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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Tax Laws Amendment (2009 Measures  
No. 6) Bill 2009**

**No. , 2009**

*(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 (2009*  
6                     *Measures No. 6) Act 2009.*

7     **2 Commencement**

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day this Act receives the Royal Assent.	
3. Schedule 2, Parts 1, 2 and 3	The day after this Act receives the Royal Assent.	
4. Schedule 2, Parts 4 and 5	1 July 2013.	1 July 2013
5. Schedule 3, Part 1, Division 1	Immediately after the commencement of item 57 of Schedule 1 to the <i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i> .	30 June 2000
6. Schedule 3, Part 1, Division 2	Immediately after the commencement of item 214 of Schedule 7 to the <i>Tax Laws Amendment (2006 Measures No. 2) Act 2006</i> .	22 June 2006
7. Schedule 3, Part 2, Division 1	At the same time as Schedule 1 to the <i>Superannuation Legislation Amendment (Simplification) Act 2007</i> commences.	15 March 2007
8. Schedule 3, Part 2, Division 2	Immediately after the start of the day on which the <i>Superannuation Legislation Amendment (Simplification) Act 2007</i> received the Royal Assent.	15 March 2007
9. Schedule 3, Part 3	The day this Act receives the Royal Assent.	
10. Schedule 4, Part 1	4 June 2009.	4 June 2009
11. Schedule 4, Parts 2 and 3	The day this Act receives the Royal Assent.	
12. Schedule 5, Part 1	25 February 2009.	25 February 2009
13. Schedule 5, Part 2	Immediately before the commencement of item 5 of Schedule 5 to the <i>Tax Laws Amendment (2008 Measures No. 6) Act 2009</i> .	1 July 2011

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
14. Schedule 5, Part 3	The day this Act receives the Royal Assent.	
15. Schedule 6	The day this Act receives the Royal Assent.	

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

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

### 7 **3 Schedule(s)**

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

1  
2 **Schedule 1—Abolishing trust cloning and**  
3 **providing a CGT roll-over for certain**  
4 **trusts**

5 **Part 1—Removing trust cloning exception**

6 *Income Tax Assessment Act 1997*

7 **1 Subsection 104-55(5)**

8 Repeal the subsection, substitute:

9 *Exceptions*

10 (5) *CGT event E1* does not happen if you are the sole beneficiary of  
11 the trust and:

12 (a) you are absolutely entitled to the asset as against the trustee  
13 (disregarding any legal disability); and

14 (b) the trust is not a unit trust.

15 **2 Subsection 104-60(5)**

16 Repeal the subsection, substitute:

17 *Exceptions*

18 (5) *CGT event E2* does not happen if you are the sole beneficiary of  
19 the trust and:

20 (a) you are absolutely entitled to the asset as against the trustee  
21 (disregarding any legal disability); and

22 (b) the trust is not a unit trust.

23 **3 Application provision**

24 The amendments made by this Part apply to CGT events happening on  
25 or after 1 November 2008.



1

2 **Part 2—Roll-over for certain trusts**

3 *Income Tax Assessment Act 1997*

4 **4 Subsection 40-340(1) (at the end of the table)**

5 Add:

- 5       \*Disposal of asset between     The trustees of the trusts choose to obtain a  
          certain trusts                     roll-over under Subdivision 126-G in relation  
   to the disposal.

6 **5 Section 109-55 (after table item 8F)**

7 Insert:

- 8G     You hold a membership             when you acquired the     section 115-30  
       interest in the receiving trust     corresponding  
       involved in a roll-over under     membership interest in  
       Subdivision 126-G                 the transferring trust  
   involved in the  
   roll-over

8 **6 After section 112-54**

9 Insert:

10 **112-54A Transfer of assets between certain trusts**

11

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<b>Transfer of assets between certain trusts</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See sections:</b>
1	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	First element of cost base and reduced cost base of the CGT asset	126-240
2	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	Cost base and reduced cost base of membership interests in each trust	126-245 and 126-250

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12 **7 Section 112-150 (at the end of the table)**

13 Add:

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10      Transfer of a CGT asset between certain trusts      Subdivision 126-G

1      **8 Subsection 115-30(1) (at the end of the table)**

2      Add:

- 9      A \*CGT asset that:
- (a) is a \*membership interest in the receiving trust involved in a roll-over under Subdivision 126-G; and
  - (b) is held by the acquirer just after the transfer time for the roll-over
- (a) when the acquirer \*acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the roll-over; or
  - (b) if the roll-over asset for the roll-over has been involved in an unbroken series of roll-overs under Subdivision 126-G—when the acquirer acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the first roll-over in the series

3      **9 At the end of Division 126**

4      Add:

5      **Subdivision 126-G—Transfer of assets between certain trusts**

6      **Guide to Subdivision 126-G**

7      **126-215 What this Subdivision is about**

8      

Roll-overs may be available when CGT assets are transferred between certain trusts.
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9

10      **Table of sections**

11      **Operative provisions**

- 12      126-220    Object of this Subdivision
- 13      126-225    When a roll-over may be chosen
- 14      126-230    Beneficiaries' entitlements not be discretionary etc.
- 15      126-235    Exceptions for roll-over

1	126-240	Consequences for the trusts
2	126-245	Consequences for beneficiaries—general approach for working out cost
3		base etc.
4	126-250	Consequences for beneficiaries—other approach for working out cost base
5		etc.
6	126-255	No other cost base etc. adjustment for beneficiaries
7	126-260	Giving information to beneficiaries

## 8 **Operative provisions**

### 9 **126-220 Object of this Subdivision**

10 The object of this Subdivision is to ensure that CGT considerations  
11 are not an impediment to the restructure of trusts, whilst ensuring  
12 that subsequent changes to the manner and extent to which  
13 beneficiaries can benefit from the trusts are subject to appropriate  
14 tax consequences.

### 15 **126-225 When a roll-over may be chosen**

- 16 (1) A roll-over may be chosen for a \*CGT asset (the *roll-over asset*) if:
- 17 (a) the trustee of a trust (the *transferring trust*):
- 18 (i) creates a trust (the *receiving trust*), by declaration or  
19 settlement, over one or more CGT assets that include  
20 the roll-over asset; or
- 21 (ii) transfers the roll-over asset to an existing trust (the  
22 *receiving trust*);
- 23 at a particular time (the *transfer time*); and
- 24 (b) if subparagraph (a)(ii) applies—the receiving trust has no  
25 CGT assets, other than small amounts of cash or debt, just  
26 before the transfer time; and
- 27 (c) just after the transfer time:
- 28 (i) each of the trusts has the same beneficiaries; and
- 29 (ii) the receiving trust has the same \*classes of \*membership  
30 interests that the transferring trust had just before, and  
31 has just after, the transfer time; and
- 32 (iii) the sum of the \*market values of each beneficiary's  
33 membership interests of a particular class in both trusts  
34 is substantially the same as the sum of the market  
35 values, just before the transfer time, of the beneficiary's  
36 membership interests of that class in both trusts; and

- 1 (d) the requirement in section 126-230 is met; and  
2 (e) the exceptions in section 126-235 do not apply.

3 *Exception if other roll-over assets already transferred*

- 4 (2) However, paragraph (1)(b) does not apply if:  
5 (a) the roll-over asset is transferred to the receiving trust under  
6 an \*arrangement; and  
7 (b) the roll-over asset was an asset of the transferring trust just  
8 before the arrangement was made; and  
9 (c) at least one other asset of the receiving trust:  
10 (i) is an asset for which a roll-over was obtained under this  
11 Subdivision for the trusts; and  
12 (ii) is an asset over which the receiving trust was created, or  
13 was transferred by the transferring trust to the receiving  
14 trust under the arrangement; and  
15 (d) the transfer time is in the income year for the transferring  
16 trust that includes the earliest transfer time (the *start time*) for  
17 the assets covered by paragraph (c).

18 *Obtaining the roll-over*

- 19 (3) The roll-over only happens if both the trustee of the transferring  
20 trust and the trustee of the receiving trust choose to obtain it.

21 **126-230 Beneficiaries' entitlements not be discretionary etc.**

- 22 (1) The conditions in subsections (2) and (3) must be met:  
23 (a) if subsection 126-225(2) applies—at all times during the  
24 period:  
25 (i) starting at the start time; and  
26 (ii) ending at the transfer time; and  
27 (b) otherwise—at the transfer time.

