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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (2010 Measures
No. 1) Bill 2010**

No. , 2010

(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 (2010*
6 *Measures No. 1) Act 2010*.

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 this Act receives the Royal Assent. | |
| 2. Schedule 1, Part 1 | 1 July 2010. | 1 July 2010 |
| 3. Schedule 1, item 7 | 1 July 2010. However, if item 32 of Schedule 2 to the <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i> commences on or before 1 July 2010, the provision(s) do not commence at all. | |
| 4. Schedule 1, item 8 | The later of: (a) the start of 1 July 2010; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 5. Schedule 1, Part 3 | 1 July 2010. | 1 July 2010 |
| 6. Schedule 2 | The day after this Act receives the Royal Assent. | |
| 7. Schedules 3 and 4 | The day this Act receives the Royal Assent. | |
| 8. Schedule 5, Parts 1 to 5 | The day this Act receives the Royal Assent. | |
| 9. Schedule 5, Part 6, Division 1 | The day this Act receives the Royal Assent. | |
| 10. Schedule 5, Part 6, Division 2 | Immediately after the commencement of the provision(s) covered by table item 9. | |
| 11. Schedule 5, Parts 7 to 18 | The day this Act receives the Royal Assent. | |

| Commencement information | | |
|--|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 12. Schedule 5, Part 19, Division 1 | The day this Act receives the Royal Assent. | |
| 13. Schedule 5, Part 19, Division 2 | Immediately after the commencement of the provision(s) covered by table item 12. | |
| 14. Schedule 5, Part 20 | The day this Act receives the Royal Assent. | |
| 15. Schedule 6, Parts 1 to 5 | The day this Act receives the Royal Assent. | |
| 16. Schedule 6, Part 6, Divisions 1 to 3 | The day after this Act receives the Royal Assent. | |
| 17. Schedule 6, Part 6, Division 4 | The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 23 of Schedule 1 to the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> . | |
| 18. Schedule 6, Part 7 | Immediately after the commencement of Schedule 2 to the <i>Tax Laws Amendment (2008 Measures No. 2) Act 2008</i> . | 24 June 2008 |
| 19. Schedule 6, Part 8 | 1 July 2006. | 1 July 2006 |
| 20. Schedule 6, items 109 to 111 | The day this Act receives the Royal Assent. | |
| 21. Schedule 6, item 112 | Immediately after the time specified in the <i>Tax Laws Amendment (2009 Measures No. 4) Act 2009</i> for the commencement of item 132 of Schedule 5 to that Act. | 18 September 2009 |
| 22. Schedule 6, item 113 | Immediately after the time specified in the <i>Tax Laws Amendment (2009 Measures No. 4) Act 2009</i> for the commencement of item 133 of Schedule 5 to that Act. | 18 September 2009 |
| 23. Schedule 6, | The day this Act receives the Royal Assent. | |

Commencement information

| Column 1 | Column 2 | Column 3 |
|-----------------|--------------|--------------|
| Provision(s) | Commencement | Date/Details |
| Parts 10 and 11 | | |

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.

12 **4 Amendment of assessments**

13 (1) Section 170 of the *Income Tax Assessment Act 1936* does not
14 prevent the amendment of an assessment if:

- 15 (a) the assessment was made before the commencement of
16 Schedule 2 to this Act; and
- 17 (b) the amendment is made for the purpose of giving effect to
18 item 1 or 2 of that Schedule; and
- 19 (c) the amendment is made within 4 years after the end of the
20 income year in which the relevant CGT event happened.

21 (2) Section 170 of the *Income Tax Assessment Act 1936* does not
22 prevent the amendment of an assessment if:

- 23 (a) the assessment was made before the commencement of this
24 section; and
- 25 (b) the amendment is made within 2 years after that
26 commencement; and
- 27 (c) the amendment is made for the purpose of giving effect to
28 Schedule 5 to this Act.

1
2 **Schedule 1—Approved superannuation**
3 **clearing house**

4 **Part 1—Main amendments**

5 ***Retirement Savings Accounts Act 1997***

6 **1 After subsection 183(2)**

7 Insert:

8 (2A) Subsection (2) does not apply if:

- 9 (a) the employer pays to an approved clearing house (within the
10 meaning of the *Superannuation Guarantee (Administration)*
11 *Act 1992*) the amount of the deduction before the end of
12 period mentioned in that subsection; and
13 (b) the approved clearing house accepts the payment.

14 ***Superannuation Guarantee (Administration) Act 1992***

15 **2 Subsection 6(1)**

16 Insert:

17 *approved clearing house* has the meaning given by subsection
18 79A(3).

19 **3 After section 23A**

20 Insert:

21 **23B Contributions through an approved clearing house**

22 For the purposes of sections 23 and 23A:

- 23 (a) treat an employer that, at a particular time, pays an amount to
24 an approved clearing house for the benefit of an employee as
25 having made a contribution of the same amount to a
26 complying superannuation fund or an RSA for the benefit of
27 the employee at that time, if the approved clearing house
28 accepts the payment; and

- 1 (b) disregard any contribution that the approved clearing house
2 makes to a complying superannuation fund or an RSA as a
3 result of the payment.

4 **4 After subsection 32C(2A)**

5 Insert:

6 *Contributions through an approved clearing house*

7 (2B) A contribution to a fund by an employer for the benefit of an
8 employee is made in compliance with the choice of fund
9 requirements if:

- 10 (a) section 79A (which is about a contribution through an
11 approved clearing house) applies to the contribution; and
12 (b) the employee gives the employer written notice to the effect
13 that the employee wants a fund to be a chosen fund for the
14 employee in accordance with Division 4 of Part 3A
15 (Choosing a fund); and

16 Note: Under section 32G (Limit on funds that may be chosen), the fund
17 chosen by the employee must be an eligible choice fund and must
18 be a fund to which the employer can make contributions.

- 19 (c) the employer passes onto the approved clearing house
20 mentioned in section 79A the information that the employee
21 included in the written notice, and any other prescribed
22 information:
23 (i) within 21 days after the employee gives the notice to the
24 employer; and
25 (ii) before or at the time the contribution is made; and
26 (d) the approved clearing house accepts the information.

27 **5 After section 79**

28 Insert:

29 **79A Approved clearing house**

- 30 (1) This section applies if:
31 (a) an employer pays an amount to an approved clearing house
32 for the benefit of an employee; and
33 (b) as a result, the approved clearing house makes a contribution
34 to an RSA, a superannuation fund or a superannuation
35 scheme for the benefit of the employee.

1 (2) To avoid doubt, the approved clearing house makes the
2 contribution to the RSA, superannuation fund or superannuation
3 scheme on behalf of the employer, as the employer's agent.

4 (3) *Approved clearing house* means a body specified in the
5 regulations for the purposes of this subsection.

6 ***Superannuation Industry (Supervision) Act 1993***

7 **6 After subsection 64(2)**

8 Insert:

9 (2A) Subsection (2) does not apply if:

10 (a) the employer pays to an approved clearing house (within the
11 meaning of the *Superannuation Guarantee (Administration)*
12 *Act 1992*) the amount of the deduction before the end of the
13 period mentioned in that subsection; and

14 (b) the approved clearing house accepts the payment.

1

2

**Part 2—Amendments conditional on the Tax Laws
Amendment (Confidentiality of Taxpayer
Information) Act 2010**

3

4

5

Income Tax Assessment Act 1936

6

7 After paragraph 16(4)(hba)

7

Insert:

8

(hbb) an approved clearing house (within the meaning of the
Superannuation Guarantee (Administration) Act 1992), for
the purposes of that body performing its functions in relation
to superannuation contributions; or

9

10

11

12

Taxation Administration Act 1953

13

8 Subsection 355-65(3) in Schedule 1 (at the end of the table)

14

Add:

9

an approved clearing house
(within the meaning of the
*Superannuation Guarantee
(Administration) Act 1992*)

is for the purposes of that body
performing its functions in relation to
superannuation contributions.

1

2 **Part 3—Application provision**

3 **9 Application provision**

4 The amendments made by Part 1 of this Schedule apply to a payment
5 made to an approved clearing house on or after the commencement of
6 this item.

1
2 **Schedule 2—Forestry managed investment**
3 **schemes**
4

5 ***Income Tax Assessment Act 1936***

6 **1 After subsection 82KZMGA(1)**

7 Insert:

8 (1A) Paragraph (1)(b) does not apply to a CGT event if:

- 9 (a) the CGT event happens because of circumstances outside the
10 taxpayer's control; and

11 Example: The interest is compulsorily acquired.

- 12 (b) when the taxpayer acquired the interest, the taxpayer could
13 not reasonably have foreseen the CGT event happening.

14 ***Income Tax Assessment Act 1997***

15 **2 After subsection 394-10(5)**

16 Insert:

17 (5A) Paragraph (5)(b) does not apply to a *CGT event if:

- 18 (a) the CGT event happens because of circumstances outside
19 your control; and

20 Example: The forestry interest is compulsorily acquired.

- 21 (b) when you acquired the *forestry interest, you could not
22 reasonably have foreseen the CGT event happening.

23 ***Taxation Administration Act 1953***

24 **3 After subsection 290-50(2) in Schedule 1**

25 Insert:

26 (2A) For the purposes of subsection (2), disregard:

- 27 (a) subsection 82KZMGA(1A) of the *Income Tax Assessment*
28 *Act 1936*; and

- 29 (b) subsection 394-10(5A) of the *Income Tax Assessment Act*
30 *1997*.

- 1 Note 1: Those 2 subsections relate to forestry managed investment schemes.
2 Note 2: The effect of this subsection is that a scheme will have been
3 implemented in a way that is materially different from that described
4 in a product ruling if the tax outcome for participants in the scheme is
5 the same as that described in the ruling only because of the operation
6 of the subsections mentioned in paragraphs (a) and (b).

7 **4 Application provision**

- 8 The amendments made by this Schedule apply to CGT events that
9 happen on or after 1 July 2007.

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Schedule 3—Managed investment trusts

Income Tax Assessment Act 1936

1 Subsection 95(1) (at the end of the note to the definition of *net income*)

Add “to this Act or Division 275 of the *Income Tax Assessment Act 1997*”.

Income Tax Assessment Act 1997

2 Section 10-5 (after table item headed “lotteries”)

Insert:
managed investment trusts
gains etc. from carried interests 275-200(2)

3 Section 12-5 (after table item headed “losses”)

Insert:
managed investment trusts
losses from carried interests 275-200(4)

4 After Part 3-10

Insert:

Part 3-25—Particular kinds of trusts

Division 275—Australian managed investment trusts

Table of Subdivisions

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| 275-A | Extended concept of managed investment trust for the purposes of this Division |
| 275-B | Choice for capital treatment of managed investment trust gains and losses |
| 275-C | Carried interests in managed investment trusts |

1 **Guide to Division 275**

2 **275-1 What this Division is about**

3 The trustee of certain Australian managed investment trusts may
 4 make a choice that certain assets of the trust be dealt with under
 5 CGT rules. If the trustee does not make such a choice, those assets
 6 will be treated as revenue assets (see Subdivision 275-B).

7 Gains and profits from carried interests held in entities that are or
 8 were Australian managed investment trusts are included in the
 9 assessable income of the holder of the interests. The holder is
 10 entitled to a deduction from losses from such interests (see
 11 Subdivision 275-C).

