21 Insert:

- 22 (b) to evaluate, and to advise the Minister about, the operation of
23 this Act, the *Pooled Development Funds Act 1992* and the
24 *Venture Capital Act 2002*, and the Commonwealth's income
25 tax laws as they operate in relation to those Acts; and

26 **13 Paragraph 7(c)**

27 After "by", insert "the *Pooled Development Funds Act 1992*, the
28 *Venture Capital Act 2002* or".

29 **14 After paragraph 7(c)**

30 Insert:

- 31 (ca) to give information it obtains under Part 2, 3 or 4 of the
32 *Venture Capital Act 2002* to the Commissioner of Taxation

1 for the purposes of implementing and administering the
2 taxation law (within the meaning of the *Taxation*
3 *Administration Act 1953*); and

4 **15 Subsection 11(1)**

5 Omit “, or an acting Chairperson,”.

6 **16 Subsection 11(1)**

7 Omit “or an acting Chairperson” (last occurring).

8 **17 Paragraph 11(1)(a)**

9 Repeal the paragraph, substitute:

10 (a) must make, or cause to be made, such inquiries as the
11 Chairperson thinks necessary into:

12 (i) applications made under this Act, the *Pooled*
13 *Development Funds Act 1992* or the *Venture Capital Act*
14 *2002*; or

15 (ii) any other matter relevant to the operation of this Act,
16 the *Pooled Development Funds Act 1992* or the *Venture*
17 *Capital Act 2002*; and

18 **18 Paragraph 11(1)(b)**

19 Before “applications”, insert “those”.

20 **19 Subsection 16(4)**

21 Repeal the subsection.

22 **20 Subsection 17(8)**

23 Repeal the subsection.

24 **21 Subsection 18(8)**

25 Repeal the subsection.

26 **22 Subsection 19(1)**

27 Omit “(1)”.

28 **23 Subsection 19(1)**

29 After “this Act”, insert “, the *Pooled Development Funds Act 1992* or
30 the *Venture Capital Act 2002*”.

1 **24 After section 19A**

2 Insert:

3 **19B Minister may require provision of advice**

4 (1) The Minister may, by writing given to the Board, require the Board
5 to advise the Minister about a matter connected with the operation
6 of:

7 (a) this Act, the *Pooled Development Funds Act 1992* or the
8 *Venture Capital Act 2002*; or

9 (b) the Commonwealth's income tax laws as they operate in
10 relation to this Act, the *Pooled Development Funds Act 1992*
11 or the *Venture Capital Act 2002*.

12 (2) The Board must comply with such a requirement.

13 (3) A requirement made under subsection (1) is not a legislative
14 instrument.

15 **25 Subsection 20(1)**

16 Omit “, and the exercise of its powers, under this Act”, substitute “and
17 the exercise of its powers”.

18 **26 Subsection 20(4)**

19 Repeal the subsection, substitute:

20 (4) Subsection (1) does not empower the Minister to direct that the
21 Board perform any of its functions, or exercise any of its powers,
22 in a particular way in a particular case.

23 **27 Subsections 20(5) and (6)**

24 Repeal the subsections.

25 **28 Subsections 21(1) and (2)**

26 Repeal the subsections, substitute:

27 (1) The Board may, by resolution, delegate to the Chairperson, another
28 member or a member of the staff assisting the Board, all or any of
29 its functions and powers, other than its functions or powers:

30 (a) for PDFs—to make or revoke registration declarations under
31 the *Pooled Development Funds Act 1992*; and

- 1 (b) to register entities or revoke registration under Part 7A of the
2 *Pooled Development Funds Act 1992*; and
3 (c) to register limited partnerships as VCLPs, ESVCLPs or
4 AFOFs or revoke registration under Part 2 of the *Venture*
5 *Capital Act 2002*; and
6 (d) to approve ESVCLPs' investment plans, and their
7 replacement plans, under Part 2 of the *Venture Capital Act*
8 *2002*; and
9 (e) to register entities as eligible venture capital investors or
10 revoke registration under Part 3 of the *Venture Capital Act*
11 *2002*; and
12 (f) to make determinations under Part 4 of the *Venture Capital*
13 *Act 2002*.
- 14 (2) The Board may, by resolution, delegate to a committee all or any
15 of its functions and powers (including those referred to in
16 paragraphs (1)(a) to (f)).

17 **29 Subsection 21(3)**

18 After "delegation of a", insert "function or".

19 **30 Paragraph 21(3)(a)**

20 Omit "power was delegated);", substitute "function or power was
21 delegated); and".

22 **31 Paragraph 21(3)(b)**

23 Repeal the paragraph.

24 **32 Subsection 21(5)**

25 After "delegation of a", insert "function or".

26 **33 Subsections 21(7) and (8)**

27 Repeal the subsections.

28 **34 Subsection 22(1)**

29 After "this Act", insert ", the *Pooled Development Funds Act 1992* or
30 the *Venture Capital Act 2002*".

31 **35 Subsection 22(1A)**

1 Omit “powers delegated to it by the Board under subsection 21(1)”,
2 substitute “functions or powers delegated to it by the Board under
3 subsection 21(2)”.

4 **36 Subsection 22(2)**

5 After “(2B)”, insert “, (2BA)”.

6 **37 After subsection 22(2B)**

7 Insert:

8 (2BA) Despite subsection (2B), a person may be appointed as a member
9 of a committee for no more than 2 further consecutive terms if:

- 10 (a) during the previous 2 consecutive terms the person was not
11 the Chairperson of the committee; and
12 (b) the person will be the Chairperson of the committee in those
13 further terms.