28 *CGT event E4 is capable of happening*

- 29 (2) The first condition is met at a particular time if, at that time, \*CGT  
30 event E4 is capable of happening to all of the \*membership  
31 interests in each of the trusts.

32 Note: A roll-over cannot be chosen if either trust is a discretionary trust.

1 *Beneficiaries' entitlements not discretionary*

- 2 (3) The second condition is met at a particular time if, at that time, the  
3 manner or extent to which each beneficiary of each trust can  
4 benefit from the trust is not capable of being significantly affected  
5 by the exercise, or non-exercise, of a power.
- 6 (4) However, if both trusts are \*managed investment trusts, disregard a  
7 power if the power's existence at that time does not significantly  
8 affect the \*market value at that time of each \*membership interest  
9 in each of the trusts.

10 **126-235 Exceptions for roll-over**

11 *Foreign trusts*

- 12 (1) An exception applies for a \*CGT asset if:  
13 (a) the receiving trust is a \*foreign trust for CGT purposes for the  
14 income year that includes the transfer time; and  
15 (b) the roll-over asset is not \*taxable Australian property just  
16 after the transfer time.

17 *Corporate unit trusts and public trading trusts*

- 18 (2) Another exception applies if either trust is a trust to which  
19 section 102K or 102S of the *Income Tax Assessment Act 1936*  
20 applies for the income year that includes the transfer time.

21 *Choices*

- 22 (3) Another exception applies if, just after the transfer time:  
23 (a) a choice (however described) under a provision of a \*taxation  
24 law is in force for either of the trusts in relation to particular  
25 circumstances; and  
26 (b) the same choice (however described) under that provision for  
27 the other trust in relation to those circumstances (a *mirror*  
28 *choice*) is not also in force; and  
29 (c) the absence of a mirror choice would or could have an  
30 ongoing effect on the calculation of an entity's \*net income,  
31 or taxable income, for:  
32 (i) the entity's income year that includes the transfer time;  
33 or

- 1 (ii) a later income year.
- 2 (4) However, the exception in subsection (3) does not apply if:
- 3 (a) the other trust makes a mirror choice before the first time
- 4 after the transfer time when the absence of the mirror choice
- 5 would affect the calculation of an entity's \*net income, or
- 6 taxable income, for an income year; or
- 7 (b) it would not be reasonable for subsection (3) to apply.
- 8 Note: For paragraph (a), the other trust must still be able, under the relevant
- 9 provision of the taxation law, to make the mirror choice.
- 10 (5) If, just after the transfer time:
- 11 (a) a choice (however described) referred to in paragraph (3)(a)
- 12 is in force for either of the trusts (the *first choice*); and
- 13 (b) a provision of a \*taxation law:
- 14 (i) prevents the revocation or variation of that choice; or
- 15 (ii) sets out a consequence for an entity if that choice is
- 16 revoked or varied;
- 17 that provision is taken to apply for a mirror choice, in force for the
- 18 other trust at or after that time, in a way corresponding to the way
- 19 in which it applies for the first choice.
- 20 Note: For example, if the provision sets out consequences that flow from the
- 21 revocation of the first choice, then those consequences will also flow
- 22 if the mirror choice is revoked.

## 23 **126-240 Consequences for the trusts**

### 24 *Disregard any capital gain or loss*

- 25 (1) If the roll-over is chosen, disregard any \*capital gain or \*capital
- 26 loss the trustee of the transferring trust makes from:
- 27 (a) creating the receiving trust over the roll-over asset; or
- 28 (b) transferring the roll-over asset to the receiving trust;
- 29 at the transfer time.

### 30 *Adjust roll-over asset's cost base and reduced cost base*

- 31 (2) If the roll-over is chosen:
- 32 (a) the first element of the roll-over asset's \*cost base, in the
- 33 hands of the receiving trust, is its cost base just before the
- 34 transfer time; and

1 (b) the first element of the roll-over asset's \*reduced cost base is  
2 worked out similarly.

3 *Any pre-transfer losses of receiving trust cannot be utilised*

4 (3) If the roll-over is chosen:

- 5 (a) any \*net capital loss of the receiving trust for an income year  
6 ending before the transfer time cannot be applied after the  
7 transfer time to reduce an amount of that trust's \*capital  
8 gains; and  
9 (b) the sum of the receiving trust's \*capital losses for the income  
10 year that includes the transfer time (the *transfer year*) is  
11 reduced by an amount equal to any net capital loss that the  
12 trust would have had for that year had that year ended just  
13 before the transfer time; and  
14 (c) any \*tax loss of the receiving trust for an income year ending  
15 before the transfer time cannot be deducted after the transfer  
16 time from an amount of that trust's assessable income or \*net  
17 exempt income; and  
18 (d) the sum of the receiving trust's deductions for the transfer  
19 year is reduced by an amount equal to any tax loss that the  
20 trust would have had for that year had that year ended just  
21 before the transfer time.

22 References in this subsection to the transfer time are to be read as  
23 references to the start time if subsection 126-225(2) applies.

24 Note: Subsection 126-225(2) applies if the roll-over asset is transferred to  
25 the receiving trust after an earlier roll-over under this Subdivision, for  
26 another asset, was obtained for the trusts.

27 *Pre-CGT assets*

28 (4) If:

- 29 (a) the roll-over is chosen; and  
30 (b) the transferring trust last \*acquired the roll-over asset before  
31 20 September 1985;  
32 the receiving trust is taken to have acquired it before that day.

33 **126-245 Consequences for beneficiaries—general approach for**  
34 **working out cost base etc.**

35 (1) If the roll-over is chosen, each of the following:

**Schedule 1** Abolishing trust cloning and providing a CGT roll-over for certain trusts  
**Part 2** Roll-over for certain trusts

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- 1 (a) the \*cost base and \*reduced cost base of each of a  
2 beneficiary's \*membership interests in each trust;  
3 (b) the time each of the beneficiary's membership interests in the  
4 receiving trust is treated as having been \*acquired;  
5 is adjusted under this section for the transfer time unless the  
6 beneficiary has chosen for them to be adjusted under  
7 section 126-250.

8 Note: The beneficiary can choose for these things to be adjusted once for  
9 several consecutive transfer times (for multiple roll-over assets) if the  
10 beneficiary owned the interests at all of those times (see  
11 section 126-250).

12 *First element of cost base of interests in transferring trust*

- 13 (2) The first element of the \*cost base, just after the transfer time, of  
14 each of the beneficiary's \*membership interests in the transferring  
15 trust is an amount equal to such proportion of the interest's cost  
16 base just before the transfer time as is reasonable having regard to:  
17 (a) the \*market value of the interest just after the transfer time, or  
18 a reasonable approximation of that market value; and  
19 (b) the market value of the interest just before the transfer time,  
20 or a reasonable approximation of that market value.

21 *First element of cost base of interests in receiving trust*

- 22 (3) The first element of the \*cost base, just after the transfer time, of  
23 each of the beneficiary's \*membership interests in the receiving  
24 trust is such amount so that the sum of:  
25 (a) the cost base, just before the transfer time, of that  
26 membership interest in the receiving trust; and  
27 (b) if, just after the transfer time, that interest in the receiving  
28 trust corresponds to at least one of the beneficiary's  
29 membership interests in the transferring trust—the cost base,  
30 just before the transfer time, of each of those corresponding  
31 membership interests in the transferring trust; and  
32 (c) if, just after the transfer time, that interest in the receiving  
33 trust corresponds to a proportion of one of the beneficiary's  
34 membership interests in the transferring trust—that  
35 proportion of the cost base, just before the transfer time, of  
36 that corresponding membership interest in the transferring  
37 trust;  
38 reasonably approximates:
-



- 1 (d) if paragraph (b) applies—the sum of the cost bases, just after  
2 the transfer time, of each of the interests referred to in  
3 paragraphs (a) and (b); and  
4 (e) if paragraph (c) applies—the sum of:  
5 (i) the cost base, just after the transfer time, of the interest  
6 referred to in paragraph (a); and  
7 (ii) the proportion of the cost base, just after the transfer  
8 time, of the interest referred to in paragraph (c).

9 *First element of reduced cost base of interests in each trust*

- 10 (4) The first element of the \*reduced cost base, just after the transfer  
11 time, of each of the beneficiary's \*membership interests in each  
12 trust is worked out similarly.

13 *Time of acquisition for interests in the receiving trust*

- 14 (5) Each of the beneficiary's \*membership interests in the receiving  
15 trust is treated as having been \*acquired just after the transfer time.