12 **Subdivision 275-A—Extended concept of managed investment** 13 **trust for the purposes of this Division**

14 **Table of sections**

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| 21 | 275-30 | Temporary circumstances outside the control of the trustee |
| 22 | 275-35 | Application of subsections 102L(15) and 102T(16) |

23 **275-5 Trust operated or managed by a financial services licensee etc.**

- 24 (1) For the purposes of this Division, treat a trust in the same way as a
 25 *managed investment trust in relation to an income year if:
- 26 (a) the condition in item 1 of the table in subsection 12-400(1) in
 27 Schedule 1 to the *Taxation Administration Act 1953* is
 28 satisfied in relation to the income year; and
- 29 (b) the trust is operated or managed by:
- 30 (i) a financial services licensee (as defined by section 761A
 31 of the *Corporations Act 2001*) holding an Australian
 32 financial services licence whose licence covers it
 33 providing financial services (as defined by section 766A

- 1 of that Act) to wholesale clients (as defined by
2 section 761G of that Act); or
3 (ii) an authorised representative (as defined by
4 section 761A of that Act) of such a financial services
5 licensee; and
6 (c) the trust is covered by one or more of the following
7 subsections of this section.
- 8 (2) The trust is covered by this subsection if every *member of the
9 trust satisfies at least one of the following requirements:
10 (a) the member is a *managed investment trust (whether or not
11 through the operation of this Subdivision) in relation to the
12 income year;
13 (b) the member is an entity covered by paragraph 12-400(2)(a) or
14 (b) in Schedule 1 to the *Taxation Administration Act 1953*.
- 15 (3) The trust is covered by this subsection if *members of the trust that
16 are entities covered by a paragraph of subsection 12-400(2) in
17 Schedule 1 to the *Taxation Administration Act 1953*:
18 (a) hold, or have the right to *acquire, interests representing 75%
19 or more of the value of the interests in the trust; or
20 (b) have the control of, or the ability to control, 75% or more of
21 the rights attaching to *membership interests in the trust; or
22 (c) have the right to receive 75% or more of any distribution of
23 income that the trustee may make.
- 24 (4) The trust is covered by this subsection if the trust has at least 50
25 *members. In determining the number of members of the trust,
26 apply these rules:
27 (a) if an entity that is not a trust holds interests in the trust
28 indirectly, through a *chain of trusts:
29 (i) treat the entity as a member of the trust; and
30 (ii) do not treat a trust in the chain of trusts as a member of
31 the trust;
32 (b) treat the following entities as together being one member of
33 the trust:
34 (i) an individual that is a member of the trust;
35 (ii) each of his or her relatives that are members of the trust;

- 1 (iii) each entity that is a member of the trust in the capacity
 2 of nominee of an individual mentioned in
 3 subparagraph (i) or (ii);
- 4 (c) treat the following entities as together being one member of
 5 the trust:
- 6 (i) a member of the trust that is not an individual;
- 7 (ii) each entity that is a member of the trust in the capacity
 8 of nominee of the member mentioned in
 9 subparagraph (i);
- 10 (d) do not treat as a member of the trust any of the following:
- 11 (i) an object of the trust;
- 12 (ii) an individual (other than an individual who became a
 13 member of the trust because a financial product or a
 14 financial service was provided to, or acquired by, the
 15 individual as a wholesale client (as defined by
 16 section 761G of the *Corporations Act 2001*)).
- 17 (5) The trust is covered by this subsection if:
- 18 (a) the trust is created during the income year; or
- 19 (b) the trust ceases to exist during the income year, and was a
 20 *managed investment trust (whether or not through the
 21 operation of this Subdivision, but disregarding paragraph (a))
 22 in relation to the previous income year.
- 23 (6) A requirement in paragraph (1)(b) or (2)(b) or subsection (3) or (4)
 24 is satisfied if, and only if, it is satisfied:
- 25 (a) at the time the trustee of the trust makes the first *fund
 26 payment in relation to the income year; or
- 27 (b) if the trustee does not make such a payment in relation to the
 28 income year—at both the start and the end of the income
 29 year.

30 **275-10 Managed investment schemes that are not subject to**
 31 **requirement to be operated by financial services licensee**

- 32 (1) For the purposes of this Division, treat an entity in the same way as
 33 a *managed investment trust in relation to an income year if:
- 34 (a) the entity would be a managed investment trust in relation to
 35 the income year if item 2 of the table in subsection 12-400(1)
 36 in Schedule 1 to the *Taxation Administration Act 1953* were
 37 disregarded; and

- 1 (b) the entity is a managed investment scheme (as defined by
2 section 9 of the *Corporations Act 2001*); and
3 (c) the entity would be required under that Act to be operated by
4 a financial services licensee (as defined by section 761A of
5 that Act) but for any of the following:
6 (i) subsection 5A(4) of that Act (about the Crown not being
7 bound by Chapter 6CA or 7 of that Act);
8 (ii) any instrument issued by ASIC under that Act that has
9 effect in relation to the entity and operation of the
10 scheme.
- 11 (2) A requirement in paragraph (1)(b) or (c) is satisfied if, and only if,
12 it is satisfied:
13 (a) at the time the trustee of the trust makes the first *fund
14 payment in relation to the income year; or
15 (b) if the trustee does not make such a payment in relation to the
16 income year—at both the start and the end of the income
17 year.

18 **275-15 Every member of trust is a managed investment trust**

- 19 (1) For the purposes of this Division, treat a trust in the same way as a
20 *managed investment trust in relation to an income year if:
21 (a) the condition in item 1 of the table in subsection 12-400(1) in
22 Schedule 1 to the *Taxation Administration Act 1953* is
23 satisfied; and
24 (b) every *member of the trust is a managed investment trust
25 (whether or not through the operation of this Subdivision) in
26 relation to the income year.
- 27 (2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is
28 satisfied:
29 (a) at the time the trustee of the trust makes the first *fund
30 payment in relation to the income year; or
31 (b) if the trustee does not make such a payment in relation to the
32 income year—at both the start and the end of the income
33 year.

275-20 No fund payment made in relation to the income year

For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if:

- (a) the trustee of the trust does not make a *fund payment in relation to the income year; and
- (b) the trust would be a managed investment trust (whether or not through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year; and
- (c) the trust would be a managed investment trust (whether or not through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year.

275-25 Trust held by small group not to be treated as managed investment trust

For the purposes of this Division, despite sections 275-5, 275-10, 275-15 and 275-20, do *not* treat a trust in the same way as a *managed investment trust in relation to an income year if, at any time in the income year, 20 or fewer individuals, directly or indirectly:

- (a) hold, or have the right to *acquire, interests representing 75% or more of the value of the interests in the trust; or
- (b) have the control of, or the ability to control, 75% or more of the rights attaching to *membership interests in the trust; or
- (c) have the right to receive 75% or more of any distribution of income that the trustee may make.

275-30 Temporary circumstances outside the control of the trustee

If, apart from a particular circumstance, a trust would be treated under this Subdivision in the same way as a *managed investment trust in relation to an income year, treat the trust in the same way as a managed investment trust in relation to the income year for the purposes of this Division if:

- (a) the circumstance is temporary; and
- (b) the circumstance arose outside the control of the trustee of the trust; and

- 1 (c) it is fair and reasonable to treat the trust as a managed
2 investment trust in relation to the income year, having regard
3 to the following matters:
4 (i) the matters in paragraphs (a) and (b);
5 (ii) the nature of the circumstance;
6 (iii) the actions (if any) taken by the trustee of the trust to
7 address or remove the circumstance, and the speed with
8 which such actions are taken;
9 (iv) the extent to which treating the trust as a managed
10 investment trust in relation to the income year would
11 increase or reduce the amount of tax otherwise payable
12 by the trustee, the beneficiaries of the trust or any other
13 entity;
14 (v) any other relevant matter.

15 **275-35 Application of subsections 102L(15) and 102T(16)**

16 To avoid doubt, subsections 102L(15) and 102T(16) of the *Income*
17 *Tax Assessment Act 1936* do not apply for the purposes of this
18 Division.

19 **Subdivision 275-B—Choice for capital treatment of managed**
20 **investment trust gains and losses**

21 **Table of sections**

| | | |
|----|---------|--|
| 22 | 275-100 | Consequences of making choice—CGT to be primary code for calculating |
| 23 | | MIT gains or losses |
| 24 | 275-105 | Covered assets |
| 25 | 275-110 | MIT not to be corporate unit trust or trading trust |
| 26 | 275-115 | MIT CGT choices |
| 27 | 275-120 | Consequences of not making choice—revenue account treatment |

28 **275-100 Consequences of making choice—CGT to be primary code**
29 **for calculating MIT gains or losses**

- 30 (1) The modifications in subsection (2) apply if:
31 (a) a *CGT event happens at a time involving a *CGT asset; and
32 (b) the CGT asset is owned at that time by an entity that is a
33 *managed investment trust in relation to the income year in
34 which the time occurs; and

- 1 (c) the CGT event happens because the managed investment
 2 trust *disposes of, ceases to own or otherwise realises the
 3 asset; and
 4 (d) the asset is covered by section 275-105; and
 5 (e) the entity meets the requirement in section 275-110 at the
 6 time; and
 7 (f) a choice under section 275-115 covering the entity is in force
 8 for the income year in which the time occurs.

- 9 (2) These provisions do not apply to the *CGT event:
 10 (a) sections 6-5 (about *ordinary income), 8-1 (about amounts
 11 you can deduct), and 15-15 and 25-40 (about profit-making
 12 undertakings or plans);
 13 (b) sections 25A and 52 of the *Income Tax Assessment Act 1936*
 14 (about profit-making undertakings or schemes);
 15 (c) section 118-20 (about reducing capital gains if amount
 16 otherwise assessable);
 17 (d) Division 70 and section 118-25 (about trading stock).

18 *General exceptions*

- 19 (3) The provisions referred to in subsection (2) can apply to the *CGT
 20 event if a *capital gain or *capital loss from the event is disregarded
 21 because of one of the provisions in this table:
 22

Where gain or loss disregarded because of CGT provision

| Item | Provision | Brief description |
|-------------|------------------------|---|
| 1 | Paragraph 104-15(4)(a) | Title in a CGT asset does not pass when a hire purchase or similar agreement ends |
| 2 | Section 118-13 | Shares in a PDF |
| 3 | Section 118-60 | Certain gifts |

23 *Trading stock and profit-making undertakings or plans involving*
 24 *land etc.*

- 25 (4) The provisions referred to in subsection (2) can also apply to the
 26 *CGT event if:
 27 (a) where the *CGT asset is land (including an interest in land),
 28 or a right or option to *acquire or *dispose of land (including
 29 an interest in land):

- 1 (i) the CGT asset is *trading stock; or
2 (ii) the circumstances existing at the time of the event
3 would, disregarding this Subdivision, give rise to an
4 amount being included in the assessable income of the
5 entity under section 15-15 or to a deduction for the
6 entity under section 25-40 (about profit-making
7 undertakings or plans); or
8 (b) where paragraph (a) does not apply:
9 (i) the *managed investment trust acquired the CGT asset
10 in an income year for which the choice mentioned in
11 paragraph (1)(f) was not in force; and
12 (ii) the CGT asset was treated as trading stock in the
13 managed investment trust's financial report for the most
14 recent income year ending before the start of the income
15 year in which that choice first came into force; and
16 (iii) the CGT asset was treated as trading stock in the
17 *income tax return for the managed investment trust for
18 the most recent income year ending before the start of
19 the income year in which that choice first came into
20 force; and
21 (iv) the CGT asset was treated as trading stock in the
22 managed investment trust's financial report for the most
23 recent income year ending before the time of the event;
24 and
25 (v) the CGT asset was treated as trading stock in the income
26 tax return for the managed investment trust for the most
27 recent income year ending before the time of the event.

28 *Treatment of outgoings to acquire trading stock*

- 29 (5) The modifications in subsection (6) apply if:
30 (a) an entity that is a *managed investment trust in relation to the
31 income year *acquires a *CGT asset at a time in that income
32 year; and
33 (b) the CGT asset is an item of *trading stock; and
34 (c) the CGT asset is *not* land (including an interest in land), or a
35 right or option to acquire or *dispose of land (including an
36 interest in land); and
37 (d) the entity incurs an outgoing in connection with acquiring the
38 asset; and

-
- 1 (e) the asset is covered by section 275-105; and
 2 (f) the entity meets the requirement in section 275-110 at the
 3 time; and
 4 (g) a choice under section 275-115 covering the entity is in force
 5 for the income year in which the time occurs.
- 6 (6) The modifications are as follows:
 7 (a) section 8-1 (about amounts you can deduct) does not apply to
 8 the *acquisition;
 9 (b) Division 70 (about trading stock) does not apply in relation to
 10 the asset in respect of:
 11 (i) the income year in which the time occurs; and
 12 (ii) any later income year in relation to which the entity is a
 13 *managed investment trust and throughout which the
 14 entity meets the requirement in section 275-110.

15 **275-105 Covered assets**

- 16 (1) An asset is covered by this section if it is any of the following:
 17 (a) a *share in a company (including a share in a *foreign hybrid
 18 company);
 19 (b) a *non-share equity interest in a company;
 20 (c) a unit in a unit trust;
 21 (d) land (including an interest in land);
 22 (e) a right or option to *acquire or *dispose of an asset of a kind
 23 mentioned in paragraph (a), (b), (c) or (d).
- 24 (2) However, the asset is *not* covered by this section if it is any of the
 25 following:
 26 (a) a *Division 230 financial arrangement;
 27 (b) a *debt interest.

28 **275-110 MIT not to be corporate unit trust or trading trust**

- 29 (1) An entity that is a trust meets the requirement in this section at a
 30 time if the entity is *not* any of the following at that time:
 31 (a) a corporate unit trust (within the meaning of section 102J of
 32 the *Income Tax Assessment Act 1936*) in relation to the year
 33 of income in which the time occurs;

- 1 (b) a trading trust for the purposes of Division 6C of that Act in
2 relation to that year of income.
- 3 (2) If, apart from a particular circumstance, a trust would meet the
4 requirement in paragraph (1)(b) at a time, the trust also meets the
5 requirement in this section at a time if:
- 6 (a) the circumstance is temporary; and
7 (b) the circumstance arose outside the control of the trustee of
8 the trust; and
9 (c) the trustee of the trust is *not* liable to pay income tax on the
10 net income of the trust under section 102S of the *Income Tax*
11 *Assessment Act 1936* for the income year in which the time
12 occurs; and
13 (d) it is fair and reasonable to treat the trust as meeting the
14 requirement in this section at that time, having regard to the
15 following matters:
- 16 (i) the matters in paragraphs (a), (b) and (c);
17 (ii) the nature of the circumstance;
18 (iii) the actions (if any) taken by the trustee of the trust to
19 address or remove the circumstance, and the speed with
20 which such actions are taken;
21 (iv) the extent to which treating the trust as meeting the
22 requirement in this section at that time would increase
23 or reduce the amount of tax otherwise payable by the
24 trustee, the beneficiaries of the trust or any other entity;
25 (v) any other relevant matter.