14 **38 Subsection 22(7)**

15 After “this Act”, insert “, the *Pooled Development Funds Act 1992* or
16 the *Venture Capital Act 2002*”.

17 **39 Subsection 22A(1)**

18 Repeal the subsection, substitute:

19 (1) A committee may, by resolution, delegate to a member of the
20 committee or to a member of the staff assisting the committee all
21 or any of its functions and powers (including a function or power
22 delegated to the committee by the Board under subsection 21(2),
23 despite paragraph 34AB(b) of the *Acts Interpretation Act 1901*).

24 (1A) However, a committee must not delegate a function or power that:

- 25 (a) is referred to in paragraph 21(1)(a), (b), (c), (d), (e) or (f);
26 and
27 (b) was delegated to the committee by the Board under
28 subsection 21(2).

29 **40 Subsection 22A(2)**

30 After “delegation of a”, insert “function or”.

31 **41 Paragraph 22A(2)(a)**

1 After “when the”, insert “function or”.

2 **42 Subsection 22A(3)**

3 After “delegation of a”, insert “function or”.

4 **43 Subsection 22A(5)**

5 Repeal the subsection.

6 **44 Subsection 22A(6)**

7 Repeal the subsection.

8 **45 Subsection 46(1)**

9 Omit “activities”, substitute “operations”.

10 **46 Paragraph 46(2)(a)**

11 Omit “during the year in achieving the object of this Act”, substitute “,
12 the *Pooled Development Funds Act 1992* and the *Venture Capital Act*
13 *2002* during the year in achieving the objects of those Acts”.

14 **47 After subsection 46(2)**

15 Insert:

16 (2A) The report must also contain:

- 17 (a) a list of all PDFs in existence as at the end of the financial
18 year; and
19 (b) a list of all companies that became PDFs during the financial
20 year; and
21 (c) a list of all companies that ceased to be PDFs during the
22 financial year; and
23 (d) a list of the entities registered under Part 7A of the *Pooled*
24 *Development Funds Act 1992* as at the end of the financial
25 year; and
26 (e) a list of the entities that became registered under Part 7A of
27 the *Pooled Development Funds Act 1992* during the financial
28 year; and
29 (f) a list of the entities whose registration under Part 7A of the
30 *Pooled Development Funds Act 1992* was revoked during the
31 financial year; and

- 1 (g) a list of the partnerships registered under Part 2 of the
2 *Venture Capital Act 2002* as at the end of the financial year;
3 and
4 (h) a list of the partnerships that became registered under Part 2
5 of the *Venture Capital Act 2002* during the financial year;
6 and
7 (i) a list of the partnerships whose registration under Part 2 of
8 the *Venture Capital Act 2002* was revoked during the
9 financial year; and
10 (j) a list of the entities registered under Part 3 of the *Venture*
11 *Capital Act 2002* as at the end of the financial year; and
12 (k) a list of the entities that became registered under Part 3 of the
13 *Venture Capital Act 2002* during the financial year; and
14 (l) a list of the entities whose registration under Part 3 of the
15 *Venture Capital Act 2002* was revoked during the financial
16 year.

17 **48 Subsection 47(1)**

18 Omit “The Board, a committee, a member or an acting member of the
19 Board, a member of a committee or a member of the staff assisting the
20 Board or assisting a committee shall not”, substitute “An official to
21 whom this section applies must not”.

22 **49 Subsection 47(1)**

23 Omit “information” (wherever occurring), substitute “protected
24 information”.

25 **50 Subsection 47(2)**

26 Omit “information” (first occurring), substitute “protected information”.

27 **51 Subsection 47(3)**

28 Insert:

29 *official to whom this section applies* means the following:

- 30 (a) the Board;
31 (b) a person who is or has been a member of the Board;
32 (c) a committee;
33 (d) a person who is or has been a member of a committee;

- 1 (e) a person who is or has been a member of the staff assisting
2 the Board or a committee (see section 25);
3 (f) a person who is or has been a consultant assisting the Board
4 or a committee (see section 25);
5 (g) a person who was a member, or an acting member, of the
6 former Industry Research and Development Board that was
7 established by this Act (as in force before the commencement
8 of Schedule 12 to the *Tax Laws Amendment (2007 Measures*
9 *No. 5) Act 2007*);
10 (h) a person who was a member of the staff assisting the former
11 Industry Research and Development Board that was
12 established by this Act (as in force before the commencement
13 of Schedule 12 to the *Tax Laws Amendment (2007 Measures*
14 *No. 5) Act 2007*);
15 (i) a person who was a consultant assisting the former Industry
16 Research and Development Board that was established by
17 this Act (as in force before the commencement of
18 Schedule 12 to the *Tax Laws Amendment (2007 Measures*
19 *No. 5) Act 2007*).

20 **52 Subsection 47(3)**

21 Insert:

22 *protected information* means information that relates to a matter
23 covered by this Act.

24 ***Pooled Development Funds Act 1992***

25 **53 Subsection 4(1) (definition of *appointed member*)**

26 Repeal the definition.

27 **54 Subsection 4(1) (definition of *Board*)**

28 Repeal the definition, substitute:

29 *Board* means Innovation Australia, established by section 6 of the
30 *Industry Research and Development Act 1986*.

31 **55 Subsection 4(1)**

32 Insert:

1 *committee* means a committee appointed under section 22 of the
2 *Industry Research and Development Act 1986*.