16 *Time of acquisition for pre-CGT interests in the receiving trust*

- 17 (6) However, if one or more of the beneficiary's \*membership interests  
18 in the transferring trust were \*pre-CGT assets just before the  
19 transfer time, the beneficiary is treated as having \*acquired before  
20 20 September 1985 its interests in the receiving trust that  
21 correspond to those interests in the transferring trust.

22 **126-250 Consequences for beneficiaries—other approach for**  
23 **working out cost base etc.**

- 24 (1) This section applies if the beneficiary owns one or more  
25 \*membership interests in the transferring trust at all times during  
26 the period:  
27 (a) starting just before this time (the *starting time*):  
28 (i) the transfer time; or  
29 (ii) the transfer time for an asset referred to in paragraph  
30 126-225(2)(c) (assuming subsection 126-225(2)  
31 applies); and  
32 (b) ending just after this time (the *ending time*):

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**Part 2** Roll-over for certain trusts

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- 1 (i) the transfer time (assuming this is not also the starting  
2 time); or  
3 (ii) a later time in the transfer year that is the transfer time  
4 for another asset for which a roll-over is obtained under  
5 this Subdivision for the trusts.
- 6 Note: Subsection 126-225(2) applies if the roll-over asset is transferred to  
7 the receiving trust after an earlier roll-over under this Subdivision, for  
8 another asset, was obtained for the trusts.
- 9 (2) The beneficiary may choose for each of the following:  
10 (a) the \*cost base and \*reduced cost base of each of those  
11 \*membership interests and of the beneficiary's corresponding  
12 membership interests in the receiving trust;  
13 (b) the time each of those corresponding interests in the  
14 receiving trust is treated as having been \*acquired;  
15 to be adjusted under subsection (3) for the period.
- 16 (3) For each of the interests referred to in subsection (2), subsections  
17 126-245(2), (3), (4), (5) and (6) apply as if:  
18 (a) references in those subsections to just before the transfer time  
19 were references to just before the starting time; and  
20 (b) references in those subsections to just after the transfer time  
21 were references to just after the ending time.

22 **126-255 No other cost base etc. adjustment for beneficiaries**

- 23 If a beneficiary of the trusts makes adjustments under  
24 section 126-245 or 126-250 to the \*cost base and \*reduced cost  
25 base of the beneficiary's \*membership interests in relation to the  
26 \*CGT event that is:  
27 (a) the creation of the receiving trust over the roll-over asset; or  
28 (b) the transfer of the roll-over asset to the receiving trust;  
29 no other adjustment is to be made under this Act to those cost  
30 bases and reduced cost bases because of something that happens in  
31 relation to that event.
- 32 Note: This section prevents the general value shifting regime from applying  
33 in relation to the event because sections 126-245 and 126-250 deal  
34 with any value shift that might occur.

1 **126-260 Giving information to beneficiaries**

2 *Beneficiaries must be given particulars of the roll-over*

3 (1) If the roll-over is chosen, the trustee of the transferring trust must,  
4 within 3 months after the end of the transfer year, send written  
5 notice of the particulars set out in subsection (2) to each of the  
6 trust's beneficiaries:

- 7 (a) by post to the address most recently notified by the  
8 beneficiary as the beneficiary's address; or  
9 (b) by any other means notified by the beneficiary for receiving  
10 correspondence from the trust.

11 Note: The trustee may also notify beneficiaries of other details of the  
12 roll-over.

13 *The particulars that must be given*

14 (2) The particulars are as follows:

- 15 (a) the roll-over asset's transfer time;  
16 (b) sufficient information to enable a beneficiary to work out  
17 which of the beneficiary's \*membership interests in the  
18 receiving trust correspond to each of the beneficiary's  
19 membership interests in the transferring trust;  
20 (c) the \*market value of each of the membership interests held by  
21 the beneficiary in the transferring trust just after the roll-over  
22 asset's transfer time, or a reasonable approximation of that  
23 market value;  
24 (d) the market value of each of the membership interests held by  
25 the beneficiary in the transferring trust just before the  
26 roll-over asset's transfer time, or a reasonable approximation  
27 of that market value.

28 *Offence*

29 (3) A trustee commits an offence if the trustee contravenes  
30 subsection (1).

31 Penalty: 30 penalty units.

32 (4) An offence against subsection (3) is an offence of strict liability.

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

1 *If the transferring trust has multiple trustees*

2 (5) If the transferring trust has 2 or more trustees, the obligation  
3 imposed by subsection (1) is imposed on each of the trustees, but  
4 may be discharged by any of the trustees.

5 Note: Each of the trustees commits an offence against subsection (3) if none  
6 of them discharges the obligation imposed by subsection (1).

7 (6) In a prosecution of a trustee for an offence against subsection (3)  
8 for an act or omission contravening subsection (1), it is a defence if  
9 the trustee proves that the trustee:

10 (a) did not aid, abet, counsel or procure the act or omission; and

11 (b) was not in any way knowingly concerned in, or party to, the  
12 act or omission (whether directly or indirectly and whether  
13 by any act or omission of the trustee).

14 Note: A defendant bears a legal burden in relation to the matters in  
15 subsection (6): see section 13.4 of the *Criminal Code*.

16 *Obligations of beneficiary unaffected if not notified of roll-over*

17 (7) A failure by a trustee to comply with subsection (1) does not affect  
18 the application of section 126-245 to the beneficiary.

19 **10 Subsection 995-1(1) (definition of *class*) (second**  
20 **occurring)**

21 After “company”, insert “or trust”.

22 **11 Application provision**

23 The amendments made by items 4 to 9 apply to CGT events happening  
24 on or after 1 November 2008.

25 **12 Transitional: time for making mirror choices**

26 (1) Subsection 126-235(3) of the *Income Tax Assessment Act 1997* does not  
27 apply if the other trust makes a mirror choice under a provision of a  
28 taxation law by:

29 (a) 6 months after the day this Act receives the Royal Assent; or

30 (b) a later day allowed by the Commissioner of Taxation.

31 Note: For this item to have effect, the other trust must still be able, under that provision of the  
32 taxation law, to make the mirror choice.

- 1 (2) This item has effect in addition to subsection 126-235(4) of the *Income*  
2 *Tax Assessment Act 1997*.

3 **13 Transitional: deadline for giving information to**  
4 **beneficiaries**

- 5 (1) This item applies in relation to a roll-over chosen under  
6 Subdivision 126-G of the *Income Tax Assessment Act 1997* if the  
7 transfer year for the roll-over is the transferring trust's 2008-09 income  
8 year.
- 9 (2) Subsection 126-260(1) of that Act has effect, in relation to the roll-over,  
10 as if the reference in that subsection to 3 months after the end of the  
11 transfer year were a reference to 6 months after the day this Act  
12 receives the Royal Assent.

1

2 **Part 3—Other amendments**

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

4 **14 Subsection 184-1(2) (note)**

5 Omit “Note”, substitute “Note 1”.

6 **15 At the end of subsection 184-1(2)**

7 Add:

8 Note 2: The entity that is the trustee of a trust or fund does not change merely  
9 because of a change in the person who is the trustee of the trust or  
10 fund, or persons who are the trustees of the trust or fund.

11 ***Income Tax Assessment Act 1997***

12 **16 Subsection 104-10(2)**

13 Repeal the subsection, substitute:

14 (2) You *dispose of* a \*CGT asset if a change of ownership occurs from  
15 you to another entity, whether because of some act or event or by  
16 operation of law. However, a change of ownership does not occur  
17 if you stop being the legal owner of the asset but continue to be its  
18 beneficial owner.

19 Note: A change in the trustee of a trust does not constitute a change in the  
20 entity that is the trustee of the trust (see subsection 960-100(2)). This  
21 means that CGT event A1 will not happen merely because of a change  
22 in the trustee.

23 **17 At the end of subsection 104-55(1)**

24 Add:

25 Note: A change in the trustee of a trust does not constitute a change in the  
26 entity that is the trustee of the trust (see subsection 960-100(2)). This  
27 means that CGT event E1 will not happen merely because of a change  
28 in the trustee.

29 **18 At the end of subsection 104-60(1)**

30 Add:

31 Note: A change in the trustee of a trust does not constitute a change in the  
32 entity that is the trustee of the trust (see subsection 960-100(2)). This

1 means that CGT event E2 will not happen merely because of a change  
2 in the trustee.

3 **19 Subsection 960-100(2) (note)**

4 Omit “Note”, substitute “Note 1”.

5 **20 At the end of subsection 960-100(2)**

6 Add:

7 Note 2: The entity that is the trustee of a trust or fund does not change merely  
8 because of a change in the person who is the trustee of the trust or  
9 fund, or persons who are the trustees of the trust or fund.