26 **275-115 MIT CGT choices**

- 27 (1) The trustee of an entity that is a *managed investment trust may
28 make a choice under this section that covers the managed
29 investment trust.
- 30 (2) The choice must be made in the *approved form.
- 31 (3) The choice can be made only:
- 32 (a) if the entity became a *managed investment trust in the
33 2009-10 income year or a later income year (whether or not
34 the entity existed before it became a managed investment
35 trust)—on or before the latest of the following days:

-
- 1 (i) the day it is required to lodge its *income tax return for
 2 the income year in which it became a managed
 3 investment trust;
 4 (ii) if the Commissioner allows a later day for the managed
 5 investment trust—that later day; or
 6 (b) otherwise—on or before the latest of the following days:
 7 (i) the last day in the 3 month period starting on the day on
 8 which this section commences;
 9 (ii) the last day of the 2009-10 income year;
 10 (iii) if the Commissioner allows a later day for the managed
 11 investment trust—that later day.
- 12 (4) The choice, once made, cannot be revoked.
- 13 (5) The choice is in force:
 14 (a) in the circumstances mentioned in paragraph (3)(a)—for the
 15 income year in which the entity became a *managed
 16 investment trust (whether or not the entity existed before it
 17 became a managed investment trust) and later income years;
 18 or
 19 (b) in the circumstances mentioned in paragraph (3)(b)—for the
 20 2008-09 income year and later income years.

21 **275-120 Consequences of not making choice—revenue account**
 22 **treatment**

- 23 (1) This section applies if:
 24 (a) the requirements in subsection 275-100(1) are met in relation
 25 to a *CGT asset held by a *managed investment trust, apart
 26 from the requirement in paragraph 275-100(1)(f); and
 27 (b) the CGT asset is not:
 28 (i) land (including an interest in land); or
 29 (ii) a right or option to *acquire or *dispose of land
 30 (including an interest in land); and
 31 (c) the managed investment trust disposes of, ceases to own or
 32 otherwise realises the asset; and
 33 (d) disregarding this section:
 34 (i) the net proceeds (if any) from the disposal, cessation or
 35 realisation would not be reflected in an amount being

- 1 included in the assessable income of the managed
2 investment trust (other than under Part 3-1 or 3-3); and
3 (ii) the gain or profit (if any) on the disposal, cessation or
4 realisation would not be reflected in an amount being
5 included in the assessable income of the managed
6 investment trust (other than under Part 3-1 or 3-3); and
7 (iii) the loss (if any) on the disposal, cessation or realisation
8 would not be reflected in an amount being deductible by
9 the managed investment trust.
- 10 (2) For the purposes of this Act, treat the disposal, cessation of
11 ownership of or realisation of the asset in the same way as the
12 disposal, cessation of ownership of or realisation of a *revenue
13 asset.

14 **Subdivision 275-C—Carried interests in managed investment**
15 **trusts**

16 **Table of sections**

17 275-200 Gains and losses etc. from carried interests in managed investment trusts
18 reflected in assessable income or deduction

19 **275-200 Gains and losses etc. from carried interests in managed**
20 **investment trusts reflected in assessable income or**
21 **deduction**

- 22 (1) This section applies if:
23 (a) you hold a *CGT asset in an income year that carries an
24 entitlement to a distribution from an entity; and
25 (b) the entitlement to such a distribution is contingent upon the
26 attainment of profits by the entity; and
27 (c) the entity satisfies any of these requirements:
28 (i) it is a *managed investment trust in relation to the
29 income year;
30 (ii) it was a managed investment trust in relation to a
31 previous income year; and
32 (d) you acquired the asset because of services you or your
33 *associate provided, or will provide, to the entity; and
34 (e) you or your associate provided, or will provide, those
35 services:

-
- 1 (i) as a manager of the entity; or
 2 (ii) as an associate of a manager of the entity; or
 3 (iii) as an employee of a manager of the entity; or
 4 (iv) as an associate of an employee of a manager of the
 5 entity; and
 6 (f) any of the following apply:
 7 (i) you become entitled in the income year to such a
 8 distribution (regardless of whether the distribution is
 9 made immediately, or is to be made in the future);
 10 (ii) a *CGT event happens in relation to the asset in the
 11 income year.
- 12 (2) Include in your assessable income for the income year:
 13 (a) the amount of the distribution (except to the extent that it
 14 represents a return of capital that you or your associate
 15 contributed in order for you to *acquire the asset); or
 16 (b) the amount of your gain or profit (if any) on the *CGT event.
- 17 (3) Subsection (2) does not apply to the extent that the amount is
 18 included in your assessable income as:
 19 (a) *ordinary income under section 6-5; or
 20 (b) *statutory income under a section of this Act, other than a
 21 provision in Part 3-1 or 3-3.
- 22 (4) An amount to which subsection (2) applies is taken, for the
 23 purposes of the *income tax laws, to have a source in Australia. For
 24 the purposes of this subsection, disregard subsection (3).
- 25 (5) You are entitled to a deduction for the income year for the amount
 26 of your loss (if any) on the *CGT event.
- 27 (6) Subsection (5) does not apply to the extent that you can deduct the
 28 amount under another provision of this Act.
- 29 (7) Subdivision 115-C does not apply to the amount of a distribution
 30 mentioned in subparagraph (1)(f)(i) if:
 31 (a) that amount is included in your assessable income under
 32 subsection (2); or
 33 (b) an amount referable to that amount is included in your
 34 assessable income under Division 6 of Part III of the *Income*
 35 *Tax Assessment Act 1936*.
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1 **5 Subsection 840-805(6) (subsection heading)**

2 Repeal the heading, substitute:

3 *Exception—Australian permanent establishments*

4 **6 At the end of section 840-805**

5 Add:

6 *Exception—distributions on carried interests*

7 (7) Subsections (2) and (3) do not apply to you to the extent that the
8 fund payment part:

9 (a) is included in your assessable income under subsection
10 275-200(2) (Gains etc. from carried interests) for the income
11 year because you hold or held a *CGT asset that carries an
12 entitlement to a distribution mentioned in subsection
13 275-200(2); or

14 (b) would be so included if subsection 275-200(3) were
15 disregarded.

16 (8) Subsection (4) does not apply to you to the extent that the fund
17 payment part:

18 (a) is attributable to an amount included in the net income of the
19 trust mentioned in that subsection because of subsection
20 275-200(2) (Gains etc. from carried interests) for the income
21 year because the trust holds or held a *CGT asset that carries
22 an entitlement to a distribution mentioned in subsection
23 275-200(2); or

24 (b) would be so included if subsection 275-200(3) were
25 disregarded.

26 **7 Subsection 995-1(1) (definition of *instalment income*)**

27 Omit “and 45-465”, substitute “, 45-286 and 45-465”.

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

29 **8 After Part 3-10**

30 Insert:

1 **Part 3-25—Particular kinds of trusts**

2 **Division 275—Australian managed investment trusts**

3 **Table of Subdivisions**

4 275-A Choice for capital treatment of MIT gains and losses

5 **Subdivision 275-A—Choice for capital treatment of MIT gains**
6 **and losses**

7 **Table of sections**

8 275-10 Consequences of making choice—Commissioner cannot make certain
9 amendments to previous assessments

10 **275-10 Consequences of making choice—Commissioner cannot**
11 **make certain amendments to previous assessments**

12 (1) This section applies if:

- 13 (a) the trustee of a managed investment trust makes a choice
14 under section 275-115 of the *Income Tax Assessment Act*
15 *1997* covering the trust that is in force for the 2008-09
16 income year; and
17 (b) the Commissioner made an assessment (the *previous*
18 *assessment*) for a previous income year for any of the
19 following entities:
20 (i) the trustee of the managed investment trust;
21 (ii) a beneficiary of the managed investment trust;
22 (iii) an entity that holds interests in the managed investment
23 trust indirectly, through a chain of trusts; and
24 (c) the previous assessment was made on the basis that:
25 (i) a CGT event happened at a time involving a CGT asset
26 that was owned by the managed investment trust; and
27 (ii) a gain or loss was realised for income tax purposes
28 because of the circumstances that gave rise to the CGT
29 event; and
30 (d) the previous assessment was also made on the basis that:
31 (i) the gain or loss should be reflected in the net income of
32 the managed investment trust for that previous income
33 year; or

- 1 (ii) the gain or loss should be reflected in a tax loss or net
2 capital loss of the managed investment trust for that
3 previous income year; and
- 4 (e) the previous assessment was also made on one of these bases:
5 (i) the CGT asset was a revenue asset;
6 (ii) the CGT asset was *not* a revenue asset; and
- 7 (f) none of the provisions mentioned in subsection 275-100(2) of
8 the *Income Tax Assessment Act 1997* would have applied at
9 the time of the CGT event in relation to the asset, if these
10 assumptions were made:
11 (i) Subdivision 275-B of the *Income Tax Assessment Act*
12 *1997* (and any other provision of that Act or of the
13 *Income Tax Assessment Act 1936*, to the extent that it
14 relates to that Subdivision) had applied in relation to the
15 CGT event;
16 (ii) a choice under section 275-115 of the *Income Tax*
17 *Assessment Act 1997* covering the entity for which the
18 assessment was made was in force for the previous
19 income year.
- 20 (2) The Commissioner cannot amend the previous assessment on the
21 basis that:
22 (a) if subparagraph (1)(e)(i) applies—the CGT asset should *not*
23 have been treated as a revenue asset; or
24 (b) if subparagraph (1)(e)(ii) applies—the CGT asset should
25 have been treated as a revenue asset.
- 26 (3) Subsection (2) applies despite any other provision of this Act (apart
27 from subsection (4) of this section), the *Income Tax Assessment*
28 *Act 1997* and the *Income Tax Assessment Act 1936*.
- 29 (4) Subsection (2) does not apply in any of these cases:
30 (a) if the entity for which the assessment was made gives the
31 Commissioner a written consent to the amendment;
32 (b) if the Commissioner may amend the assessment in
33 accordance with item 5 (fraud or evasion) or 6 (review or
34 appeal) of the table in subsection 170(1) of the *Income Tax*
35 *Assessment Act 1936*;
36 (c) if the amendment is made for the purpose of giving effect to
37 a provision specified in the regulations for the purposes of
38 this paragraph.
-

1 ***Taxation Administration Act 1953***

2 **9 After section 45-285 in Schedule 1**

3 Insert:

4 **45-286 Instalment income includes distributions by certain managed**
 5 **investment trusts**

6 Your *instalment income* for a period includes trust income or trust
 7 capital that a trust distributes to you, or applies for your benefit,
 8 during that period if:

- 9 (a) the income or capital is not included in your instalment
 10 income under section 45-280 or 45-285; and
- 11 (b) the trust satisfies the condition in item 1 of the table in
 12 subsection 12-400(1) in relation to the income year that is or
 13 includes that period; and
- 14 (c) the trust is:
 - 15 (i) a *managed investment trust for that income year; or
 - 16 (ii) treated as a managed investment trust for that income
 17 year for the purposes of Division 275 of the *Income Tax*
 18 *Assessment Act 1997*; and
- 19 (d) the trust meets the requirement in section 275-110 of that Act
 20 throughout the income year.

21 (It does not matter whether the trust income or trust capital is
 22 included in your assessable income for the income year that is or
 23 includes that period.)

24 **10 Application provision**

- 25 (1) The amendments made by this Schedule apply in relation to CGT
 26 events that happen on or after the start of the 2008-09 income year.
- 27 (2) Despite subitem (1), subsections 275-100(5) and (6) of the *Income Tax*
 28 *Assessment Act 1997* as inserted by this Schedule (and any other
 29 provision inserted by this Schedule, to the extent that it relates to those
 30 subsections) apply in relation to acquisitions of assets that happen on or
 31 after the start of the 2008-09 income year.
- 32 (3) Despite subitem (1), section 275-120 of the *Income Tax Assessment Act*
 33 *1997* as inserted by this Schedule (and any other provision inserted by

- 1 this Schedule, to the extent that it relates to that section) applies in
2 relation to:
- 3 (a) disposals of assets; and
 - 4 (b) cessations of ownership of assets; and
 - 5 (c) other realisations of assets;
- 6 that happen on or after the commencement of this item.
- 7 (4) Despite subitem (1), Subdivision 275-C of the *Income Tax Assessment*
8 *Act 1997* as inserted by this Schedule (and any other provision inserted
9 by this Schedule, to the extent that it relates to that Subdivision) applies
10 in relation to:
- 11 (a) entitlements to distributions that arise on or after the
12 commencement of this item; and
 - 13 (b) CGT events that happen on or after the commencement of
14 this item.
- 15 (5) Despite subitem (1), section 45-286 in Schedule 1 to the *Taxation*
16 *Administration Act 1953* as inserted by this Schedule (and any other
17 provision inserted by this Schedule, to the extent that it relates to that
18 section) applies in relation to distributions or applications of benefits
19 that are made on or after the commencement of this item.