3 **56 Subsection 4(1) (definition of *give information to the***
4 ***Board*)**

5 Omit “(5)”, substitute “4(8) of the *Industry Research and Development*
6 *Act 1986*”.

7 **57 Subsection 4(1) (definition of *produce a document to the***
8 ***Board*)**

9 Omit “(5)”, substitute “4(8) of the *Industry Research and Development*
10 *Act 1986*”.

11 **58 Subsection 4(5)**

12 Repeal the subsection.

13 **59 Parts 2 and 9**

14 Repeal the Parts.

15 **60 Subsection 71(5) (paragraphs (a), (b) and (c) of the**
16 **definition of *person to whom this section applies*)**

17 Repeal the paragraphs, substitute:

- 18 (a) a member of the Board; or
19 (b) a member of a committee; or
20 (c) a member of the staff assisting the Board or a committee (see
21 section 25 of the *Industry Research and Development Act*
22 *1986*); or
23 (d) a consultant assisting the Board or a committee (see
24 section 25 of the *Industry Research and Development Act*
25 *1986*); or
26 (e) a member of the former Venture Capital Registration Board
27 that was established by this Act (as in force before the
28 commencement of Schedule 12 to the *Tax Laws Amendment*
29 *(2007 Measures No. 5) Act 2007*); or
30 (f) a member of the staff assisting the former Venture Capital
31 Registration Board that was established by this Act (as in
32 force before the commencement of Schedule 12 to the *Tax*
33 *Laws Amendment (2007 Measures No. 5) Act 2007*); or

1 (g) a consultant to the former Venture Capital Registration Board
2 that was established by this Act (as in force before the
3 commencement of Schedule 12 to the *Tax Laws Amendment*
4 *(2007 Measures No. 5) Act 2007*), who was engaged under
5 this Act before that commencement.

6 **61 Subsection 71(5) (paragraph (a) of the definition of**
7 ***protected document*)**

8 Omit “to the Board in confidence”, substitute “in confidence to the
9 Board in relation to a matter covered by this Act or the *Venture Capital*
10 *Act 2002*”.

11 **62 Subsection 71(5) (after paragraph (a) of the definition of**
12 ***protected document*)**

13 Insert:

14 (aa) a document supplied in confidence to the former Venture
15 Capital Registration Board that was established by this Act
16 (as in force before the commencement of Schedule 12 to the
17 *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

18 **63 Subsection 71(5) (paragraph (a) of the definition of**
19 ***protected information*)**

20 Omit “to the Board in confidence”, substitute “in confidence to the
21 Board in relation to a matter covered by this Act or the *Venture Capital*
22 *Act 2002*”.

23 **64 Subsection 71(5) (after paragraph (a) of the definition of**
24 ***protected information*)**

25 Insert:

26 (aa) information supplied in confidence to the former Venture
27 Capital Registration Board that was established by this Act
28 (as in force before the commencement of Schedule 12 to the
29 *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

30 **65 Sections 72, 73, 74 and 75**

31 Repeal the sections.

1

2 **Part 2—Consequential amendments**

3 ***Income Tax Assessment Act 1936***

4 **66 Paragraph 16(4)(m)**

5 Omit “the PDF Registration Board established under section 5 of the
6 *Pooled Development Funds Act 1992*”, substitute “Innovation Australia,
7 established by section 6 of the *Industry Research and Development Act*
8 *1986*,”.

9 **67 Subsection 73B(1) (definition of *Board*)**

10 Omit “the Industry Research and Development Board”, substitute
11 “Innovation Australia,”.

12 **68 Subsection 73BD(12) (definition of *Board*)**

13 Omit “the Industry Research and Development Board”, substitute
14 “Innovation Australia,”.

15 **69 Subsection 73BE(7) (definition of *Board*)**

16 Omit “the Industry Research and Development Board”, substitute
17 “Innovation Australia,”.

18 **70 Subsection 73BK(12) (definition of *Board*)**

19 Omit “the Industry Research and Development Board”, substitute
20 “Innovation Australia,”.

21 **71 Subsection 73BL(7) (definition of *Board*)**

22 Omit “the Industry Research and Development Board”, substitute
23 “Innovation Australia,”.

24 ***Income Tax Assessment Act 1997***

25 **72 Section 43-100 (heading)**

26 Repeal the heading, substitute:

1 **43-100 Certificates by Innovation Australia**

2 **73 Section 43-100**

3 Omit “the Industry Research and Development Board established under
4 the *Industry Research and Development Act 1986*”, substitute
5 “*Innovation Australia”

6 **74 Paragraph 118-425(2)(b)**

7 Omit “the Venture Capital Registration Board”, substitute “*Innovation
8 Australia”.

9 **75 Subsection 118-425(2)**

10 Omit “the Venture Capital Registration Board” (last occurring),
11 substitute “Innovation Australia”.

12 **76 Subsection 118-425(3) (note 3)**

13 Omit “the Venture Capital Registration Board”, substitute “Innovation
14 Australia”.

15 **77 Subsection 118-425(14) (heading)**

16 Repeal the heading, substitute:

17 *Innovation Australia discretion*

18 **78 Subsection 118-425(14)**

19 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
20 Australia”.

21 **79 Paragraph 118-427(3)(c)**

22 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
23 Australia”.

24 **80 Subsection 118-427(3)**

25 Omit “the Venture Capital Registration Board”, substitute “Innovation
26 Australia”.

27 **81 Subsection 118-427(4) (note 3)**

28 Omit “the Venture Capital Registration Board”, substitute “Innovation
29 Australia”.

1 **82 Subsection 118-427(15) (heading)**

2 Repeal the heading, substitute:

3 *Innovation Australia discretion*

4 **83 Subsection 118-427(15)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **84 Subsection 995-1(1)**

8 Insert:

9 *form approved by Innovation Australia* has the same meaning as
10 in section 33-5 of the *Venture Capital Act 2002*.

11 **85 Subsection 995-1(1) (definition of *form approved by the***
12 ***Venture Capital Registration Board*)**

13 Repeal the definition.

14 **86 Subsection 995-1(1)**

15 Insert:

16 *Innovation Australia* means the board established by section 6 of
17 the *Industry Research and Development Act 1986*.