1  
2 **Schedule 2—Loss relief for merging**  
3 **superannuation funds**

4 **Part 1—Main amendment**

5 *Income Tax Assessment Act 1997*

6 **1 At the end of Part 3-30**

7 Add:

8 **Division 310—Loss relief for merging superannuation**  
9 **funds**

10 **Table of Subdivisions**

11		Guide to Division 310
12	310-A	Object of this Division
13	310-B	Choice to transfer losses
14	310-C	Consequences of choosing to transfer losses
15	310-D	Choice for assets roll-over
16	310-E	Consequences of choosing assets roll-over
17	310-F	Choices

18 **Guide to Division 310**

19 **310-1 What this Division is about**

20 This Division sets out special rules for certain merging  
21 superannuation funds. These rules relate to the transfer of losses,  
22 the treatment of CGT events related to the merger and the  
23 treatment of assets related to the merger.

24 Note 1: This Division applies only to mergers happening between  
25 24 December 2008 and 30 June 2011 (see Part 3 of Schedule 2 to the  
26 *Tax Laws Amendment (2009 Measures No. 6) Act 2009*).

27 Note 2: This Division and associated provisions will be repealed on 1 July  
28 2013 (see Parts 4 and 5 of that Schedule).



1 **Operative provisions**

2 **Subdivision 310-A—Object of this Division**

3 **310-5 Object**

4 The main object of this Division is to facilitate the consolidation of  
5 the superannuation industry by allowing certain merging  
6 \*superannuation funds to retain the value, for income tax purposes,  
7 of certain losses that might otherwise cease to be able to be utilised  
8 as a result of the merger.

9 **Subdivision 310-B—Choice to transfer losses**

10 **Table of sections**

11	310-10	Original fund's assets extend beyond life insurance policies and units in
12		pooled superannuation trusts
13	310-15	Original fund's assets include a complying superannuation/FHSA life
14		insurance policy
15	310-20	Original fund's assets include units in a pooled superannuation trust

16 **310-10 Original fund's assets extend beyond life insurance policies**  
17 **and units in pooled superannuation trusts**

- 18 (1) A trustee of:
- 19 (a) a \*complying superannuation fund (the *transferring entity* or  
20 the *original fund*); or
- 21 (b) a \*complying approved deposit fund (the *transferring entity*  
22 or the *original fund*);
- 23 can choose to transfer losses if an \*arrangement is made for which  
24 the conditions in this section are satisfied.

25 *Transferring entity's assets include other assets*

- 26 (2) The first condition is satisfied if, just before the \*arrangement was  
27 made, the transferring entity's assets included assets other than:
- 28 (a) a \*complying superannuation/FHSA life insurance policy; or  
29 (b) units in a \*pooled superannuation trust.

30 Note: Other entities may also choose under this Subdivision to transfer  
31 losses, for the same arrangement, if the transferring entity holds a  
32 complying superannuation/FHSA life insurance policy or units in a  
33 pooled superannuation trust.

*Original fund's members transfer to a continuing fund*

- 1
- 2 (3) The second condition is satisfied if, under the \*arrangement:
- 3 (a) the transferring entity ceases to have any members (within
- 4 the meaning of the *Superannuation Industry (Supervision)*
- 5 *Act 1993*) at a particular time (the **completion time**); and
- 6 (b) the individuals who cease to be members (within the meaning
- 7 of that Act) of the transferring entity become members
- 8 (within the meaning of that Act) of one or more \*complying
- 9 superannuation funds (the **continuing funds**).

10 *Continuing funds will usually not be able to be small funds*

- 11 (4) The third condition is satisfied if either:
- 12 (a) none of the continuing funds was a \*small superannuation
- 13 fund, and all existed, just before the \*arrangement was made;
- 14 or
- 15 (b) the following subparagraphs apply:
- 16 (i) only one of the continuing funds either was a small
- 17 superannuation fund, or did not exist, just before the
- 18 arrangement was made;
- 19 (ii) under the arrangement, a \*complying superannuation
- 20 fund or \*complying approved deposit fund, other than
- 21 the original fund, ceases to have any members (within
- 22 the meaning of the *Superannuation Industry*
- 23 *(Supervision) Act 1993*);
- 24 (iii) under the arrangement, the individuals who cease to be
- 25 members (within the meaning of that Act) of that other
- 26 fund become members (within the meaning of that Act)
- 27 of the continuing fund;
- 28 (iv) either the other fund or the original fund was not a small
- 29 superannuation fund just before the arrangement was
- 30 made;
- 31 (v) the continuing fund is not a small superannuation fund
- 32 just after the earliest time when both the other fund and
- 33 the original fund cease to have any members (within the
- 34 meaning of that Act).

1 *Ignore members who cannot transfer to a continuing fund*

- 2 (5) For the purposes of subsections (3) and (4), ignore an individual  
3 who remains a member of a \*complying superannuation fund or  
4 \*complying approved deposit fund because of circumstances  
5 beyond the control of the trustee of that fund.

6 **310-15 Original fund's assets include a complying**  
7 **superannuation/FHSA life insurance policy**

- 8 (1) A \*life insurance company (the *transferring entity*) can choose to  
9 transfer losses if an \*arrangement is made for which the conditions  
10 in this section are satisfied.

11 *Original fund holds a complying superannuation/FHSA life*  
12 *insurance policy*

- 13 (2) The first condition is satisfied if, just before the \*arrangement was  
14 made, a \*complying superannuation/FHSA life insurance policy  
15 issued by the transferring entity was held by:  
16 (a) a \*complying superannuation fund (the *original fund*); or  
17 (b) a \*complying approved deposit fund (the *original fund*).

18 Note: Other entities may also choose under this Subdivision to transfer  
19 losses, for the same arrangement, if the original fund holds other  
20 assets.

21 *Original fund's members transfer to a continuing fund*

- 22 (3) The second condition is satisfied if, under the \*arrangement:  
23 (a) the original fund ceases to have any members (within the  
24 meaning of the *Superannuation Industry (Supervision) Act*  
25 *1993*) at a particular time (the *completion time*); and  
26 (b) the individuals who cease to be members (within the meaning  
27 of that Act) of the original fund become members (within the  
28 meaning of that Act) of one or more \*complying  
29 superannuation funds (the *continuing funds*).

30 *Continuing funds will usually not be able to be small funds*

- 31 (4) The third condition is satisfied if either:

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- 1 (a) none of the continuing funds was a \*small superannuation  
2 fund, and all existed, just before the \*arrangement was made;  
3 or  
4 (b) the following subparagraphs apply:  
5 (i) only one of the continuing funds either was a small  
6 superannuation fund, or did not exist, just before the  
7 arrangement was made;  
8 (ii) under the arrangement, a \*complying superannuation  
9 fund or \*complying approved deposit fund, other than  
10 the original fund, ceases to have any members (within  
11 the meaning of the *Superannuation Industry*  
12 *(Supervision) Act 1993*);  
13 (iii) under the arrangement, the individuals who cease to be  
14 members (within the meaning of that Act) of that other  
15 fund become members (within the meaning of that Act)  
16 of the continuing fund;  
17 (iv) either the other fund or the original fund was not a small  
18 superannuation fund just before the arrangement was  
19 made;  
20 (v) the continuing fund is not a small superannuation fund  
21 just after the earliest time when both the other fund and  
22 the original fund cease to have any members (within the  
23 meaning of that Act).

24 *Ignore members who cannot transfer to a continuing fund*

- 25 (5) For the purposes of subsections (3) and (4), ignore an individual  
26 who remains a member of a \*complying superannuation fund or  
27 \*complying approved deposit fund because of circumstances  
28 beyond the control of the trustee of that fund.

29 **310-20 Original fund's assets include units in a pooled**  
30 **superannuation trust**

- 31 (1) A trustee of a \*pooled superannuation trust (the *transferring entity*)  
32 can choose to transfer losses if an \*arrangement is made for which  
33 the conditions in this section are satisfied.

1 *Units in the trust were held by the original fund*

- 2 (2) The first condition is satisfied if, just before the \*arrangement was  
3 made, units in the transferring entity were held by:  
4 (a) a \*complying superannuation fund (the **original fund**); or  
5 (b) a \*complying approved deposit fund (the **original fund**).

6 Note: Other entities may also choose under this Subdivision to transfer  
7 losses, for the same arrangement, if the original fund holds other  
8 assets.