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Schedule 4—25% entrepreneurs' tax offset

Income Tax Assessment Act 1997

1 Section 61-500

Omit:

Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on whether your aggregated turnover is \$50,000 or less or is more than \$50,000.

Substitute:

Your entitlement to the offset varies depending on what kind of entity you are. The amount of your offset varies depending on:

- (a) whether your aggregated turnover is \$50,000 or less or is more than \$50,000; and
- (b) if you are an individual—whether you (and your spouse, if you have a spouse) have significant income from sources other than your small business.

2 Subsection 61-505(2) (at the end of step 4 of the method statement)

Add:

Note: If you are an individual, section 61-523 may reduce the amount of the tax offset.

3 Subsection 61-505(2) (at the end of step 5 of the method statement)

Add:

Note: If you are an individual, section 61-523 may reduce the amount of the tax offset.

1 **4 Subsection 61-510(2) (at the end of step 4 of the method**
2 **statement)**

3 Add:

4 Note: If you are an individual, section 61-523 may reduce the
5 amount of the tax offset.

6 **5 Subsection 61-510(2) (at the end of step 5 of the method**
7 **statement)**

8 Add:

9 Note: If you are an individual, section 61-523 may reduce the
10 amount of the tax offset.

11 **6 Subsection 61-520(2) (at the end of step 4 of the method**
12 **statement)**

13 Add:

14 Note: If you are an individual, section 61-523 may reduce the
15 amount of the tax offset.

16 **7 Subsection 61-520(2) (at the end of step 5 of the method**
17 **statement)**

18 Add:

19 Note: If you are an individual, section 61-523 may reduce the
20 amount of the tax offset.

21 **8 After section 61-520**

22 Insert:

23 **61-523 25% entrepreneurs' tax offset—reduction for non-small**
24 **business income**

25 Reduce the amount of your *tax offset worked out under subsection
26 61-505(2), 61-510(2) or 61-520(2) by the amount worked out using
27 the following formula (but not below nil), if:

- 28 (a) you are an individual; and
29 (b) the amount worked out using the formula is greater than nil:

Non-ETO small business income – Threshold amount
for the income year

5

where:

non-ETO small business income for the income year is worked out by:

- (a) adding up the following:
 - (i) your taxable income for the year;
 - (ii) your *reportable fringe benefits total for the year;
 - (iii) your *reportable superannuation contributions (if any) for the year;
 - (iv) your *total net investment loss for the year; and
- (b) subtracting:
 - (i) in a case covered by subsection 61-505(2)—your *net small business income for the year; or
 - (ii) in a case covered by subsection 61-510(2) or 61-520(2)—your net small business income share for the year (within the meaning of paragraph 61-510(1)(e) or 61-520(1)(e), whichever is applicable); and
- (c) adding the following in relation to each individual (if any) who, on the last day of the year, is your *spouse:
 - (i) your spouse's taxable income for the year;
 - (ii) your spouse's reportable fringe benefits total for the year;
 - (iii) your spouse's reportable superannuation contributions (if any) for the year;
 - (iv) your spouse's total net investment loss for the year.

Note: ETO is short for 25% entrepreneurs' tax offset.

threshold amount means:

- (a) \$120,000 if:
 - (i) on any day during the income year, you have a dependant (within the meaning of the definition of **dependant** in subsection 159P(4) of the *Income Tax Assessment Act 1936*, disregarding paragraph (a) (spouse) of that definition); or

Schedule 4 25% entrepreneurs' tax offset

- 1 (ii) on the last day of the income year, you have a *spouse;
2 or
3 (b) otherwise—\$70,000.

4 **9 Application provision**

5 The amendments made by this Schedule apply in relation to
6 assessments for income years that commence on or after 1 July 2009.

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Schedule 5—Consolidation

Part 1—Use of the tax cost setting amount

Division 1—Main amendments

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “financial arrangements” (first occurring))

Repeal the item, substitute:

consolidated groups and MEC groups

| | |
|--|-----------|
| assets in relation to Division 230 financial arrangement ... | 701-61(4) |
| rights to future income | 716-405 |

2 Subsection 701-55(3)

After “Division 70”, insert “(other than Subdivision 70-E)”.

3 Subsection 701-55(6)

Repeal the subsection, substitute:

*Rights to future amounts to be included in assessable income of
head company*

- (5C) If section 716-410 (rights to future amounts that are expected to be included in assessable income) covers the asset at the particular time, the expression means that section 716-405 may apply in relation to the asset after the particular time.

Other provisions

- (6) If any provision of this Act that is not mentioned above is to apply in relation to the asset by including an amount in assessable income, or by allowing an amount as a deduction, in a way that brings into account (directly or indirectly) any of the following amounts:
- (a) the cost of the asset;
 - (b) outgoings incurred, or amounts paid, in respect of the asset;

- 1 (c) expenditure in respect of the asset;
2 (d) an amount of a similar kind in respect of the asset;
3 the expression means that the provision applies, for the purpose of
4 determining the amount included in assessable income or the
5 amount of the deduction, as if the cost, outgoing, expenditure or
6 other amount had been incurred or paid to acquire the asset at the
7 particular time for an amount equal to its tax cost setting amount.

8 Note 1: This subsection modifies the application of the provision only for the
9 purpose of determining the amount included in assessable income or
10 the amount of the deduction. Therefore:

- 11 (a) the acquisition mentioned in this subsection is recognised only
12 for that purpose; and
13 (b) apart from the things mentioned in subsection 701-56(1), that
14 acquisition does not affect the operation of section 701-5 (the
15 entry history rule) in relation to the asset for other purposes.

16 Note 2: For specific clarifications of the operation of this subsection in
17 relation to bad debts, see Subdivision 716-S.

18 **701-56 Setting the tax cost of an asset—subsection 701-55(6)**

19 *Entry history rule*

- 20 (1) To avoid doubt, if subsection 701-55(6) applies in relation to an
21 asset at the time (the *joining time*) an entity (the *joining entity*)
22 became a *subsidiary member of a *consolidated group, the things
23 that are taken to have happened in relation to the *head company of
24 the group under section 701-5 (entry history rule) do not include:
25 (a) the cost, outgoing, expenditure or other amount incurred or
26 paid to acquire the asset by the joining entity; and
27 (b) whether the cost, outgoing, expenditure or other amount
28 incurred or paid by the joining entity to acquire the asset has
29 been deducted by the joining entity before the joining time.

30 *Trading stock*

- 31 (2) Subsection 701-55(6) does not apply in relation to an asset if it is
32 *trading stock.

33 *Certain depreciating assets etc.*

- 34 (3) Subsection 701-55(6) does not apply in relation to an asset if any
35 of the following provisions are to apply in relation to the asset:
36 (a) Subdivision 40-F (Primary production depreciating assets);

- 1 (b) Subdivision 40-G (Capital expenditure of primary producers
2 and other landholders);
3 (c) Subdivision 40-H (Capital expenditure that is immediately
4 deductible);
5 (d) Subdivision 40-I (Capital expenditure that is deductible over
6 time), other than section 40-880 (Business related costs);
7 (e) Subdivision 40-J (Capital expenditure for the establishment
8 of trees in carbon sink forests);
9 (f) Division 41 (Additional deduction for certain new business
10 investment);
11 (g) Division 43 (Deductions for capital works).

12 **4 After Subdivision 716-G**

13 Insert:

14 **Subdivision 716-S—Miscellaneous consequences of tax cost** 15 **setting**

16 **Table of sections**

| | | |
|----|---------|---|
| 17 | 716-400 | Tax cost setting and bad debts |
| 18 | 716-405 | Tax cost setting and rights to future income—deduction |
| 19 | 716-410 | Rights to amounts that are expected to be included in assessable income |
| 20 | | after joining time |

21 **716-400 Tax cost setting and bad debts**

- 22 (1) The object of this section is to clarify the effect of section 701-5
23 (entry history rule) and subsection 701-55(6) in relation to an asset
24 that may give rise to a bad debt. It achieves this object by
25 clarifying that certain things are taken to have happened in relation
26 to the asset through the operation of section 701-5 and subsection
27 701-55(6).
- 28 (2) This section applies if:
- 29 (a) the tax cost of an asset was set at the time (the *joining time*)
30 an entity (the *joining entity*) became a subsidiary member of
31 a *consolidated group at the asset's tax cost setting amount;
32 and
33 (b) the asset is a debt; and
34 (c) any of the following apply:

Schedule 5 Consolidation

Part 1 Use of the tax cost setting amount

- 1 (i) the debt was included in the joining entity's assessable
2 income before the joining time;
- 3 (ii) the debt was in respect of money that the joining entity
4 lent before the joining time in the ordinary course of a
5 business of lending money;
- 6 (iii) the joining entity bought the debt before the joining
7 time in the ordinary course of a business of lending
8 money; and
- 9 (d) the requirements in subsection 701-58(1) (intra-group assets)
10 are *not* satisfied in relation to the asset.
- 11 (3) To avoid doubt, in determining the extent to which the *head
12 company of the group can deduct an amount under section 25-35
13 (bad debts) in relation to the asset, section 701-5 (entry history
14 rule) and subsection 701-55(6) have the effect that, before the
15 joining time:
- 16 (a) in a case covered by subparagraph (2)(c)(i)—the head
17 company included an amount equal to the tax cost setting
18 amount in its assessable income in respect of the debt; or
- 19 (b) in a case covered by subparagraph (2)(c)(ii)—the head
20 company lent an amount of money in respect of the debt
21 equal to the tax cost setting amount in the ordinary course of
22 a business of lending money; or
- 23 (c) in a case covered by subparagraph (2)(c)(iii)—the head
24 company incurred expenditure equal to the tax cost setting
25 amount in buying the debt in the ordinary course of a
26 business of lending money.

27 **716-405 Tax cost setting and rights to future income—deduction**

- 28 (1) This section applies if:
- 29 (a) an entity (the *joining entity*) became a subsidiary member of
30 a *consolidated group at a time (the *joining time*); and
- 31 (b) subsection 701-55(5C) applies in relation to the asset at the
32 joining time.
- 33 Note: Subsection 701-55(5C) deals with assets covered by section 716-410
34 (Rights to amounts that are expected to be included in assessable
35 income after joining time).

- 1 (2) An entity qualified for a deduction under subsection (5) for the
2 asset for an income year ending after the joining time can deduct,
3 for that income year:
- 4 (a) unless paragraph (b) applies—the *unexpended tax cost
5 setting amount for the asset for that income year, to the
6 extent that an amount is included in the entity’s assessable
7 income for that income year in respect of the asset; or
- 8 (b) if it is reasonable to expect that no amount will be included in
9 the assessable income of an entity qualified for a deduction
10 under subsection (5) for the asset for any later income year—
11 the unexpended tax cost setting amount for the asset for that
12 income year.
- 13 (3) Paragraph (2)(b) does not apply in relation to an entity qualified for
14 a deduction under subsection (5) for the asset for that income year
15 if:
- 16 (a) the entity is the *head company of the group; and
17 (b) another entity ceased to be a *subsidiary member of the group
18 in that income year; and
- 19 (c) the other entity can deduct an amount under subsection (2)
20 for that income year because it is also qualified for a
21 deduction under subsection (5) for the asset for that income
22 year.
- 23 (4) The *unexpended tax cost setting amount* for the asset for an
24 income year is the *tax cost setting amount for the asset, reduced
25 by:
- 26 (a) the amounts (if any) of all deductions under this section in
27 respect of the asset for previous income years ending after
28 the joining time; and
- 29 (b) in determining the amount of a deduction under this section
30 in respect of the asset for that income year for an entity that
31 ceased to be a *subsidiary member of the group in that
32 income year—the amount (if any) that the *head company of
33 the group can deduct under this section in respect of the asset
34 for that income year.
- 35 (5) An entity is qualified for a deduction under this subsection for an
36 income year for the asset if:
- 37 (a) the entity:
38 (i) is the *head company of the group; and
-

- 1 (ii) held the asset at a time in that income year (whether or
2 not because of the operation of subsection 701-1(1) (the
3 single entity rule)); or
4 (b) the entity:
5 (i) held the asset at a time in that income year; and
6 (ii) ceased to be a *subsidiary member of the group in that
7 income year or an earlier income year.
- 8 (6) An amount deducted under this section:
9 (a) is not to be deducted under any other provision of this Act;
10 and
11 (b) is not to be taken into account in determining an amount that
12 is included in the assessable income of any entity qualified
13 for a deduction under subsection (5) for any income year for
14 the asset; and
15 (c) is not to be taken into account in determining an amount of a
16 deduction of any entity qualified for a deduction under
17 subsection (5) for any income year for the asset; and
18 (d) despite paragraphs (b) and (c), is taken never to have been
19 included in any of the elements of the *cost base of the asset.