18 **87 Subsection 995-1(1) (definition of *Venture Capital***
19 ***Registration Board*)**

20 Repeal the definition.

21 ***Industrial Research and Development Incentives Act 1976***

22 **88 Subsection 4(1) (definition of *acting Chairperson*)**

23 Repeal the definition.

24 **89 Subsection 4(1) (definition of *new Board*)**

25 Omit “the Industry Research and Development Board”, substitute
26 “Innovation Australia,”.

27 **90 Subsection 4(1A)**

1 Omit “(including an acting Chairperson of the new Board)”.

2 ***Venture Capital Act 2002***

3 **91 Subsection 1-15(2)**

4 Omit “*Venture Capital Registration Board”, substitute “*Innovation
5 Australia”.

6 **92 Section 3-1 (note)**

7 Repeal the note, substitute:

8 Note: Innovation Australia is responsible for the operation of these
9 measures. The *Industry Research and Development Act 1986* provides
10 for the establishment and operation of Innovation Australia.

11 **93 Paragraph 3-5(c)**

12 Omit “the Venture Capital Registration Board”, substitute “Innovation
13 Australia”.

14 **94 Section 3-15 (heading)**

15 Repeal the heading, substitute:

16 **3-15 Determinations by Innovation Australia concerning certain
17 investments (Part 4)**

18 **95 Section 3-15**

19 Omit “the Venture Capital Registration Board”, substitute “Innovation
20 Australia”.

21 **96 Section 3-20**

22 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
23 Australia’s”.

24 **97 Section 7-1**

25 Omit “The Venture Capital Registration Board” (first occurring),
26 substitute “Innovation Australia”.

27 **98 Section 7-1**

28 Omit “the Venture Capital Registration Board” (wherever occurring),
29 substitute “Innovation Australia”.

1 **99 Section 7-1**

2 Omit “The Venture Capital Registration Board” (second occurring),
3 substitute “Innovation Australia”.

4 **100 Paragraph 9-3(4)(a)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **101 Subsection 9-4(1)**

8 Omit “The *Venture Capital Registration Board”, substitute
9 “*Innovation Australia”.

10 **102 Subsection 9-4(2)**

11 Omit “*form approved by the *Venture Capital Registration Board”,
12 substitute “*form approved by Innovation Australia”.

13 **103 Subsection 9-4(3)**

14 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
15 Australia”.

16 **104 Subsection 9-4(4)**

17 Omit “The *Venture Capital Registration Board”, substitute
18 “*Innovation Australia”.

19 **105 Subsection 9-4(5)**

20 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
21 Australia”.

22 **106 Subsection 9-4(5)**

23 Omit “the Venture Capital Registration Board”, substitute “Innovation
24 Australia”.

25 **107 Subsection 9-4(6)**

26 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
27 Australia”.

28 **108 Subsection 9-4(6)**

29 Omit “the Venture Capital Registration Board”, substitute “Innovation
30 Australia”.

1 **109 Paragraph 9-10(1)(b)**

2 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
3 Australia”.

4 **110 Subsection 9-10(2)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **111 Subsection 9-10(2)**

8 Omit “*form approved by the Venture Capital Registration Board”,
9 substitute “*form approved by Innovation Australia”.

10 **112 Subsection 9-10(2)**

11 Omit “for the Venture Capital Registration Board”, substitute “for
12 Innovation Australia”.

13 **113 Subsection 9-10(3)**

14 Omit “The *Venture Capital Registration Board”, substitute
15 “*Innovation Australia”.

16 **114 Subsection 9-10(3)**

17 Omit “the Venture Capital Registration Board”, substitute “Innovation
18 Australia”.

19 **115 Subsection 11-1(1)**

20 Omit “*form approved by the Venture Capital Registration Board”,
21 substitute “*form approved by Innovation Australia”.

22 **116 Subsection 11-1(1)**

23 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
24 Australia”.

25 **117 Paragraph 11-1(2)(l)**

26 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
27 Australia”.

28 **118 Subsection 11-5(1)**

29 Omit “The *Venture Capital Registration Board”, substitute
30 “*Innovation Australia”.

1 **119 Subsection 11-5(1)**

2 Omit “the Venture Capital Registration Board” (wherever occurring),
3 substitute “Innovation Australia”.

4 **120 Section 11-10**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **121 Subsection 11-15(1)**

8 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
9 Australia”.

10 **122 Subsection 11-15(2)**

11 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
12 Australia”.

13 **123 Subsection 11-15(2)**

14 Omit “the Venture Capital Registration Board”, substitute “Innovation
15 Australia”.

16 **124 Subsection 11-15(3)**

17 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
18 Australia”.

19 **125 Subsection 11-15(4)**

20 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
21 Australia”.

22 **126 Subsection 11-15(4)**

23 Omit “the Venture Capital Registration Board”, substitute “Innovation
24 Australia”.

25 **127 Subsection 13-1(1)**

26 Omit “The *Venture Capital Registration Board”, substitute
27 “*Innovation Australia”.

28 **128 Paragraph 13-1(1)(d)**

29 Omit “the Venture Capital Registration Board”, substitute “Innovation
30 Australia”.

1 **129 Subsection 13-1(1)**

2 Omit “the Venture Capital Registration Board” (last occurring),
3 substitute “Innovation Australia”.

4 **130 Subsection 13-1(1A)**

5 Omit “The *Venture Capital Registration Board”, substitute
6 “*Innovation Australia”.

7 **131 Paragraph 13-1(1A)(c)**

8 Omit “the Venture Capital Registration Board” (wherever occurring),
9 substitute “Innovation Australia”.

10 **132 Paragraphs 13-1(1A)(d) and (f)**

11 Omit “the Venture Capital Registration Board”, substitute “Innovation
12 Australia”.

13 **133 Subsection 13-1(1A)**

14 Omit “the Venture Capital Registration Board” (last occurring),
15 substitute “Innovation Australia”.

16 **134 Subsection 13-1(2)**

17 Omit “The *Venture Capital Registration Board”, substitute
18 “*Innovation Australia”.

19 **135 Paragraph 13-1(2)(d)**

20 Omit “the Venture Capital Registration Board”, substitute “Innovation
21 Australia”.

22 **136 Subsection 13-1(2)**

23 Omit “the Venture Capital Registration Board” (last occurring),
24 substitute “Innovation Australia”.

25 **137 Subsection 13-1(3)**

26 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
27 Australia”.