9 *Original fund's members transfer to a continuing fund*

- 10 (3) The second condition is satisfied if, under the \*arrangement:  
11 (a) the original fund ceases to have any members (within the  
12 meaning of the *Superannuation Industry (Supervision) Act*  
13 *1993*) at a particular time (the **completion time**); and  
14 (b) the individuals who cease to be members (within the meaning  
15 of that Act) of the original fund become members (within the  
16 meaning of that Act) of one or more \*complying  
17 superannuation funds (the **continuing funds**).

18 *Continuing funds will usually not be able to be small funds*

- 19 (4) The third condition is satisfied if either:  
20 (a) none of the continuing funds was a \*small superannuation  
21 fund, and all existed, just before the \*arrangement was made;  
22 or  
23 (b) the following subparagraphs apply:  
24 (i) only one of the continuing funds either was a small  
25 superannuation fund, or did not exist, just before the  
26 arrangement was made;  
27 (ii) under the arrangement, a \*complying superannuation  
28 fund or \*complying approved deposit fund, other than  
29 the original fund, ceases to have any members (within  
30 the meaning of the *Superannuation Industry*  
31 *(Supervision) Act 1993*);  
32 (iii) under the arrangement, the individuals who cease to be  
33 members (within the meaning of that Act) of that other  
34 fund become members (within the meaning of that Act)  
35 of the continuing fund;

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- 1 (iv) either the other fund or the original fund was not a small  
2 superannuation fund just before the arrangement was  
3 made;  
4 (v) the continuing fund is not a small superannuation fund  
5 just after the earliest time when both the other fund and  
6 the original fund cease to have any members (within the  
7 meaning of that Act).

8 *Ignore members who cannot transfer to a continuing fund*

- 9 (5) For the purposes of subsections (3) and (4), ignore an individual  
10 who remains a member of a \*complying superannuation fund or  
11 \*complying approved deposit fund because of circumstances  
12 beyond the control of the trustee of that fund.

13 **Subdivision 310-C—Consequences of choosing to transfer**  
14 **losses**

15 **Table of sections**

16	310-25	Who losses can be transferred to
17	310-30	Losses that can be transferred
18	310-35	Effect of transferring a net capital loss
19	310-40	Effect of transferring a tax loss

20 **310-25 Who losses can be transferred to**

21 An entity choosing under Subdivision 310-B to transfer losses can  
22 choose to transfer any or all of the transferring entity's losses set  
23 out in section 310-30, in whole or in part, to one or more of the  
24 following entities (a *receiving entity*):

- 25 (a) a continuing fund for the choice;  
26 (b) a \*pooled superannuation trust in which units are held by a  
27 continuing fund for the choice just after the completion time;  
28 (c) a \*life insurance company with which a \*complying  
29 superannuation/FHSA life insurance policy is held by a  
30 continuing fund for the choice just after the completion time.

31 **310-30 Losses that can be transferred**

- 32 (1) The transferring entity's losses that can be transferred are:

- 1 (a) any of its \*net capital losses for income years earlier than the  
2 income year for the transferring entity that includes the  
3 completion time (the *transfer year*), to the extent that it was  
4 not \*utilised before the completion time (an *earlier year net*  
5 *capital loss*); and  
6 (b) any net capital loss it would have made for the transfer year  
7 were the transfer year to have ended at the completion time (a  
8 *transfer year net capital loss*); and  
9 (c) any of its \*tax losses for income years earlier than the transfer  
10 year, to the extent that it was not utilised before the  
11 completion time (an *earlier year tax loss*); and  
12 (d) any tax loss it would have incurred for the transfer year were  
13 the transfer year to have ended at the completion time (a  
14 *transfer year tax loss*);  
15 worked out subject to the modifications set out in this section.

16 Note: If the entity choosing to transfer losses also chooses an asset roll-over  
17 under Subdivision 310-D for the same arrangement, none of the  
18 transfer events for the roll-over will contribute towards a loss  
19 transferred under this Subdivision (see subsections 310-55(1),  
20 310-60(3), 310-65(1) and 310-70(1)).

- 21 (2) For a choice under section 310-15 (life insurance companies), work  
22 out those losses by only considering the following to the extent that  
23 they relate to assets reasonably attributable to a \*complying  
24 superannuation/FHSA life insurance policy issued by the  
25 transferring entity and held by the original fund:  
26 (a) \*capital gains from \*complying superannuation/FHSA assets;  
27 (b) \*capital losses from complying superannuation/FHSA assets;  
28 (c) assessable income covered by subsection 320-137(2) (about  
29 complying superannuation/FHSA assets);  
30 (d) deductions covered by subsection 320-137(4) (about  
31 complying superannuation/FHSA assets).  
32 (3) For a choice under section 310-20 (pooled superannuation trusts),  
33 work out those losses by only considering \*capital gains, \*capital  
34 losses, assessable income and deductions to the extent that they  
35 relate to assets reasonably attributable to units in the transferring  
36 entity held by the original fund.

1 **310-35 Effect of transferring a net capital loss**

- 2 (1) To the extent that an earlier year net capital loss is transferred to a  
3 receiving entity:
- 4 (a) the transferring entity is taken not to have made the loss for  
5 that earlier income year; and
- 6 (b) an amount equal to the transferred amount is taken to be:
- 7 (i) if the receiving entity is a \*life insurance company—a  
8 \*capital loss from \*complying superannuation/FHSA  
9 assets made by the receiving entity for that earlier year;  
10 and
- 11 (ii) otherwise—a capital loss made by the receiving entity  
12 for that earlier year.
- 13 (2) To the extent that a transfer year net capital loss is transferred to a  
14 receiving entity:
- 15 (a) if the transferring entity is a \*life insurance company—the  
16 sum of the transferring entity's \*capital losses from  
17 \*complying superannuation/FHSA assets for the transfer year  
18 is reduced by an amount equal to the transferred amount; and
- 19 (b) if the transferring entity is not a life insurance company—the  
20 sum of the transferring entity's capital losses for the transfer  
21 year is reduced by an amount equal to the transferred  
22 amount; and
- 23 (c) if the receiving entity is a life insurance company—an  
24 amount equal to the transferred amount is taken to be a  
25 capital loss from complying superannuation/FHSA assets  
26 made by the receiving entity for the transfer year; and
- 27 (d) if the receiving entity is not a life insurance company—an  
28 amount equal to the transferred amount is taken to be a  
29 capital loss made by the receiving entity for the transfer year.

30 **310-40 Effect of transferring a tax loss**

- 31 (1) To the extent that an earlier year tax loss is transferred to a  
32 receiving entity:
- 33 (a) the transferring entity is taken not to have incurred the loss  
34 for that earlier income year; and
- 35 (b) an amount equal to the transferred amount is taken to be:



- 1 (i) if the receiving entity is a \*life insurance company—a  
2 \*tax loss of the \*complying superannuation/FHSA class  
3 incurred by the receiving entity for that earlier year; and  
4 (ii) otherwise—a tax loss incurred by the receiving entity  
5 for that earlier year.
- 6 (2) To the extent that a transfer year tax loss is transferred to a  
7 receiving entity:
- 8 (a) if the transferring entity is a \*life insurance company—the  
9 sum of the transferring entity’s deductions covered by  
10 subsection 320-137(4) (about complying  
11 superannuation/FHSA assets) for the transfer year is reduced  
12 by an amount equal to the transferred amount; and  
13 (b) if the transferring entity is not a life insurance company—the  
14 sum of the transferring entity’s deductions for the transfer  
15 year is reduced by an amount equal to the transferred  
16 amount; and  
17 (c) if the receiving entity is a life insurance company—an  
18 amount equal to the transferred amount is taken to be a \*tax  
19 loss of the \*complying superannuation/FHSA class incurred  
20 by the receiving entity for the transfer year; and  
21 (d) if the receiving entity is not a life insurance company—an  
22 amount equal to the transferred amount is taken to be a tax  
23 loss incurred by the receiving entity for the transfer year.

24 **Subdivision 310-D—Choice for assets roll-over**

25 **Table of sections**

26 310-45 Choosing the assets roll-over  
27 310-50 Choosing the form of the assets roll-over

28 **310-45 Choosing the assets roll-over**

- 29 (1) An entity can choose a roll-over under this Subdivision if:
- 30 (a) the entity makes or could make a choice under  
31 Subdivision 310-B (the *losses choice*) to transfer the losses of  
32 an entity (the *transferring entity*); and  
33 (b) the conditions in this section are satisfied for the  
34 \*arrangement to which the losses choice relates.