20 **716-410 Rights to amounts that are expected to be included in**
21 **assessable income after joining time**

22 This section covers an asset at a time if:

- 23 (a) the asset is a right (including a contingent right) to receive an
24 amount for the doing of a thing; and
25 (b) the asset is held by an entity just before the time (the *joining*
26 *time*) it became a *subsidiary member of a *consolidated
27 group; and
28 (c) it is reasonable to expect that an amount will be included in
29 the assessable income of the entity or any other entity after
30 the joining time in relation to the right.

31 **5 Subsection 995-1(1)**

32 Insert:

33 *unexpended tax cost setting amount* has the meaning given by
34 section 716-405.

1 **Division 2—Foreign currency gains and losses**

2 ***Income Tax Assessment Act 1997***

3 **6 After Subdivision 715-D**

4 Insert:

5 **Subdivision 715-E—Interactions with Division 775 (Foreign**
6 **currency gains and losses)**

7 **Table of sections**

8 715-370 Cost setting—reference time for determining currency exchange rate effect

9 **715-370 Cost setting—reference time for determining currency**
10 **exchange rate effect**

- 11 (1) This section applies if:
- 12 (a) an entity (the *joining entity*) becomes a *subsidiary member
 - 13 of a *consolidated group at a time (the *joining time*); and
 - 14 (b) taking into account the operation of subsection 701-1(1) (the
 - 15 single entity rule), the *head company of the group held an
 - 16 asset at the joining time because the joining entity became a
 - 17 subsidiary member of the group; and
 - 18 (c) the asset is a reset cost base asset at the joining time (within
 - 19 the meaning of section 705-35); and
 - 20 (d) in working out the asset's *tax cost setting amount, the
 - 21 currency exchange rate of a particular *foreign currency is
 - 22 taken into account in determining the *market value of the
 - 23 asset.
- 24 (2) For the purposes of Division 775, determine the extent of any
- 25 *currency exchange rate effect after the joining time in relation to
- 26 the asset, by reference to the currency exchange rate for the
- 27 *foreign currency at the joining time.

28 **Division 3—Application and transitional provisions**

29 **7 Application provision**

Schedule 5 Consolidation

Part 1 Use of the tax cost setting amount

- 1 (1) The amendments made by Division 1 of this Part apply on and after
2 1 July 2002.
- 3 (2) The amendment made by Division 2 of this Part applies in relation to a
4 consolidated group or MEC group on and after:
5 (a) if the head company of the group makes a choice in
6 accordance with subitems (3) and (4)—1 July 2002; or
7 (b) otherwise—the day on which the Bill that became this Act
8 was introduced into the House of Representatives.
- 9 (3) A choice mentioned in paragraph (2)(a) must be made:
10 (a) on or before 30 June 2011; or
11 (b) within a further time allowed by the Commissioner.
- 12 (4) A choice mentioned in paragraph (2)(a) must be made in writing.

13 **8 Transitional provision—use of the tax cost setting amount**

- 14 (1) This item applies if:
15 (a) the tax cost of an asset was set at the time (the *joining time*)
16 an entity (the *joining entity*) became a subsidiary member of
17 a consolidated group or MEC group, at the asset's tax cost
18 setting amount; and
19 (b) the asset is a trade receivable that is denominated in foreign
20 currency; and
21 (c) CGT event C2 happens in relation to the asset:
22 (i) after the joining time; and
23 (ii) before 23 August 2006; and
24 (d) just before the CGT event, the head company of the group
25 held the asset because of the operation of subsection 701-1(1)
26 of the *Income Tax Assessment Act 1997* (the single entity
27 rule); and
28 (e) disregarding section 118-20 of that Act, there is a capital gain
29 or capital loss from the event; and
30 (f) the head company of the group makes a choice to apply this
31 item, in accordance with subitems (4) and (5).
- 32 (2) These provisions do not apply to the CGT event:
33 (a) section 6-5 of the *Income Tax Assessment Act 1997* (about
34 ordinary income);

- 1 (b) any other provision of that Act that includes an amount in
2 assessable income, other than a provision in Part 3-1 or 3-3
3 of that Act;
- 4 (c) section 8-1 of that Act (about amounts you can deduct);
- 5 (d) any other provision of that Act that allows you to deduct an
6 amount from your assessable income;
- 7 (e) section 118-20 of that Act.
- 8 (3) The provisions referred to in subitem (2) can apply to the CGT event to
9 the extent that any capital gain or capital loss from the event is
10 attributable to currency exchange rate fluctuations.
- 11 (4) A choice mentioned in paragraph (1)(f) must be made:
- 12 (a) by the day the head company lodges its income tax return for
13 the income year in which the relevant CGT event happened;
14 or
- 15 (b) within a further time allowed by the Commissioner.
- 16 (5) The way the head company prepares its income tax return is sufficient
17 evidence of the making of the choice.

1

2 **Part 2—Group restructures**

3 ***Income Tax Assessment Act 1997***

4 **9 Paragraph 703-75(2)(d)**

5 Omit “group);”, substitute “group); or”.

6 **10 After paragraph 703-75(2)(d)**

7 Insert:

8 (e) section 719-125 (about the effects of a group conversion
9 involving a MEC group);

10 **11 Section 719-25 (heading)**

11 Repeal the heading, substitute:

12 **719-25 Head company, subsidiary members and members of a MEC**
13 **group**

14 **12 At the end of section 719-25**

15 Add:

16 (3) The *members* of a *MEC group are the *head company of the
17 group and the *subsidiary members of the group.

18 **13 Subparagraph 719-65(3)(d)(i)**

19 Omit “the group came into existence as a result of a choice under
20 section 719-50, and”.

21 **14 After paragraph 719-90(2)(c)**

22 Insert:

23 (ca) section 719-125 (about the effects of a group conversion
24 involving a MEC group); or

25 **15 After Subdivision 719-B**

26 Insert:

1 **Subdivision 719-BA—Group conversions involving MEC**
2 **groups**

3 **Table of sections**

| | | |
|---|---------|--|
| 4 | 719-120 | Application |
| 5 | 719-125 | Head company of new group retains history of head company of old group |
| 6 | 719-130 | Provisions of this Part not to apply to conversion |
| 7 | 719-135 | Provisions of this Part applying to conversion despite section 719-130 |
| 8 | 719-140 | Other provisions of this Part not applying to conversion |

9 **719-120 Application**

- 10 (1) This Subdivision applies if, at a particular time (the *conversion*
11 *time*):
- 12 (a) a *consolidated group (the *new group*) is *created from a
13 *MEC group (the *old group*); or
- 14 (b) a MEC group (the *new group*) is created from a consolidated
15 group (the *old group*).
- 16 (2) However, sections 719-130 and 719-135 apply only in relation to
17 entities that:
- 18 (a) were *members of the old group just before the conversion
19 time; and
- 20 (b) are members of the new group at that time.

21 **719-125 Head company of new group retains history of head**
22 **company of old group**

- 23 (1) Everything that happened in relation to the *head company of the
24 old group before the conversion time is taken instead to have
25 happened in relation to:
- 26 (a) if the head company of the old group is the same entity as the
27 head company of the new group—that entity in its role as
28 head company of the new group; or
- 29 (b) otherwise—the head company of the new group (just as if the
30 head company of the new group had been the head company
31 of the old group at all times before the conversion time).
- 32 (2) To avoid doubt, subsection (1) also covers everything that,
33 immediately before the conversion time, was taken to have

- 1 happened in relation to the *head company of the old group
2 because of:
- 3 (a) section 701-1 (the single entity rule); or
 - 4 (b) section 701-5 (the entry history rule); or
 - 5 (c) section 703-75 (about the effects of choice to continue
6 *consolidated group after shelf company becomes new head
7 company); or
 - 8 (d) section 719-90 (about the effects of a change of head
9 company of a *MEC group); or
 - 10 (e) one or more previous applications of this Division.
- 11 (3) Subsections (1) and (2) have effect:
- 12 (a) for the *head company core purposes in relation to an income
13 year ending after the conversion time; and
 - 14 (b) for the entity core purposes in relation to an income year
15 ending after the conversion time; and
 - 16 (c) for the purposes of determining the balance of the *franking
17 account of the head company of the new group at and after
18 the conversion time.
- 19 (4) Subsections (1) and (2) have effect subject to:
- 20 (a) section 701-40 (Exit history rule); and
 - 21 (b) a provision of this Act to which section 701-40 is subject
22 because of section 701-85 (about exceptions to the core rules
23 in Division 701).
- 24 Note: An example of provisions covered by paragraph (b) of this subsection
25 is Subdivision 717-E (about transferring to a company leaving a
26 consolidated group various surpluses under the CFC rules in Part X of
27 the *Income Tax Assessment Act 1936*).

28 **719-130 Provisions of this Part not to apply to conversion**

- 29 (1) A provision mentioned in subsection (5) that applies on an entity
30 becoming a *member of a *consolidated group or *MEC group
31 does *not* apply to an entity becoming such a member because of a
32 situation described in subsection 719-120(1), unless the provision
33 is expressed to apply despite this subsection.
- 34 Note 1: An example of the effect of this subsection is that section 701-5 (entry
35 history rule) does not apply. See instead section 719-125.
- 36 Note 2: Further examples of the effect of this subsection are that Division 705
37 (cost setting on entry) and Division 707 (losses) do not apply.

1 (2) Subsection (1) does not affect the application of subsection
2 701-1(1) (the single entity rule).

3 (3) A provision mentioned in subsection (5) that applies on an entity
4 ceasing to be a *member of a *consolidated group or *MEC group
5 does *not* apply to an entity ceasing being such a member because
6 of a situation described in subsection 719-120(1), unless the
7 provision is expressed to apply despite this subsection.

8 Note 1: An example of the effect of this subsection is that section 701-40 (Exit
9 history rule) does not apply. See instead section 719-125.

10 Note 2: Another example of the effect of this subsection is that Division 711
11 (cost setting on exit) does not apply.

12 (4) Subsection (3) does not apply if:

13 (a) the old group mentioned in subsection 719-120(1) is a
14 *consolidated group; and

15 (b) the new group mentioned in subsection 719-120(1) is a
16 *MEC group; and

17 (c) the entity ceasing to be a *member of the old group becomes
18 an *eligible tier-1 company in respect of the new group.

19 (5) The provisions are as follows:

20 (a) Subdivision 104-L;

21 (b) section 165-212E;

22 (c) this Part (other than this Subdivision);

23 (d) Part 3-90 of the *Income Tax (Transitional Provisions) Act*
24 *1997*.

25 **719-135 Provisions of this Part applying to conversion despite**
26 **section 719-130**

27 (1) This section applies despite subsections 719-130(1) and (3).

28 (2) If the new group is a *consolidated group, the following provisions
29 may apply on an entity ceasing to be a *member of the old group:

30 (a) Subdivision 719-K;

31 (b) any other provision of this Part, to the extent that the
32 application of the provision is necessary for the application of
33 Subdivision 719-K.

1 **719-140 Other provisions of this Part not applying to conversion**

2 If the new group is a *consolidated group, the following provisions
3 do not apply merely because the old group ceases to exist at the
4 conversion time (or merely because the *potential MEC group of
5 which the old group consisted ceases to exist at that time):

- 6 (a) section 719-280;
- 7 (b) section 719-465;
- 8 (c) section 719-705;
- 9 (d) section 719-725;
- 10 (e) any other provision of this Part, to the extent that the
11 application of the provision is necessary for the application of
12 any of those sections.

13 **16 Subsection 995-1(1) (after paragraph (b) of the definition**
14 **of member)**

15 Insert:

- 16 (ba) in relation to a *MEC group—has the meaning given by
17 section 719-25; and
- 18 (bb) in relation to a *potential MEC group—has the meaning
19 given by section 719-10; and

20 **17 Application provision**

- 21 (1) The amendments made by this Part apply in relation to the creation of a
22 MEC group from a consolidated group, or a consolidated group from a
23 MEC group, on or after:
 - 24 (a) if the head company of the group makes a choice in
25 accordance with subitems (2) and (3)—1 July 2002; or
 - 26 (b) otherwise—27 October 2006.
- 27 (2) A choice mentioned in paragraph (1)(a) must be made:
 - 28 (a) on or before 30 June 2011; or
 - 29 (b) within a further time allowed by the Commissioner.
- 30 (3) A choice mentioned in paragraph (1)(a) must be made in writing.
- 31 (4) Despite subitem (1), the amendment made by item 13 of this Schedule
32 applies on and after 1 July 2002.