28 **138 Subsection 13-1(3)**

29 Omit “the Venture Capital Registration Board”, substitute “Innovation
30 Australia”.

1 **139 Subsection 13-1(4)**

2 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
3 Australia”.

4 **140 Subsection 13-1(4)**

5 Omit “the Venture Capital Registration Board”, substitute “Innovation
6 Australia”.

7 **141 Subsection 13-1(5)**

8 Omit “The *Venture Capital Registration Board”, substitute
9 “*Innovation Australia”.

10 **142 Subsection 13-5(1)**

11 Omit “The *Venture Capital Registration Board”, substitute
12 “*Innovation Australia”.

13 **143 Subsection 13-5(1)**

14 Omit “the Venture Capital Registration Board”, substitute “Innovation
15 Australia”.

16 **144 Subsection 13-5(1A)**

17 Omit “The *Venture Capital Registration Board”, substitute
18 “*Innovation Australia”.

19 **145 Subsection 13-5(1A)**

20 Omit “the Venture Capital Registration Board”, substitute “Innovation
21 Australia”.

22 **146 Subsection 13-5(2)**

23 Omit “The *Venture Capital Registration Board”, substitute
24 “*Innovation Australia”.

25 **147 Subsection 13-5(2)**

26 Omit “the Venture Capital Registration Board”, substitute “Innovation
27 Australia”.

28 **148 Subsection 13-15(1)**

29 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
30 Australia”.

1 **149 Subsection 13-15(1)**

2 Omit “the Venture Capital Registration Board”, substitute “Innovation
3 Australia”.

4 **150 Subsections 13-15(3), (5) and (6)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **151 Subsection 13-15(7)**

8 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
9 Australia”.

10 **152 Subsection 13-15(7)**

11 Omit “the Board”, substitute “Innovation Australia”.

12 **153 Subsection 13-15(8)**

13 Omit “The *Venture Capital Registration Board”, substitute
14 “*Innovation Australia”.

15 **154 Subsection 13-15(9)**

16 Omit “the *Venture Capital Registration Board’s”, substitute
17 “*Innovation Australia’s”.

18 **155 Subsection 13-20(1)**

19 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
20 Australia”.

21 **156 Subsection 13-20(2)**

22 Omit “The *Venture Capital Registration Board”, substitute
23 “*Innovation Australia”.

24 **157 Subsection 13-20(3)**

25 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
26 Australia”.

27 **158 Section 15-1**

28 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
29 Australia”.

1 **159 Paragraph 15-1(h)**

2 Omit “the Venture Capital Registration Board”, substitute “Innovation
3 Australia”.

4 **160 Subsection 15-5(1)**

5 Omit “The *Venture Capital Registration Board”, substitute
6 “*Innovation Australia”.

7 **161 Subsection 15-5(1)**

8 Omit “the Venture Capital Registration Board” (wherever occurring),
9 substitute “Innovation Australia”.

10 **162 Section 15-10**

11 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
12 Australia”.

13 **163 Section 15-15**

14 Omit “The *Venture Capital Registration Board”, substitute
15 “*Innovation Australia”.

16 **164 Subsection 15-17(1)**

17 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
18 Australia”.

19 **165 Subsections 15-17(2) and (3)**

20 Omit “The *Venture Capital Registration Board”, substitute
21 “*Innovation Australia”.

22 **166 Subsection 15-17(4)**

23 Omit “The *Venture Capital Registration Board”, substitute
24 “*Innovation Australia”.

25 **167 Subsection 15-17(4)**

26 Omit “section 75 of the *Pooled Development Funds Act 1992*”,
27 substitute “section 46 of the *Industry Research and Development Act*
28 *1986*”.

29 **168 Section 15-20**

1 Omit “The *Venture Capital Registration Board”, substitute
2 “*Innovation Australia”.

3 **169 Section 15-20**

4 Omit “the Venture Capital Registration Board” (wherever occurring),
5 substitute “Innovation Australia”.

6 **170 Subsection 17-1(1)**

7 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
8 Australia”.

9 **171 Subsection 17-1(2)**

10 Omit “The *Venture Capital Registration Board”, substitute
11 “*Innovation Australia”.

12 **172 Paragraph 17-1(3)(a)**

13 Omit “the Venture Capital Registration Board’s”, substitute
14 “*Innovation Australia’s”.

15 **173 Paragraphs 17-1(3)(b) and (c)**

16 Omit “the Venture Capital Registration Board”, substitute “Innovation
17 Australia”.

18 **174 Subsection 17-1(5)**

19 Omit “The *Venture Capital Registration Board”, substitute
20 “*Innovation Australia”.

21 **175 Subsection 17-3(1)**

22 Omit “The *Venture Capital Registration Board”, substitute
23 “*Innovation Australia”.

24 **176 Subsection 17-3(1)**

25 Omit “the Venture Capital Registration Board”, substitute “Innovation
26 Australia”.

27 **177 Subsection 17-3(2)**

28 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
29 Australia”.

1 **178 Subsection 17-3(2)**

2 Omit “*form approved by the Venture Capital Registration Board”,
3 substitute “*form approved by Innovation Australia”.