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- 1           (2) The first condition is that, under the \*arrangement, one or more  
2           \*CGT events (the *transfer events*) happen in relation to the  
3           following assets (the *original assets*) of the transferring entity with  
4           the result that it ceases to own those assets:  
5           (a) for a losses choice under section 310-10 (original funds)—all  
6           of its \*CGT assets;  
7           (b) for a losses choice under section 310-15 (life insurance  
8           companies)—all of its CGT assets reasonably attributable to  
9           the \*complying superannuation/FHSA life insurance policy  
10          held by the original fund for the losses choice just before the  
11          arrangement was made;  
12          (c) for a losses choice under section 310-20 (pooled  
13          superannuation trusts)—all of its CGT assets reasonably  
14          attributable to the units in that entity held by the original fund  
15          for the losses choice just before the arrangement was made.
- 16          (3) The second condition is that the transfer events all happen in the  
17          income year (the *transfer year*) for the transferring entity that  
18          includes the completion time for the losses choice.
- 19          (4) The third condition is that, for each transfer event, an asset (the  
20          *received asset*) becomes an asset of one of the following (the  
21          *receiving entity*) as a result of the event:  
22          (a) a continuing fund for the losses choice;  
23          (b) a \*pooled superannuation trust in which units are held by a  
24          continuing fund for the losses choice just after the completion  
25          time;  
26          (c) a \*life insurance company with which a \*complying  
27          superannuation/FHSA life insurance policy is held by a  
28          continuing fund for the losses choice just after the completion  
29          time.
- 30          (5) For the purposes of subsection (2), ignore any \*CGT assets retained  
31          by the transferring entity:  
32          (a) to pay its existing or expected debts relating to the  
33          \*arrangement; or  
34          (b) to meet its liabilities relating to individuals who have  
35          remained members (within the meaning of the  
36          *Superannuation Industry (Supervision) Act 1993*) of the  
37          original fund because of circumstances beyond the control of  
38          the trustee of that fund.

1 **310-50 Choosing the form of the assets roll-over**

- 2 (1) For those of the original assets that are not \*revenue assets, the  
3 form of the roll-over is worked out as follows:

4 *Method statement*

5 Step 1. For the transfer events relating to those original assets:

6 (a) add up any \*capital losses of the transferring entity  
7 for the events; and

8 (b) subtract any \*capital gains of the transferring entity  
9 for the events.

10 Step 2. If the result of step 1 is more than zero, the entity  
11 choosing the roll-over can choose either section 310-55  
12 (global asset approach) or 310-60 (individual asset  
13 approach) to apply to those assets and the corresponding  
14 received assets.

15 Step 3. Otherwise, section 310-60 (individual asset approach)  
16 applies to those original assets and the corresponding  
17 received assets.

- 18 (2) For those of the original assets that are \*revenue assets, the form of  
19 the roll-over is worked out as follows:

20 *Method statement*

21 Step 1. For the transfer events relating to those original assets:

22 (a) add up any amounts the transferring entity would  
23 be able to deduct as a result of the events; and

24 (b) subtract any amounts that would be included in the  
25 transferring entity's assessable income as a result  
26 of the events.

27 Step 2. If the result of step 1 is more than zero, the entity  
28 choosing the roll-over can choose either section 310-65  
29 (global asset approach) or 310-70 (individual asset

1 approach) to apply to those assets and the corresponding  
2 received assets.  
3 Step 3. Otherwise, section 310-70 (individual asset approach)  
4 applies to those original assets and the corresponding  
5 received assets.

6 **Subdivision 310-E—Consequences of choosing assets roll-over**

7 **Table of sections**

8	310-55	CGT assets—if global asset approach chosen
9	310-60	CGT assets—individual asset approach
10	310-65	Revenue assets—if global asset approach chosen
11	310-70	Revenue assets—individual asset approach
12	310-75	Further consequences for roll-overs involving life insurance companies

13 **310-55 CGT assets—if global asset approach chosen**

14 *Consequences for transferring entity*

- 15 (1) For each of the original assets to which this section applies, the  
16 transferring entity's \*capital proceeds from the relevant transfer  
17 event are taken to be an amount equal to:  
18 (a) if, apart from this subsection, the event would result in a  
19 \*capital gain—the asset's \*cost base just before the event; or  
20 (b) if, apart from this subsection, the event would result in a  
21 \*capital loss—the asset's \*reduced cost base just before the  
22 event.

23 Note: This section only applies if it is chosen to apply under subsection  
24 310-50(1).

25 *Consequences for receiving entity*

- 26 (2) For each of the received assets to which this section applies, the  
27 first element of the \*cost base of the asset (in the hands of the  
28 receiving entity) is taken to be an amount equal to the cost base of  
29 the corresponding original asset just before the relevant transfer  
30 event.  
31 (3) For each of the received assets to which this section applies, the  
32 first element of the \*reduced cost base of the asset (in the hands of

1 the receiving entity) is taken to be an amount equal to the reduced  
2 cost base of the corresponding original asset just before the  
3 relevant transfer event.

4 **310-60 CGT assets—individual asset approach**

5 *Consequences for transferring entity*

6 (1) The transferring entity may disregard any \*capital loss for a  
7 transfer event relating to an original asset to which this section  
8 applies.

9 Note: This section does not apply if section 310-55 (global asset approach)  
10 is chosen to apply under subsection 310-50(1).

11 (2) Subsections (3), (4) and (5) apply if under subsection (1) the  
12 transferring entity disregards a \*capital loss for a transfer event  
13 relating to an original asset.

14 (3) The transferring entity's \*capital proceeds from the transfer event  
15 are taken to be an amount equal to the \*reduced cost base of the  
16 original asset just before the event.

17 *Consequences for receiving entity*

18 (4) The first element of the \*cost base of the corresponding received  
19 asset (in the hands of the receiving entity) is taken to be an amount  
20 equal to the cost base of the original asset just before the event.

21 (5) The first element of the \*reduced cost base of the corresponding  
22 received asset (in the hands of the receiving entity) is taken to be  
23 an amount equal to the reduced cost base of the original asset just  
24 before the event.

25 **310-65 Revenue assets—if global asset approach chosen**

26 *Consequences for transferring entity*

27 (1) For each of the original assets to which this section applies, the  
28 transferring entity's gross proceeds for the relevant transfer event  
29 are taken to be the amount (the *deemed proceeds*) the transferring  
30 entity would need to have received in order to have a nil profit and  
31 nil loss for the event.

**Schedule 2** Loss relief for merging superannuation funds  
**Part 1** Main amendment

---

1 Note: This section only applies if it is chosen to apply under subsection  
2 310-50(2).

3 *Consequences for receiving entity*

4 (2) For each of the received assets to which this section applies, the  
5 receiving entity is taken, for the purposes of this Act, to have paid  
6 an amount for that asset at the time of the transfer event that is  
7 equal to the deemed proceeds for the corresponding original asset.

8 **310-70 Revenue assets—individual asset approach**

9 *Consequences for transferring entity*

10 (1) If the transferring entity incurs a \*tax loss for a transfer event  
11 relating to an original asset to which this section applies, the entity  
12 choosing the roll-over can choose for the transferring entity's gross  
13 proceeds for the event to be taken to be the amount (the *deemed*  
14 *proceeds*) the transferring entity would need to have received in  
15 order to have a nil profit and nil loss for the event.

16 Note: This section does not apply if section 310-65 (global asset approach)  
17 is chosen to apply under subsection 310-50(2).

18 *Consequences for receiving entity*

19 (2) If a choice is made under subsection (1), the receiving entity is  
20 taken to have paid an amount for the corresponding received asset  
21 at the time of the transfer event that is equal to the deemed  
22 proceeds for the event.

23 **310-75 Further consequences for roll-overs involving life insurance**  
24 **companies**

25 (1) Section 320-200 (about consequences of transferring assets to or  
26 from a complying superannuation/FHSA asset pool) does not apply  
27 for a transfer event for the roll-over if either the transferring entity  
28 or the receiving entity is a \*life insurance company.

29 (2) If the receiving entity for the roll-over is a \*life insurance  
30 company, each received asset of that entity is taken:  
31 (a) to be a \*complying superannuation/FHSA asset of that entity;  
32 and  
33 (b) not to be, in whole or in part, a \*life insurance premium.