1

2 **Part 3—Pre-CGT proportions**

3 *Income Tax Assessment Act 1997*

4 **18 Section 705-125 (heading)**

5 Repeal the heading, substitute:

6 **705-125 Pre-CGT proportion for joining entity**

7 **19 Subsection 705-125(1)**

8 Omit “That mechanism involves working out a factor by which the
9 pre-CGT status can be attached to the joining entity’s assets and then
10 recognised in membership interests held in an entity that owns the
11 assets on ceasing to be a *subsidiary member of the joined group.”,
12 substitute “That mechanism involves:

- 13 (a) working out the proportion (measured by market value) of
14 the membership interests in the joining entity that have
15 pre-CGT status; and
16 (b) if the joining entity later ceases being a member of the group,
17 attaching pre-CGT status to that proportion of membership
18 interests in it (see section 711-65), subject to integrity rules
19 (see section 711-70).”.

20 **20 Subsections 705-125(2) and (3)**

21 Repeal the subsections, substitute:

22 *How to work out pre-CGT proportion*

- 23 (2) The *pre-CGT proportion* is the amount worked out by dividing:
24 (a) the sum of the *market value of each *membership interest in
25 the joining entity that is:
26 (i) held by a *member of the group at the joining time; and
27 (ii) is a *pre-CGT asset;
28 by:
29 (b) the sum of the market value of each membership interest in
30 the joining entity that is held by a member of the group at the
31 joining time.

1 **21 Subsection 705-125(4)**

2 Omit “paragraph (3)(a)”, substitute “subsection (2)”.

3 **22 Section 705-165**

4 Repeal the section.

5 **23 Section 705-205**

6 Repeal the section.

7 **24 Section 705-245**

8 Repeal the section.

9 **25 Section 711-65 (heading)**

10 Repeal the heading, substitute:

11 **711-65 Membership interests treated as having been acquired before**
12 **20 September 1985**

13 **26 Subsection 711-65(1)**

14 Repeal the subsection, substitute:

15 *When this section applies*

16 (1) This section applies unless:

- 17 (a) Subdivision 705-C (about one group joining another
18 consolidated group) applies in relation to the old group; and
19 (b) the leaving entity is a *subsidiary member of the old group.

20 (1A) To avoid doubt, this section applies regardless of whether the
21 leaving entity ceases to be a *subsidiary member of the old group
22 at the leaving time because another entity also ceases to be a
23 subsidiary member of the old group at the leaving time.

24 **27 Subsection 711-65(2) (note)**

25 Repeal the note.

26 **28 Subsection 711-65(4) (definition of *leaving entity’s***
27 ***pre-CGT proportion*)**

28 Omit “subsection (5)”, substitute “section 705-125”.

1 **29 Subsection 711-65(5)**

2 Repeal the subsection.

3 **30 Section 711-70**

4 Repeal the section, substitute:

5 **711-70 Additional integrity rule if membership interests treated as**
6 **having been acquired before 20 September 1985 under**
7 **section 711-65—application of Division 149 to head**
8 **company**

9 (1) This section applies if:

10 (a) the leaving entity held assets at the time it became a
11 *subsidiary member of the old group (disregarding subsection
12 701-1(1) (the single entity rule)); and

13 (b) some or all of the assets:

14 (i) stopped being *pre-CGT assets under Division 149 at a
15 time (the *Division 149 time*) when the *head company
16 of the group held them under subsection 701-1(1) (the
17 single entity rule); or

18 (ii) would have stopped being pre-CGT assets under
19 Division 149 at a time (also the *Division 149 time*)
20 when the head company of the group held them under
21 subsection 701-1(1) (the single entity rule) if they had
22 been pre-CGT assets just before that time; and

23 (c) the leaving entity was a subsidiary member of the group at
24 that time.

25 (2) The *pre-CGT proportion of the leaving entity at the leaving time
26 is taken to be nil.

27 (3) Adjust the old group's *allocable cost amount for the leaving entity
28 as follows:

29 (a) if the amount under subsection (4) exceeds the amount under
30 subsection (6)—increase the allocable cost amount by the
31 excess;

32 (b) if the amount under subsection (4) falls short of the amount
33 under subsection (6)—reduce the allocable cost amount by
34 the shortfall.

35 (4) Subject to subsection (5), the amount under this subsection is:

- 1 (a) if Subdivision 705-A applied in relation to the leaving entity
2 at the time it became a *subsidiary member of the old
3 group—the total of the amounts that were taken into account
4 under subsection 705-65(1) for *membership interests in the
5 leaving entity at that time; or
6 (b) otherwise—assuming that Subdivision 705-A had applied in
7 relation to the leaving entity at the time it became a
8 subsidiary member of the old group, the total of the amounts
9 that would have been taken into account under subsection
10 705-65(1) for membership interests in the leaving entity at
11 that time.
- 12 (5) For the purposes of subsection (4), if a *membership interest in the
13 leaving entity was covered under paragraph 705-125(2)(a)
14 (pre-CGT interests) when it became a *subsidiary member of the
15 old group, treat the amount that was taken into account for the
16 membership interest under subsection 705-65(1) as the interest's
17 *market value just after the Division 149 time.
- 18 (6) The amount under this subsection is the old group's *allocable cost
19 amount for the leaving entity, worked out on the assumption that
20 the leaving entity ceased to be a *subsidiary member of the old
21 group just after the Division 149 time.

22 **711-75 Additional integrity rule if membership interests treated as**
23 **having been acquired before 20 September 1985 under**
24 **section 711-65—application of CGT event K6**

- 25 (1) This section applies if the leaving entity ceases to be a *subsidiary
26 member of the old group because of a situation giving rise to *CGT
27 event A1, C2, E1, E2 or E8 in relation to one or more *membership
28 interests in the leaving entity.
- 29 (2) For the purposes of applying subsections 104-230(2) and (8) in
30 relation to those *membership interests:
31 (a) disregard subsection 701-1(1) (the single entity rule) in
32 working out the *net value of the leaving entity; and
33 (b) treat the reference in subsection 104-230(2) to “Just before
34 the other event happened” as a reference to “Just before the
35 leaving time”.

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Note 1: The single entity rule will continue to apply in determining whether the property mentioned in subsection 104-230(2) for the leaving entity was acquired on or after 20 September 1985.

Note 2: However, in a case of multiple exit from a consolidated group (see section 711-55), the property mentioned in subsection 104-230(2) for the leaving entity may include membership interests in another entity leaving the group at the leaving time. To determine which of those membership interests were acquired on or after 20 September 1985 for the purposes of applying subsection 104-230(2) to the leaving entity, see section 711-65.

- (3) In determining the sum of the *cost bases of the property mentioned in subsection 104-230(6), treat the cost base of an asset that is included in that property as:
- (a) if the asset has its *tax cost set at the leaving time under section 701-50—its *tax cost setting amount; or
 - (b) if the *terminating value of the asset is taken into account in working out the step 1 amount under section 711-25 for the leaving entity—that terminating value; or
 - (c) if the asset is taken into account in working out the step 3 amount under section 711-40 for the leaving entity—the value of the asset that is so taken into account.

31 Section 713-245

Repeal the section.

32 Section 713-270

Repeal the section.

33 Subsection 995-1(1) (definition of *pre-CGT factor*)

Repeal the definition.

34 Subsection 995-1(1)

Insert:

pre-CGT proportion has the meaning given by section 705-125.

35 Application provision

- (1) The amendments made by this Part apply in relation to an entity that becomes a subsidiary member of a consolidated group or MEC group on or after:

Schedule 5 Consolidation
Part 3 Pre-CGT proportions

- 1 (a) if the head company of the group makes a choice in
2 accordance with subitems (2) and (3)—1 July 2002; or
3 (b) otherwise—the day on which the Bill that became this Act
4 was introduced into the House of Representatives.
- 5 (2) A choice mentioned in paragraph (1)(a) must be made:
6 (a) on or before 30 June 2011; or
7 (b) within a further time allowed by the Commissioner.
- 8 (3) A choice mentioned in paragraph (1)(a) must be made in writing.

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2 **Part 4—No double counting of amounts in ACA**

3 ***Income Tax Assessment Act 1997***

4 **36 After section 705-60**

5 Insert:

6 **705-62 No double counting of amounts in allocable cost amount**

- 7 (1) The object of this section is to prevent a particular amount from
8 being taken into account more than once in calculating the
9 *allocable cost amount for the joining entity, in order to promote
10 the object of this Subdivision set out in section 705-10.
- 11 (2) Subsection (3) applies if, apart from this section, 2 or more
12 provisions of this Act operate with the result of altering:
13 (a) the *allocable cost amount for the joining entity; or
14 (b) the allocable cost amount for another entity that becomes a
15 *subsidiary member of the group at the joining time;
16 because of a particular economic attribute of the joining entity (see
17 subsection (6)).
- 18 (3) Only one of those alterations is to be made, as follows:
19 (a) if the *head company of the group makes a choice in
20 accordance with subsections (4) and (5)—the alteration
21 specified in the choice is to be made;
22 (b) otherwise—the alteration that is most appropriate (in the light
23 of the object of this Subdivision) is to be made.
- 24 (4) A choice mentioned in paragraph (3)(a) must be made:
25 (a) by the day the *head company of the group lodges its
26 *income tax return for the income year in which the joining
27 time occurs; or
28 (b) within a further time allowed by the Commissioner.
- 29 (5) A choice mentioned in paragraph (3)(a) must be made in writing.
- 30 (6) The *economic attributes* of the joining entity mentioned in
31 subsection (2) include the following:
-

Schedule 5 Consolidation

Part 4 No double counting of amounts in ACA

- 1 (a) the joining entity's retained profits;
- 2 (b) the joining entity's distributions of profits to other entities;
- 3 (c) the joining entity's realised and unrealised losses;
- 4 (d) the joining entity's deductions;
- 5 (e) the joining entity's accounting liabilities (within the meaning
- 6 of subsection 705-70(1));
- 7 (f) consideration received by the joining entity for issuing
- 8 *membership interests in itself.

9 **37 Application provision**

- 10 (1) The amendment made by this Part applies in relation to a consolidated
- 11 group or MEC group on and after:
 - 12 (a) if the head company of the group makes a choice in
 - 13 accordance with subitems (2) and (3)—1 July 2002; or
 - 14 (b) otherwise—the day on which the Bill that became this Act
 - 15 was introduced into the House of Representatives.
- 16 (2) A choice mentioned in paragraph (1)(a) must be made:
 - 17 (a) on or before 30 June 2011; or
 - 18 (b) within a further time allowed by the Commissioner.
- 19 (3) A choice mentioned in paragraph (1)(a) must be made in writing.

20 **38 Transitional provision—choice where pre-commencement**

21 **joining time**

- 22 (1) This item applies if the joining time mentioned in paragraph
- 23 705-62(4)(a) of the *Income Tax Assessment Act 1997* occurs before the
- 24 day on which this item commences.
- 25 (2) Despite subsection 705-62(4) of the *Income Tax Assessment Act 1997*,
- 26 the choice mentioned in that subsection must be made:
 - 27 (a) on or before 30 June 2011; or
 - 28 (b) within a further time allowed by the Commissioner.

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2 **Part 5—Pre-joining time roll-overs**

3 ***Income Tax Assessment Act 1997***

4 **39 Paragraph 104-505(1)(b)**

5 Omit “(after any application of section 705-150)”.

6 **40 Section 705-60 (table item 3A)**

7 Repeal the item, substitute:

- | | | |
|----|---|--|
| 3A | For each step 3A amount (if any) under section 705-93 (which is about pre-joining time roll-overs): | To adjust for certain roll-overs before the joining time affecting deferred gains and losses |
| | (a) if the step 3A amount is a *deferred roll-over loss—add to the result of step 3 (as affected by any previous application of this step) the step 3A amount; or | |
| | (b) if the step 3A amount is a *deferred roll-over gain—subtract from the result of step 3 (as affected by any previous application of this step) the step 3A amount | |

8 **41 Section 705-93 (heading)**

9 Repeal the heading, substitute:

10 **705-93 If pre-joining time roll-over from foreign resident company**
11 **or head company—step 3A in working out allocable cost**
12 **amount**

13 **42 After paragraph 705-93(1)(a)**

14 Insert:

- 15 (aa) at the joining time, as a result of the Subdivision 126-B
16 roll-over or the section 160ZZO roll-over, the roll-over asset
17 has:
18 (i) a *deferred roll-over gain; or

1 (ii) a *deferred roll-over loss; and

2 **43 Paragraph 705-93(1)(b)**

3 Repeal the paragraph, substitute:

- 4 (b) the originating company in relation to the Subdivision 126-B
5 roll-over, or the transferor in relation to the section 160ZZO
6 roll-over:
7 (i) was a foreign resident; or
8 (ii) is the *head company in relation to the joined group;
9 and

10 **44 Paragraph 705-93(1)(c)**

11 Repeal the paragraph, substitute:

- 12 (c) the recipient company in relation to the Subdivision 126-B
13 roll-over, or the transferee in relation to the section 160ZZO
14 roll-over:
15 (i) was an Australian resident; and
16 (ii) is a *spread entity in relation to the joined group; and

17 **45 Paragraph 705-93(1)(d)**

18 Repeal the paragraph, substitute:

- 19 (d) if the recipient company was previously a *subsidiary
20 member of another consolidated group—the conditions in
21 section 104-182 were *not* satisfied at any time in relation to
22 the other group between the Subdivision 126-B roll-over, or
23 the section 160ZZO roll-over, and the joining time; and

24 **46 Subsection 705-93(2)**

25 Repeal the subsection, substitute:

- 26 (2) The step 3A amount is the amount of the *deferred roll-over gain
27 or the *deferred roll-over loss mentioned in paragraph (1)(aa).