4 **179 Subsection 17-3(3)**

5 Omit “The *Venture Capital Registration Board”, substitute
6 “*Innovation Australia”.

7 **180 Subsection 17-3(3)**

8 Omit “the Venture Capital Registration Board”, substitute “Innovation
9 Australia”.

10 **181 Subsection 17-3(4)**

11 Omit “The *Venture Capital Registration Board”, substitute
12 “*Innovation Australia”.

13 **182 Subsection 17-5(1)**

14 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
15 Australia”.

16 **183 Paragraph 17-5(2)(a)**

17 Omit “the *Venture Capital Registration Board’s”, substitute
18 “*Innovation Australia’s”.

19 **184 Paragraph 17-5(2)(c)**

20 Omit “the Venture Capital Registration Board”, substitute “Innovation
21 Australia”.

22 **185 Subsection 17-5(3)**

23 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
24 Australia”.

25 **186 Subsection 17-5(3)**

26 Omit “*form approved by the Venture Capital Registration Board”,
27 substitute “*form approved by Innovation Australia”.

28 **187 Subsections 17-5(4) and (6)**

29 Omit “The *Venture Capital Registration Board”, substitute
30 “*Innovation Australia”.

1 **188 Section 17-10 (heading)**

2 Repeal the heading, substitute:

3 **17-10 Revocation at discretion of Innovation Australia**

4 **189 Subsection 17-10(1)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **190 Subsection 17-10(1)**

8 Omit “the Venture Capital Registration Board”, substitute “Innovation
9 Australia”.

10 **191 Subsection 17-10(2)**

11 Omit “The *Venture Capital Registration Board”, substitute
12 “*Innovation Australia”.

13 **192 Subsection 17-10(2)**

14 Omit “the Venture Capital Registration Board” (first occurring),
15 substitute “Innovation Australia”.

16 **193 Paragraph 17-10(2)(a)**

17 Omit “the Venture Capital Registration Board”, substitute “Innovation
18 Australia”.

19 **194 Paragraph 17-10(2)(a)**

20 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
21 Australia’s”.

22 **195 Section 17-15**

23 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
24 Australia”.

25 **196 Section 17-15**

26 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
27 Australia’s”.

28 **197 Section 17-20**

1 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
2 Australia”.

3 **198 Subsection 17-25(1)**

4 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
5 Australia”.

6 **199 Subsection 17-25(2)**

7 Omit “The *Venture Capital Registration Board”, substitute
8 “*Innovation Australia”.

9 **200 Section 21-1**

10 Omit “The Venture Capital Registration Board”, substitute “Innovation
11 Australia”.

12 **201 Subsection 21-5(1)**

13 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
14 Australia”.

15 **202 Subsection 21-5(1)**

16 Omit “*form approved by the Venture Capital Registration Board”,
17 substitute “*form approved by Innovation Australia”.

18 **203 Subsection 21-5(2)**

19 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
20 Australia”.

21 **204 Subsection 21-5(4)**

22 Omit “The *Venture Capital Registration Board”, substitute
23 “*Innovation Australia”.

24 **205 Subsection 21-5(4)**

25 Omit “the Venture Capital Registration Board”, substitute “Innovation
26 Australia”.

27 **206 Subsection 21-5(5)**

28 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
29 Australia”.

1 **207 Subsection 21-5(5)**

2 Omit “the Venture Capital Registration Board”, substitute “Innovation
3 Australia”.

4 **208 Subsection 21-5(6)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **209 Subsection 21-5(6)**

8 Omit “the Venture Capital Registration Board”, substitute “Innovation
9 Australia”.

10 **210 Subsection 21-10(1)**

11 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
12 Australia”.

13 **211 Subsection 21-10(2)**

14 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
15 Australia”.

16 **212 Subsection 21-10(2)**

17 Omit “the Venture Capital Registration Board”, substitute “Innovation
18 Australia”.

19 **213 Subsection 21-10(3)**

20 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
21 Australia”.

22 **214 Subsection 21-10(4)**

23 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
24 Australia”.

25 **215 Subsection 21-10(4)**

26 Omit “the Venture Capital Registration Board”, substitute “Innovation
27 Australia”.

28 **216 Subsection 21-20(1)**

29 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
30 Australia”.

1 **217 Section 21-25 (heading)**

2 Repeal the heading, substitute:

3 **21-25 Revocation at discretion of Innovation Australia**

4 **218 Subsection 21-25(1)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **219 Subsection 21-25(1)**

8 Omit “the Venture Capital Registration Board”, substitute “Innovation
9 Australia”.

10 **220 Subsection 21-25(2)**

11 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
12 Australia”.

13 **221 Subsection 21-25(2)**

14 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
15 Australia’s”.

16 **222 Subsection 21-25(3)**

17 Omit “The *Venture Capital Registration Board”, substitute
18 “*Innovation Australia”.

19 **223 Subsection 21-25(3)**

20 Omit “the Venture Capital Registration Board” (first occurring),
21 substitute “Innovation Australia”.

22 **224 Paragraph 21-25(3)(a)**

23 Omit “the Venture Capital Registration Board”, substitute “Innovation
24 Australia”.

25 **225 Paragraph 21-25(3)(a)**

26 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
27 Australia’s”.

28 **226 Subsection 21-30(1)**

1 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
2 Australia”.

3 **227 Subsection 21-30(2)**

4 Omit “The *Venture Capital Registration Board”, substitute
5 “*Innovation Australia”.

6 **228 Part 4 (heading)**

7 Repeal the heading, substitute:

8 **Part 4—Determinations by Innovation Australia**
9 **concerning certain investments**

10 **229 Division 25 of Part 4 (heading)**

11 Repeal the heading, substitute:

12 **Division 25—Determinations by Innovation Australia**
13 **concerning certain investments**

14 **230 Section 25-1**

15 Omit “The Venture Capital Registration Board”, substitute “Innovation
16 Australia”.

17 **231 Section 25-5 (heading)**

18 Repeal the heading, substitute:

19 **25-5 Innovation Australia may determine a shorter period**

20 **232 Subsections 25-5(1) and (1A)**

21 Omit “The *Venture Capital Registration Board”, substitute
22 “*Innovation Australia”.

23 **233 Subsection 25-5(2)**

24 Omit “*form approved by the *Venture Capital Registration Board”,
25 substitute “*form approved by Innovation Australia”.