1 **Subdivision 310-F—Choices**

2 **Table of sections**

3 310-85 Choices

4 **310-85 Choices**

- 5 (1) A choice under this Division must be made:
- 6 (a) by the day the transferring entity's \*income tax return is
- 7 lodged for the transfer year for the entity; or
- 8 (b) within a further time allowed by the Commissioner.
- 9 (2) The way the transferring entity's \*income tax return is prepared is
- 10 sufficient evidence of the making of the choice.

1

2

## Part 2—Other amendments

3

### *Income Tax Assessment Act 1997*

4

#### 2 Subsection 40-340(1) (at the end of the table)

5

Add:

- |   |   |   |
|---|---|---|
| 6 | Disposal of asset as part of merger of superannuation funds | The transferor chooses a roll-over under Subdivision 310-D in relation to the disposal. |
|---|---|---|

6

#### 3 Section 112-97 (at the end of the table)

7

Add:

- |    |  |  |                |
|----|--|--|----------------|
| 33 | An entity chooses a roll-over under Subdivision 310-D and the entity chooses section 310-55 to apply to assets | First element of cost base and reduced cost base | section 310-55 |
|----|--|--|----------------|

- 
- |    |   |  |                |
|----|---|--|----------------|
| 34 | An entity chooses a roll-over under Subdivision 310-D, but the entity does not choose section 310-55 to apply to assets | First element of cost base and reduced cost base | section 310-60 |
|----|---|--|----------------|

8

#### 4 Subsection 115-30(1) (at the end of the table)

9

Add:

- |    |  |  |
|----|--|--|
| 10 | A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 310-D | (a) when the transferring entity for the roll-over acquired the corresponding original asset for the roll-over; or<br>(b) if that original asset (or any asset corresponding to it) has been involved in an unbroken series of roll-overs—when the entity that owned the applicable asset before the first roll-over in the series acquired it |
|----|--|--|



1 **5 Section 116-25 (table item dealing with CGT event A1)**

2 Repeal the item, substitute:

A1	Disposal of a CGT asset	1, 2, 3, 4, 5, 6	If the *disposal is because another entity exercises an option: see section 116-65 If the disposal is of *shares or an interest in a trust: see section 116-80 If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100 If a roll-over under Subdivision 310-D applies: see section 116-110
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3 **6 Section 116-25 (table item dealing with CGT event C2)**

4 Omit “and 116-80”, substitute “, 116-80 and 116-110”.

5 **7 Section 116-25 (table item dealing with CGT event E2)**

6 Repeal the item, substitute:

E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5, 6	If a roll-over under Subdivision 310-D applies: see section 116-110
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7 **8 At the end of Division 116**

8 Add:

9 **116-110 Roll-overs for merging superannuation funds**

10 If a roll-over is chosen under Subdivision 310-D in relation to  
11 \*CGT event A1, C2 or E2, the \*capital proceeds of the transferring  
12 entity (within the meaning of that Division) from the event are the  
13 amount worked out under subsection 310-55(1) or 310-60(3).

14 **9 At the end of section 290-170**

15 Add:

*Application to merging superannuation funds*

1  
2 (5) If:

- 3 (a) after making your contribution, a choice is made under  
4 Subdivision 310-B in relation to the \*superannuation fund  
5 (the *original fund*), another superannuation fund (the  
6 *continuing fund*) and an \*arrangement; and  
7 (b) under the arrangement, you became a member (within the  
8 meaning of the *Superannuation Industry (Supervision) Act*  
9 *1993*) of the continuing fund; and  
10 (c) you did not give a notice under subsection (1) in relation to  
11 the contribution while you were a member (within the  
12 meaning of the *Superannuation Industry (Supervision) Act*  
13 *1993*) of the original fund;

14 then subsections (1) to (4), and section 290-180, apply as if:

- 15 (d) references in those provisions to the fund were references to  
16 the continuing fund; and  
17 (e) references in those provisions to the trustee were references  
18 to the trustee of the continuing fund.

19 **10 At the end of section 290-180**

20 Add:

21 *Application to merging superannuation funds*

22 (5) If:

- 23 (a) after a valid notice is given, a choice is made under  
24 Subdivision 310-B in relation to the \*superannuation fund  
25 (the *original fund*), another superannuation fund (the  
26 *continuing fund*) and an \*arrangement; and  
27 (b) under the arrangement, you became a member (within the  
28 meaning of the *Superannuation Industry (Supervision) Act*  
29 *1993*) of the continuing fund; and  
30 (c) you seek to vary the valid notice after you cease to be a  
31 member (within the meaning of the *Superannuation Industry*  
32 *(Supervision) Act 1993*) of the original fund;

33 then subsections (2) and (3A) apply as if:

- 34 (d) the reference in subsection (3A) to the fund were a reference  
35 to the continuing fund; and

- 1 (e) references in those subsections to the trustee were references  
2 to the trustee of the continuing fund.

1

2

## **Part 3—Application provision**

3

### **11 Application provision**

4

The amendments made by Parts 1 and 2 of this Schedule apply in relation to a transferring entity and a receiving entity if:

5

6

(a) the condition in subsection 310-10(3), 310-15(3) or 310-20(3) of the *Income Tax Assessment Act 1997* (as amended by this Schedule) for those entities is satisfied; and

7

8

9

(b) all the transfer events (if any) referred to in subsection 310-45(2) of that Act for those entities happen;

10

11

during the period starting on 24 December 2008 and ending at the end of 30 June 2011.

12

13

Note 1: The effect of paragraph (a) is that all of the members of the original fund will need to become members of a continuing fund during this period.

14

15

Note 2: The effect of paragraph (b) is that the transferring fund needs to cease to hold all relevant assets during this period.

16

1

2 **Part 4—Repeals**

3 *Income Tax Assessment Act 1997*

4 **12 Subsection 40-340(1) (table item 6)**

5 Repeal the item.

6 **13 Section 112-97 (table items 33 and 34)**

7 Repeal the items.

8 **14 Subsection 115-30(1) (table item 10)**

9 Repeal the item.

10 **15 Section 116-25 (table item dealing with CGT event A1)**

11 Omit “If a roll-over under Subdivision 310-D applies: see  
12 section 116-110”.

13 **16 Section 116-25 (table item dealing with CGT event C2)**

14 Omit “, 116-80 and 116-110”, substitute “and 116-80”.

15 **17 Section 116-25 (table item dealing with CGT event E2)**

16 Omit “If a roll-over under Subdivision 310-D applies: see  
17 section 116-110”, substitute “None”.

18 **18 Section 116-110**

19 Repeal the section.

20 **19 Subsection 290-170(5)**

21 Repeal the subsection.

22 **20 Subsection 290-180(5)**

23 Repeal the subsection.

24 **21 Division 310**

25 Repeal the Division.

1

2

## Part 5—Savings

3

### 22 Object

4

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

5

6

(a) any act done or omitted to be done; or

7

(b) any state of affairs existing; or

8

(c) any period ending;

9

before such a repeal, can continue to arise and flow, directly or

10

indirectly, through an indefinite number of steps, even if some or all of

11

those steps are taken after the repeal.

12

### 23 Making and amending assessments, and doing other things, in relation to past matters

13

14

Even though a provision is repealed by Part 4, the repeal is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

15

16

17

18

(a) making or amending an assessment;

19

(b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed);

20

21

22

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

23

24

### 24 Saving of provisions about effect of assessments

25

If a provision or part of a provision that is repealed by Part 4 affects an assessment, the repeal is disregarded in relation to assessments made, before or after the repeal, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal.

26

27

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### 25 Repeals disregarded for the purposes of dependent provisions

31

1           If the operation of a provision (the *subject provision*) of any Act or  
2           legislative instrument (within the meaning of the *Legislative*  
3           *Instruments Act 2003*) made under any Act depends to any extent on a  
4           provision that is repealed by Part 4 of this Schedule, the repeal is  
5           disregarded so far as it affects the operation of the subject provision.

6           **26 Part does not limit operation of section 8 of the Acts**  
7           ***Interpretation Act 1901***

8           This Part does not limit the operation of section 8 of the *Acts*  
9           *Interpretation Act 1901*.

1  
2 **Schedule 3—Exempt annuity business of life**  
3 **insurance companies**

4 **Part 1—Amendments applying from 30 June 2000**

5 **Division 1—Amendment of the Income Tax Assessment**  
6 **Act 1997**

7 **1 Subparagraphs 320-246(1)(e)(ii) and (iii)**

8 Omit “the conditions in subsections (3), (4) and (5)”, substitute  
9 “whichever of the conditions in subsection (3) are applicable”.