28 **47 Subsections 705-147(3), (4) and (5)**

29 Repeal the subsections, substitute:

30 *Membership interests in subsidiary members of group*

- 31 (3) In applying section 705-93 for the purposes of this Subdivision,
32 disregard paragraph 705-93(1)(f) if:

- 1 (a) the rollover asset mentioned in that section is a *membership
2 interest in an entity that becomes a *subsidiary member at the
3 formation time; and
4 (b) the rollover asset is *not* held at that time by the entity that
5 becomes the *head company of the group.

6 Note: The step 3A amount is worked out under section 705-93.

7 **48 Section 705-150**

8 Repeal the section.

9 **49 Subsections 705-227(3), (4) and (5)**

10 Repeal the subsections, substitute:

11 *Membership interests in subsidiary members of group*

12 (3) In applying section 705-93 for the purposes of this Subdivision,
13 disregard paragraph 705-93(1)(f) if:

- 14 (a) the rollover asset mentioned in that section is a *membership
15 interest in an entity that becomes a *subsidiary member at the
16 linked entity joining time; and
17 (b) the rollover asset is *not* held at that time by the entity that
18 becomes the *head company of the group.

19 Note: The step 3A amount is worked out under section 705-93.

20 **50 Subsection 995-1(1)**

21 Insert:

22 *deferred roll-over gain*: an asset has a deferred roll-over gain at a
23 particular time if:

- 24 (a) before that time there was a roll-over under a provision or
25 former provision of this Act in relation to a disposal or a
26 *CGT event that happened in relation to the asset; and
27 (b) as a result of the roll-over all or part of a *capital gain from
28 the disposal or CGT event was disregarded.

29 The amount of the deferred roll-over gain is equal to the amount of
30 the capital gain that was disregarded, reduced by the amount (if
31 any) by which the gain has been taken into account in working out
32 a *net capital gain (section 102-5) or *net capital loss
33 (section 102-10) in relation to the asset between the roll-over time
34 and the particular time.

1 **51 Subsection 995-1(1)**

2 Insert:

3 *deferred roll-over loss*: an asset has a deferred roll-over loss at a
4 particular time if:

- 5 (a) before that time there was a roll-over under a provision or
6 former provision of this Act in relation to a disposal or a
7 *CGT event that happened in relation to the asset; and
8 (b) as a result of the roll-over all or part of a *capital loss from
9 the disposal or CGT event was disregarded.

10 The amount of the deferred roll-over loss is equal to the amount of
11 the capital loss that was disregarded, reduced by the amount (if
12 any) by which the loss has been taken into account in working out
13 a *net capital gain (section 102-5) or *net capital loss
14 (section 102-10) in relation to the asset between the roll-over time
15 and the particular time.

16 **52 Subsection 995-1(1)**

17 Insert:

18 *spread entity*, in relation to a *consolidated group or *MEC group,
19 means a *member of the group that is not a *stick entity in relation
20 to the group.

21 **53 Subsection 995-1(1)**

22 Insert:

23 *stick entity*:

- 24 (a) in relation to a *consolidated group—means a *member of the
25 group that is:
26 (i) the *head company of the group; or
27 (ii) a chosen transitional entity (within the meaning of
28 Division 701 of the *Income Tax (Transitional*
29 *Provisions) Act 1997*); or
30 (iii) a transitional foreign-held subsidiary (within the
31 meaning of Division 701C of the *Income Tax*
32 *(Transitional Provisions) Act 1997*); or
33 (b) in relation to a *MEC group—means a member of the group
34 that is:
35 (i) the head company of the group; or
-

- 1 (ii) a chosen transitional entity (within the meaning of
2 Division 701 of the *Income Tax (Transitional*
3 *Provisions) Act 1997*); or
4 (iii) a transitional foreign-held subsidiary (within the
5 meaning of Division 701C of the *Income Tax*
6 *(Transitional Provisions) Act 1997*); or
7 (iv) an *eligible tier-1 company.

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

9 **54 Section 126-165 (paragraph (c) of the example)**

10 Omit “section 705-150”, substitute “section 705-93”.

11 **55 Application provision**

12 The amendments made by this Part apply on and after 1 July 2002.

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Part 6—Phasing out over-depreciation adjustments

3

Division 1—Joining times between 8 May 2007 and 30 June 2009

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Income Tax Assessment Act 1997

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56 Paragraph 705-50(2)(b)

7

Omit “before the joining time”, substitute “during the period of 5 years
ending at the joining time”.

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57 Application provision

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The amendment made by this Division applies in relation to entities that
become members of a consolidated group or MEC group during the
period:

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(a) starting on 9 May 2007; and

14

(b) ending on 30 June 2009.

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Division 2—Repeal of section 705-50 with effect from 1 July 2009

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Income Tax Assessment Act 1997

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58 Section 705-50

19

Repeal the section.

20

59 Section 705-55 (heading)

21

Repeal the heading, substitute:

22

705-55 Order of application of sections 705-40, 705-45 and 705-47

23

60 Subparagraph 705-55(b)(iii)

24

Omit “705-47;”, substitute “705-47.”.

25

61 Subparagraph 705-55(b)(iv)

26

Repeal the subparagraph.

1 **62 Paragraph 705-57(2)(d)**

2 Omit “705-45, 705-47 or 705-50”, substitute “705-45 or 705-47”.

3 **63 Subsection 705-57(6)**

4 Omit “705-45, 705-47 or 705-50”, substitute “705-45 or 705-47”.

5 **64 Subsection 705-59(7)**

6 Omit “705-45, 705-47 and 705-50”, substitute “705-45 and 705-47”.

7 **65 Section 705-190**

8 Repeal the section.

9 **66 Section 713-225(5)**

10 Repeal the subsection.

11 **67 Section 713-230**

12 Repeal the section.

13 **68 Subsection 715-900(2) (note 2)**

14 Repeal the note, substitute:

15 Note 2: The operation of Division 58 just before the joining time can affect the
16 basis on which the tax cost is set for a depreciating asset that becomes
17 an asset of the head company of the consolidated group at the joining
18 time because of section 701-1 (the single entity rule). That Division
19 provides the basis for working out under Division 40 the asset’s
20 adjustable value. This is the entity’s terminating value for the asset,
21 which in turn can affect the tax cost setting amount for the asset under
22 sections 705-40, 705-45 and 705-47.

23 **69 Subsection 716-330(9)**

24 Repeal the subsection.

25 **70 Subsection 716-340(8) (note)**

26 Repeal the note, substitute:

27 Note: Subsections (6), (7) and (8) can affect the working out of the tax cost
28 setting amount for the in-house software, by affecting the joining
29 entity’s terminating value for the software, which section 705-30
30 defines as being the adjustable value of the software just before the
31 joining time, and which is relevant to sections 705-40 and 705-57
32 (which may reduce the tax cost setting amount for the software).

1 **71 Subsection 995-1(1) (definition of *over-depreciated*)**

2 Repeal the definition.

3 **72 Subsection 995-1(1) (definition of *over-depreciation*)**

4 Repeal the definition.

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

6 **73 Section 126-165 (paragraph (b) of the example)**

7 Repeal the paragraph.

8 **74 Subsection 701-40(1)**

9 Omit “(5)”, substitute “(4)”.

10 **75 Paragraph 701-40(3)(b)**

11 Omit “section 705-50”, substitute “former section 705-50”.

12 **76 Subsection 701-40(5)**

13 Repeal the subsection.

14 **77 Subsection 705-305(9) (note)**

15 Omit “sections 705-40 and 705-50”, substitute “section 705-40”.

16 **78 Application provision**

17 The amendments made by this Division apply in relation to entities that
18 become members of a consolidated group or MEC group on or after
19 1 July 2009.

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2 **Part 7—Leaving time liabilities**

3 **Division 1—Timing**

4 *Income Tax Assessment Act 1997*

5 **79 Subsection 711-20(1) (cell at table item 1, column headed**
6 **“What the step requires”)**

7 Omit “the *terminating values of assets that the leaving entity takes with
8 it when it ceases to be a *subsidiary member”, substitute “the
9 *terminating values of the leaving entity’s assets just before the leaving
10 time”.

11 **80 Subsection 711-20(1) (cell at table item 2, column headed**
12 **“What the step requires”)**

13 Omit “the *terminating value of the assets that the leaving entity takes
14 with it”, substitute “the *terminating value of the leaving entity’s assets
15 just before the leaving time”.

16 **81 Subsection 711-20(1) (cell at table item 4, column headed**
17 **“What the step requires”)**

18 Omit:

19 (a) the liabilities that the leaving entity takes with it when it
20 ceases to be a *subsidiary member; and

21 Substitute:

22 (a) the leaving entity’s liabilities just before the leaving time;
23 and

24 **82 Section 711-25 (heading)**

25 Repeal the heading, substitute:

26 **711-25 Terminating values of the leaving entity’s assets—step 1 in**
27 **working out allocable cost amount**

28 **83 Subsection 711-45(1)**

1 Omit “is a liability of the leaving entity at the leaving time”, substitute
2 “is a liability of the leaving entity just before the leaving time”.

3 **84 Paragraph 713-265(4)(a)**

4 Omit “is a liability of the leaving entity at the leaving time”, substitute
5 “is a liability of the leaving entity just before the leaving time”.

6 **85 Paragraph 713-265(4)(b)**

7 Omit “of the partner at the leaving time”, substitute “of the partner just
8 before the leaving time”.

9 **86 Subsection 713-265(4)**

10 Omit “of the partner at the leaving time,”, substitute “of the partner just
11 before the leaving time,”.

12 **87 Application provision**

13 (1) The amendments made by this Division apply on and after the day on
14 which the Bill that became this Act was introduced into the House of
15 Representatives.

16 (2) The amendments made by this Division are to be disregarded for the
17 purposes of interpreting:
18 (a) the provisions amended by this Division, as they applied
19 before the day mentioned in subitem (1); and
20 (b) any other provision of the *Income Tax Assessment Act 1997*
21 or the *Income Tax (Transitional Provisions) Act 1997*, as that
22 provision applied before the day mentioned in subitem (1), to
23 the extent that it relates to a provision mentioned in
24 paragraph (a).

25 **Division 2—Adjustment of step 4 amount**

26 ***Income Tax Assessment Act 1997***

27 **88 Subsection 711-45(8)**

28 Repeal the subsection, substitute:

1 *Adjustment where amount of liability differed for purpose of*
2 *calculating allocable cost amount on entry*

3 (8) Subsection (10) applies if:

4 (a) either:

5 (i) an amount (the ***exit liability amount***) was added for a
6 particular liability under subsection (5); or

7 (ii) a particular liability is covered by subsection (5), but no
8 amount was added for it under that subsection (in which
9 case the ***exit liability amount*** is zero); and

10 (b) the liability was taken into account in working out the
11 *allocable cost amount (the ***original entry ACA***) for a
12 *subsidiary member (whether or not the leaving entity) of the
13 old group in accordance with Division 705; and

14 (c) the exit liability amount is not the same as the amount (the
15 ***entry liability amount***) of the liability that was taken into
16 account in working out the original entry ACA, after any
17 adjustments made under:

18 (i) section 705-70, 705-75 or 705-80; and

19 (ii) subsection (9) of this section; and

20 (d) if the liability is a provision for annual leave or long service
21 leave, or a provision for a liability contingent on a future
22 event:

23 (i) in the case of a liability that was, in accordance with the
24 *accounting principles that the entity would have used if
25 it had prepared its financial statements just before the
26 time it became a subsidiary member of the group, a
27 current liability of the entity at that time—the leaving
28 time occurs less than 1 year after that time; or

29 (ii) otherwise—the leaving time occurs less than 4 years
30 after that time.