26 **234 Subsection 25-5(3)**

1 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
2 Australia”.

3 **235 Subsection 25-5(4)**

4 Omit “The *Venture Capital Registration Board”, substitute
5 “*Innovation Australia”.

6 **236 Subsection 25-5(5)**

7 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
8 Australia”.

9 **237 Subsection 25-5(5)**

10 Omit “the Venture Capital Registration Board”, substitute “Innovation
11 Australia”.

12 **238 Subsection 25-5(6)**

13 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
14 Australia”.

15 **239 Subsection 25-5(6)**

16 Omit “the Venture Capital Registration Board”, substitute “Innovation
17 Australia”.

18 **240 Section 25-10 (heading)**

19 Repeal the heading, substitute:

20 **25-10 Innovation Australia may determine that a requirement does**
21 **not apply**

22 **241 Subsections 25-10(1) and (1A)**

23 Omit “The *Venture Capital Registration Board”, substitute
24 “*Innovation Australia”.

25 **242 Subsection 25-10(2)**

26 Omit “*form approved by the *Venture Capital Registration Board”,
27 substitute “*form approved by Innovation Australia”.

28 **243 Subsection 25-10(3)**

1 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
2 Australia”.

3 **244 Subsection 25-10(4)**

4 Omit “The *Venture Capital Registration Board”, substitute
5 “*Innovation Australia”.

6 **245 Subsection 25-10(5)**

7 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
8 Australia”.

9 **246 Subsection 25-10(5)**

10 Omit “the Venture Capital Registration Board”, substitute “Innovation
11 Australia”.

12 **247 Subsection 25-10(6)**

13 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
14 Australia”.

15 **248 Subsection 25-10(6)**

16 Omit “the Venture Capital Registration Board”, substitute “Innovation
17 Australia”.

18 **249 Section 25-15 (heading)**

19 Repeal the heading, substitute:

20 **25-15 Innovation Australia may determine that a requirement does**
21 **not apply**

22 **250 Subsections 25-15(1) and (1A)**

23 Omit “The *Venture Capital Registration Board”, substitute
24 “*Innovation Australia”.

25 **251 Subsection 25-15(2)**

26 Omit “*form approved by the Venture Capital Registration Board”,
27 substitute “*form approved by Innovation Australia”.

28 **252 Subsection 25-15(3)**

1 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
2 Australia”.

3 **253 Subsection 25-15(4)**

4 Omit “The *Venture Capital Registration Board”, substitute
5 “*Innovation Australia”.

6 **254 Subsection 25-15(5)**

7 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
8 Australia”.

9 **255 Subsection 25-15(5)**

10 Omit “the Venture Capital Registration Board”, substitute “Innovation
11 Australia”.

12 **256 Subsection 25-15(6)**

13 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
14 Australia”.

15 **257 Subsection 25-15(6)**

16 Omit “the Venture Capital Registration Board”, substitute “Innovation
17 Australia”.

18 **258 Section 29-1**

19 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
20 Australia”.

21 **259 Subsections 29-5(1) and (2)**

22 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
23 Australia”.

24 **260 Subsection 29-10(1)**

25 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
26 Australia”.

27 **261 Subsection 29-10(1)**

28 Omit “the Venture Capital Registration Board”, substitute “Innovation
29 Australia”.

1 **262 Subsection 29-10(2)**

2 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
3 Australia”.

4 **263 Subsection 29-10(2)**

5 Omit “the Venture Capital Registration Board”, substitute “Innovation
6 Australia”.

7 **264 Subsection 29-10(4)**

8 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
9 Australia”.

10 **265 Subsection 29-10(4)**

11 Omit “the Venture Capital Registration Board”, substitute “Innovation
12 Australia”.

13 **266 Subsection 29-10(5)**

14 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
15 Australia”.

16 **267 Subsection 29-10(5)**

17 Omit “the Venture Capital Registration Board” (wherever occurring),
18 substitute “Innovation Australia”.

19 **268 Subsection 29-10(6)**

20 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
21 Australia”.

22 **269 Subsection 29-10(6)**

23 Omit “the Venture Capital Registration Board”, substitute “Innovation
24 Australia”.

25 **270 Paragraph 29-10(6)(b)**

26 Omit “the Venture Capital Registration Board’s”, substitute “Innovation
27 Australia’s”.

28 **271 Subsection 29-10(8)**

29 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
30 Australia”.

1 **272 Paragraph 29-10(8)(a)**

2 Omit “the Venture Capital Registration Board”, substitute “Innovation
3 Australia”.

4 **273 Subsection 29-15(1)**

5 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
6 Australia”.

7 **274 Section 33-1**

8 Repeal the section.

9 **275 Section 33-5 (heading)**

10 Repeal the heading, substitute:

11 **33-5 Meaning of *form approved by Innovation Australia***

12 **276 Section 33-5**

13 Omit “*form approved by the Venture Capital Registration Board*”,
14 substitute “*form approved by Innovation Australia*”.

15 **277 Paragraph 33-5(a)**

16 Omit “the *Venture Capital Registration Board”, substitute “*Innovation
17 Australia”.

18 **278 Paragraphs 33-5(c) and (d)**

19 Omit “the Venture Capital Registration Board”, substitute “Innovation
20 Australia”.

1

2 **Part 3—Transitional provisions**

3 **279 Interpretation**

4 In this Part:

5 **new Board** means Innovation Australia, established by section 6 of the
6 *Industry Research and Development Act 1986* (as amended by this
7 Schedule).