10 **2 Subsections 320-246(3) to (5)**

11 Repeal the subsections, substitute:

12 (3) The following table sets out the conditions mentioned in  
13 subparagraphs (1)(e)(ii) and (iii):  
14

<b>Annuity conditions</b>		
<b>Item</b>	<b>Column 1</b> <b>The condition in column 2 applies</b> <b>in the following circumstances ...</b>	<b>Column 2</b> <b>The condition is that ...</b>
1	there is a residual capital value (within the meaning of section 27A of the <i>Income Tax Assessment Act 1936</i> ) in relation to the *immediate annuity.	the contract under which the annuity is payable does not permit the residual capital value to exceed the annuity’s purchase price (within the meaning of that section).
2	the contract under which the *immediate annuity is payable provides that the annuity is payable until the end of a term of years certain.	the contract does not permit the total of the amounts paid for the annuity’s commutation (whether in whole or in part) to exceed the annuity’s reduced purchase price (within the meaning of that section).
3	the contract under which the *immediate annuity is payable: (a) provides that the annuity is payable until the later of: (i) the death of a person (or	the contract does not permit the total of the commutation payments that may become payable before the end of the term of years certain to exceed the annuity’s reduced



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**Annuity conditions**

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Item	Column 1 The condition in column 2 applies in the following circumstances ...	Column 2 The condition is that ...
	the death of the last of 2 or more persons to die); or (ii) the end of a term of years certain; and (b) permits one or more amounts ( <i>commutation payments</i> ) to become payable before the end of the term of years certain for the annuity's commutation (whether in whole or in part).	purchase price (within the meaning of that section).
4	all circumstances.	there is no unreasonable deferral of the payments of the *immediate annuity, having regard to: (a) to the extent to which the payments depend on the returns of the investment of the assets of the *life insurance company paying the annuity—when the payments are made and when those returns are *derived; and (b) to the extent to which the payments do not depend on those returns—the relative sizes of the annual totals of the payments from year to year; and (c) any other relevant factors.

1 **Division 2—Consequential amendment**

2 ***Tax Laws Amendment (2006 Measures No. 2) Act 2006***

3 **3 Item 214 of Schedule 7 (table item 30)**

4 Repeal the item.

1

2

## **Part 2—Amendments applying from the 2007-08 income year**

3

4

### **Division 1—Amendment of the Income Tax Assessment Act 1997**

5

6

#### **4 Subparagraphs 320-246(1)(e)(i) to (iii)**

7

Repeal the subparagraphs, substitute:

8

(i) was purchased on or before 9 December 1987; or

9

(ii) is a \*superannuation income stream; or

10

(iii) satisfies whichever of the conditions in subsection (3)  
are applicable; or

11

12

#### **5 Subsection 320-246(3)**

13

Omit “subparagraphs (1)(e)(ii) and (iii)”, substitute

14

“subparagraph (1)(e)(iii)”.

15

#### **6 Subsection 320-246(3) (cell at table item 1, column 1)**

16

Omit “section 27A”, substitute “section 27H”.

17

#### **7 Subsection 320-246(3) (cell at table item 2, column 2)**

18

Omit “reduced purchase price (within the meaning of that section)”,

19

substitute “purchase price (within the meaning of that section), reduced

20

by the sum of the deductible amounts excluded from assessable income

21

under that section”.

22

#### **8 Subsection 320-246(3) (cell at table item 3, column 2)**

23

Omit “reduced purchase price (within the meaning of that section)”,

24

substitute “purchase price (within the meaning of that section), reduced

25

by the sum of the deductible amounts excluded from assessable income

26

under that section”.

1 **Division 2—Consequential amendments**

2 ***Superannuation Legislation Amendment (Simplification) Act***  
3 ***2007***

4 **9 Items 237, 238, 239 and 241 of Schedule 1**

5 Repeal the items.

6 **10 Item 51 of Schedule 3**

7 Repeal the item.

1

2

## **Part 3—Application provision**

3

### **11 Application of Part 2 amendments**

4

The amendments made by Division 1 of Part 2 of this Schedule apply to:

5

6

(a) the 2007-08 income year; and

7

(b) later income years.

8

### **12 Effect of repeal**

9

To avoid doubt, the following provisions are taken never to have had effect:

10

11

(a) item 30 of the table in item 214 of Schedule 7 to the *Tax Laws Amendment (2006 Measures No. 2) Act 2006*;

12

13

(b) items 237, 238, 239 and 241 of Schedule 1, and item 51 of Schedule 3, to the *Superannuation Legislation Amendment (Simplification) Act 2007*.

14

15

16

Note 1: The provision mentioned in paragraph (a) is repealed by Division 2 of Part 1 of this Schedule.

17

18

Note 2: The provisions mentioned in paragraph (b) are repealed by Division 2 of Part 2 of this Schedule.

19

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## **Schedule 4—Deductible gift recipients**

3

### **Part 1—Amendments commencing on 4 June 2009**

4

#### *Income Tax Assessment Act 1997*

5

##### **1 Subsection 30-25(2) (table item 2.2.21)**

6

Omit “Dymocks Literacy Foundation Limited”, substitute “Dymocks  
Children’s Charities Limited”.

7

8

##### **2 Section 30-315 (table item 45A)**

9

Omit “Dymocks Literacy Foundation Limited”, substitute “Dymocks  
Children’s Charities Limited”.

10

1

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## Part 2—Amendments commencing on Royal Assent

3

### *Income Tax Assessment Act 1997*

4

#### **3 Subsection 30-40(2) (at the end of the table)**

5

Add:

3.2.12	The Green Institute Limited	the gift must be made after 23 June 2009
--------	-----------------------------	---

---

3.2.13	United States Studies Centre	the gift must be made after 26 July 2009
--------	------------------------------	---

6

#### **4 Section 30-315 (after table item 53)**

7

Insert:

53AA	Green Institute Limited	item 3.2.12
------	-------------------------	-------------

8

#### **5 Section 30-315 (after table item 118A)**

9

Insert:

118B	United States Studies Centre	item 3.2.13
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1

2 **Part 3—Application provision**

3 **6 Application provision**

4 The amendments made by this Schedule apply in relation to  
5 assessments for:

- 6 (a) the 2008-09 income year; and  
7 (b) later income years.

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## Schedule 5—North Western Queensland floods

### Part 1—Main amendments

#### *Income Tax Assessment Act 1936*

#### **1 Subsection 159J(6) (after paragraph (bb) of the definition of *separate net income*)**

Insert:

(bc) does not include an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Western Queensland floods of January and February 2009; and

#### *Income Tax Assessment Act 1997*

#### **2 Section 11-15 (table item headed “welfare”)**

After:

Income Recovery Subsidy for the North Queensland floods of January and February 2009..... 51-30

Insert:

Income Recovery Subsidy for the North Western Queensland floods of January and February 2009..... 51-30

#### **3 Section 51-30 (at the end of the table)**

Add:

5.4	an individual in receipt of an ex-gratia payment from the Commonwealth known as Income Recovery Subsidy for the North Western Queensland floods of January and February 2009	the payment	the payment must be claimed: (a) after 24 February 2009; and (b) before 13 April 2009
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2 **Part 2—Sunsetting on 1 July 2011**

3 *Income Tax Assessment Act 1997*

4 **4 Section 11-15 (table item headed “welfare”)**

5 Omit:

Income Recovery Subsidy for the North Western  
Queensland floods of January and February 2009 ..... 51-30

6 **5 Section 51-30 (table item 5.4)**

7 Repeal the item.

1

2 **Part 3—Application provision**

3 **6 Application provision**

4           The amendments made by Part 1 of this Schedule apply in relation to  
5           the 2008-09 income year.

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## **Schedule 6—Spirit blending**

### ***Excise Act 1901***

#### **1 At the end of Part VIIAA**

Add:

#### **77FM Spirit blending is to be treated as manufacture**

- (1) Subject to subsection (2), for greater certainty so far as concerns the application of the provisions of this Act, spirit blending to produce spirit is taken to constitute the manufacture of that spirit.
- (2) For the purposes of this Act, spirit blending to produce spirit is taken not to constitute the manufacture of that spirit if the spirit blending occurred in circumstances specified in an instrument under subsection (3).
- (3) The CEO may, by legislative instrument, specify circumstances for the purposes of subsection (2).
- (4) Subsection (1) does not imply that, in the absence of such a provision, the blending of substances (whether spirit or not) would not constitute the manufacture of the substance produced by the blending.