8 **former Board** means:

- 9 (a) the Industry Research and Development Board that was
10 established by the *Industry Research and Development Act*
11 *1986* (as in force before the commencement of this item); or
12 (b) the Venture Capital Registration Board that was established
13 by the *Pooled Development Funds Act 1992* (as in force
14 before the commencement of this item).

15 **280 Things done to a former Board before commencement**

- 16 (1) Any thing done to a former Board before the commencement of this
17 item is taken, on and after that commencement, to have been done to the
18 new Board.
- 19 (2) Without limiting subitem (1), examples of things done to a former
20 Board include, but are not limited to, the following:
- 21 (a) the making of applications or requests to the former Board;
22 (b) the making of agreements with the former Board;
23 (c) the giving of notices, documents or other things to the former
24 Board;
25 (d) the giving of directions by the Minister to the former Board.

26 **281 Things done to the Chairperson or acting Chairperson of**
27 **a former Board before commencement**

- 28 (1) Any thing done to the Chairperson, or acting Chairperson, of a former
29 Board before the commencement of this item is taken, on and after that
30 commencement, to have been done to the Chairperson of the new
31 Board.

- 1 (2) Without limiting subitem (1), examples of things done to the
2 Chairperson of a former Board include, but are not limited to, the giving
3 of notices or advice to the Chairperson.

4 **282 Things done by a former Board before commencement**

- 5 (1) Any thing done by a former Board before the commencement of this
6 item is taken, on and after that commencement, to have been done by
7 the new Board.
- 8 (2) Without limiting subitem (1), examples of things done by a former
9 Board include, but are not limited to, the following:
- 10 (a) the making of determinations or decisions by the former
11 Board;
 - 12 (b) the granting or revoking of registrations, approvals,
13 certificates or other things by the former Board;
 - 14 (c) the making of requests by the former Board;
 - 15 (d) the giving of directions by the former Board;
 - 16 (e) the making of guidelines by the former Board;
 - 17 (f) the formulation of criteria by the former Board;
 - 18 (g) the approval of forms by the former Board;
 - 19 (h) the making of requirements by the former Board;
 - 20 (i) the making of agreements by the former Board;
 - 21 (j) the giving of notices, documents or other things by the
22 former Board.
- 23 (3) Without limiting subitem (1), if, after the commencement of this item,
24 the new Board is required under section 46 of the *Industry Research*
25 *and Development Act 1986* (as amended by this Schedule) to give a
26 report in relation to a financial year that commenced before the
27 commencement of this item, then the new Board must include in the
28 report any matter that, had the amendments made by this Schedule not
29 been made, a former Board would have been required to include in a
30 report for that year under:
- 31 (a) section 46 of the *Industry Research and Development Act*
32 *1986* (as in force before the commencement of this item); or
 - 33 (b) section 75 of the *Pooled Development Funds Act 1992* (as in
34 force before the commencement of this item); or
 - 35 (c) section 33-1 of the *Venture Capital Act 2002* (as in force
36 before the commencement of this item).

1 **283 Things done by the Chairperson or acting Chairperson of**
2 **a former Board before commencement**

3 (1) Any thing done by the Chairperson, or acting Chairperson, of a former
4 Board before the commencement of this item is taken, on and after that
5 commencement, to have been done by the Chairperson of the new
6 Board.

7 (2) Without limiting subitem (1), examples of things done by the
8 Chairperson of a former Board include, but are not limited to, the
9 following:

- 10 (a) the making of inquiries or reports by the Chairperson;
11 (b) a determination, by the Chairperson, of the form of records;
12 (c) the signing of documents by the Chairperson.

13 **284 Things done by a member or acting member of a former**
14 **Board before commencement**

15 (1) Any thing done by a member, or acting member, of a former Board
16 before the commencement of this item is taken, on and after that
17 commencement, to have been done by a member of the new Board.

18 (2) Without limiting subitem (1), examples of things done by a member of
19 a former Board include, but are not limited to, the signing of a
20 certificate by the member.

21 **285 Things done by a person authorised by a former Board**
22 **before commencement**

23 (1) Any thing done by a person authorised by a former Board before the
24 commencement of this item is taken, on and after that commencement,
25 to have been done by a person authorised by the new Board.

26 (2) Without limiting subitem (1), examples of things done by a person
27 authorised by a former Board include, but are not limited to, the signing
28 of a certificate by the person.

29 **286 References to a former Board in instruments etc.**

30 A reference to a former Board in the following:

- 31 (a) a legislative instrument;

- 1 (b) guidelines made or criteria formulated under the *Industry*
2 *Research and Development Act 1986* or the *Venture Capital*
3 *Act 2002*;
- 4 (c) certificates, notices or other documents given to or by the
5 former Board under the *Industry Research and Development*
6 *Act 1986*, the *Pooled Development Funds Act 1992* or the
7 *Venture Capital Act 2002*;
- 8 (d) directions given by the Minister to the former Board under
9 the *Industry Research and Development Act 1986* or the
10 *Pooled Development Funds Act 1992*;
- 11 (e) forms approved by the former Board under the *Industry*
12 *Research and Development Act 1986*;
- 13 (f) agreements made with the former Board under the *Industry*
14 *Research and Development Act 1986*;
- 15 is taken, after the commencement of this item, to be a reference to the
16 new Board.

17 **287 Committees**

18 An appointment of a member of a committee under section 22 of the
19 *Industry Research and Development Act 1986* that is in force
20 immediately before the commencement of this item is taken, on that
21 commencement, to be revoked.