31 (9) Make these adjustments to the entry liability amount if, at a time
32 when the leaving entity was a *subsidiary member of the old group,
33 the *head company of the group paid an amount that reduced the
34 liability:

35 (a) reduce the entry liability amount by the amount of the
36 reduction; and

37 (b) if the payment gave rise to an amount being included in the
38 assessable income of the head company—after making the

- 1 reduction in paragraph (a), further reduce the entry liability
2 amount by the product of:
- 3 (i) the amount included in assessable income; and
4 (ii) the *corporate tax rate; and
- 5 (c) if the payment gave rise to a deduction for the head
6 company—after making the reduction in paragraph (a),
7 increase the entry liability amount by the product of:
- 8 (i) the amount deducted; and
9 (ii) the corporate tax rate.
- 10 (10) The step 4 amount is altered by:
- 11 (a) if the entry liability amount exceeds the exit liability
12 amount—increasing the step 4 amount by the excess; or
13 (b) if the entry liability amount falls short of the exit liability
14 amount—decreasing the step 4 amount by the shortfall.

15 **89 Application provision**

16 The amendment made by this Division applies in relation to an entity
17 ceasing to be a subsidiary member of a consolidated group or MEC
18 group on or after the day on which the Bill that became this Act was
19 introduced into the House of Representatives.

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2 **Part 8—Accounting principles**

3 ***Income Tax Assessment Act 1997***

4 **90 Paragraph 701-40(2)(b)**

5 Omit “*accounting standards, or statements of accounting concepts
6 made by the Australian Accounting Standards Board”, substitute
7 “*accounting principles”.

8 **91 Paragraph 705-56(1)(b)**

9 Omit “*accounting standards, or statements of accounting concepts
10 made by the Australian Accounting Standards Board”, substitute “its
11 *accounting principles for tax cost setting”.

12 **92 Subsection 705-58(1)**

13 Omit “*accounting standards, or statements of accounting concepts
14 made by the Australian Accounting Standards Board, require them to be
15 set off against each other”, substitute “, in accordance with *accounting
16 principles, they are required to be set off against each other”.

17 **93 Subsection 705-59(2)**

18 Omit “*accounting standards, or statements of accounting concepts
19 made by the Australian Accounting Standards Board”, substitute “the
20 entity’s *accounting principles for tax cost setting”.

21 **94 Subsection 705-70(1)**

22 Omit “*accounting standards, or statements of accounting concepts
23 made by the Australian Accounting Standards Board”, substitute “the
24 joining entity’s *accounting principles for tax cost setting”.

25 **95 Subsection 705-70(1)**

26 Omit “that can or must be recognised in the entity’s statement of
27 financial position”.

28 **96 Subsection 705-70(1A)**

29 Omit “those *accounting standards or statements”, substitute “the
30 *accounting principles”.

1 **97 At the end of section 705-70**

2 Add:

3 *Joining entity's accounting principles for tax cost setting*

4 (3) The joining entity's *accounting principles for tax cost setting* are
5 the *accounting principles that the entity would use if it were to
6 prepare its financial statements just before the joining time.

7 **98 Paragraph 705-80(1)(a)**

8 Omit “*accounting standards or statements of accounting concepts made
9 by the Australian Accounting Standards Board”, substitute “the joining
10 entity's *accounting principles for tax cost setting”.

11 **99 Paragraph 705-85(3)(b)**

12 Omit “*accounting standards, or statements of accounting concepts
13 made by the Australian Accounting Standards Board”, substitute “the
14 joining entity's *accounting principles for tax cost setting”.

15 **100 Subsection 705-90(2)**

16 Omit “*accounting standards, or statements of accounting concepts
17 made by the Australian Accounting Standards Board”, substitute “the
18 joining entity's *accounting principles for tax cost setting”.

19 **101 Subsection 705-90(2)**

20 Omit “that could be recognised in the joining entity's statement of
21 financial position if that statement were prepared as at the joining time”.

22 **102 Subsection 711-45(1)**

23 Omit “*accounting standards, or statements of accounting concepts
24 made by the Australian Accounting Standards Board”, substitute “the
25 leaving entity's *accounting principles for tax cost setting”.

26 **103 Subsection 711-45(1)**

27 Omit “that can or must be identified in the entity's statement of
28 financial position”.

29 **104 After subsection 711-45(1)**

30 Insert:

1 *Leaving entity's accounting principles for tax cost setting*

2 (1A) The leaving entity's **accounting principles for tax cost setting** are
3 the *accounting principles that the group would use if it were to
4 prepare its financial statements just before the leaving time
5 (disregarding subsection 701-1(1) (the single entity rule)).

6 **105 Subsection 711-45(5)**

7 Omit “*accounting standards, or statements of accounting concepts
8 made by the Australian Accounting Standards Board”, substitute “the
9 leaving entity's *accounting principles for tax cost setting”.

10 **106 Subsection 711-45(7)**

11 Omit “*accounting standards, or statements of accounting concepts
12 made by the Australian Accounting Standards Board”, substitute “the
13 leaving entity's *accounting principles for tax cost setting”.

14 **107 Paragraph 713-225(6)(a)**

15 Omit “according to *accounting standards, or statements of accounting
16 concepts made by the Australian Accounting Standards Board”,
17 substitute “in accordance with the *accounting principles that the
18 partnership would use if it were to prepare its financial statements just
19 before the joining time”.

20 **108 Paragraph 713-225(6)(a)**

21 Omit “that can or must be recognised in the partnership's statement of
22 financial position”.

23 **109 Paragraph 713-265(4)(a)**

24 Omit “according to *accounting standards, or statements of accounting
25 concepts made by the Australian Accounting Standards Board”,
26 substitute “in accordance with the *accounting principles that the
27 partnership would use if it were to prepare its financial statements just
28 before the leaving time (disregarding subsection 701-1(1) (the single
29 entity rule))”.

30 **110 Paragraph 713-265(4)(a)**

31 Omit “that can or must be recognised in the partnership's statement of
32 financial position”.

1 **111 Subsection 995-1(1)**

2 Insert:

3 *accounting principles*: A matter is in accordance with *accounting*
4 *principles* if it is in accordance with:

- 5 (a) *accounting standards; or
6 (b) if there are no accounting standards applicable to the
7 matter—authoritative pronouncements of the Australian
8 Accounting Standards Board that apply to the preparation of
9 financial statements.

10 **112 Subsection 995-1(1)**

11 Insert:

12 *accounting principles for tax cost setting* has the meaning given
13 by:

- 14 (a) subsection 705-70(3); and
15 (b) subsection 711-45(1A).

16 **113 Application provision**

17 The amendments made by this Part apply on and after the day on which
18 the Bill that became this Act was introduced into the House of
19 Representatives.

1

2 **Part 9—Inherited deductions**

3 ***Income Tax Assessment Act 1997***

4 **114 At the end of section 705-115**

5 Add:

- 6 (3) Subsection (2) does *not* cover a deduction under section 43-15
7 (which relates to *undeducted construction expenditure) if the
8 joining entity *acquired the asset to which the deduction relates at
9 or before 7.30 pm, by legal time in the Australian Capital Territory,
10 on 13 May 1997.

11 **115 Subsection 711-35(1)**

12 Repeal the subsection, substitute:

- 13 (1) Work out the step 2 amount for the purposes of the table in
14 subsection 711-20(1) by multiplying all deductions covered by
15 subsection (2) by the *general company tax rate.

16 **116 At the end of section 711-35**

17 Add:

- 18 (3) Subsection (2) does *not* cover a deduction under section 43-15
19 (which relates to *undeducted construction expenditure) if, because
20 of section 701-40 (the exit history rule), the leaving entity is taken
21 to have *acquired the asset to which the deduction relates at or
22 before 7.30 pm, by legal time in the Australian Capital Territory,
23 on 13 May 1997.

24 **117 Application provision**

- 25 (1) The amendments made by items 114 and 116 apply on and after 1 July
26 2002.
- 27 (2) The other amendment made by this Part applies on and after the day on
28 which the Bill that became this Act was introduced into the House of
29 Representatives.

1

2

Part 10—General insurance companies

3

Income Tax Assessment Act 1997

4

118 At the end of Subdivision 713-M

5

Add:

6

713-725 Treatment of certain assets and liabilities of general insurance companies

7

8

(1) This section applies if a *general insurance company becomes or ceases to be a *subsidiary member of a *consolidated group.

9

10

(2) If the *general insurance company becomes a *subsidiary member of the group:

11

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(a) in working out the step 2 amount for the purposes of the table in section 705-60, reduce that amount by the sum of the amount of each thing mentioned in subsection (4); and

13

14

15

(b) in working out the *tax cost setting amount of a thing mentioned in subsection (4) for the purposes of

16

17

section 705-35, treat the *market value of the thing as zero.

18

(3) If the *general insurance company ceases to be a *subsidiary member of the group:

19

20

(a) in working out the step 4 amount for the purposes of the table in section 711-20, reduce that amount by the sum of the amount of each thing mentioned in subsection (4); and

21

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23

(b) for the purposes of section 711-25, treat the *terminating value of a thing mentioned in subsection (4) as zero.

24

25

(4) The things are the *general insurance company's:

26

27

(a) deferred acquisition costs in relation to the company's unearned premium reserve; and

28

29

(b) deferred reinsurance expenses in relation to the company's unearned premium reserve; and

30

31

(c) recoveries receivable in relation to the company's *outstanding claims.

32

119 Application provision

1 The amendment made by this Part applies in relation to a general
2 insurance company becoming or ceasing to be a subsidiary member of a
3 consolidated group or MEC group on or after 1 July 2002.

1

2 **Part 11—Retained cost base assets**

3 **Division 1—Cash management trusts**

4 *Income Tax Assessment Act 1997*

5 **120 Subsection 705-25(2)**

6 Omit “paragraph (a) or (b)”, substitute “paragraph (a), (b) or (ba)”.

7 **121 After paragraph 705-25(5)(b)**

8 Insert:

- 9 (ba) a unit in a *cash management trust, if:
- 10 (i) the redemption value of the unit is expressed in
11 Australian dollars; and
- 12 (ii) the redemption value of the unit cannot increase; or

13 **122 Subsection 995-1(1)**

14 Insert:

- 15 *cash management trust* means a trust that satisfies these
16 requirements:
- 17 (a) the trust is of a kind commonly known as a cash management
18 trust;
- 19 (b) each unit in the trust carries the same rights as every other
20 unit in the trust.

21 **Division 2—Rights to future income assets**

22 *Income Tax Assessment Act 1997*

23 **123 After subsection 705-25(4A)**

24 Insert:

1 *Rights to payments in respect of uncompleted work etc.*

- 2 (4B) If the *retained cost base asset is covered by paragraph (d) of the
3 definition of that expression, its *tax cost setting amount is equal to
4 the joining entity's *terminating value for the asset.

5 **124 Subparagraph 705-25(5)(c)(ii)**

6 Omit “is incurred.”, substitute “is incurred; or”.

7 **125 After paragraph 705-25(5)(c)**

8 Insert:

9 ; or (d) a right that is an asset covered by section 716-410 (rights to
10 future amounts that are expected to be included in assessable
11 income) if at the time the right was created:

- 12 (i) the *head company was the head company of a
13 *consolidatable group; and
14 (ii) the joining entity was a *subsidiary member of the
15 consolidatable group.

16 **Division 3—Application provision**

17 **126 Application provision**

- 18 (1) The amendments made by Division 1 of this Part apply in relation to a
19 consolidated group or MEC group on and after:
20 (a) if the head company of the group makes a choice in
21 accordance with subitems (2) and (3)—1 July 2002; or
22 (b) otherwise—the day on which the Bill that became this Act
23 was introduced into the House of Representatives.
- 24 (2) A choice mentioned in paragraph (1)(a) must be made:
25 (a) on or before 30 June 2011; or
26 (b) within a further time allowed by the Commissioner.
- 27 (3) A choice mentioned in paragraph (1)(a) must be made in writing.
- 28 (4) The amendments made by Division 2 of this Part apply in relation to a
29 consolidated group or MEC group on and after 1 July 2002.

1

2 **Part 12—Removal of CGT event L7**

3 *Income Tax Assessment Act 1997*

4 **127 Section 104-5 (table item relating to CGT event L7)**

5 Repeal the item.

6 **128 Section 104-530**

7 Repeal the section.

8 **129 Section 110-10 (table item relating to CGT event L7)**

9 Repeal the item.

10 *Income Tax (Transitional Provisions) Act 1997*

11 **130 Section 701-34**

12 Repeal the section.

13 **131 Application provision**

14 (1) The amendments made by this Part apply on and after 1 July 2002.

15 (2) However, the amendments made by this Part do not apply in relation to
16 a CGT event that:

17 (a) is CGT event L7; and

18 (b) happens before the day on which the Bill that became this
19 Act was introduced into the House of Representatives; and

20 (c) gives rise to a capital loss.

1
2 **Part 13—Reduction in tax cost setting amount that**
3 **exceeds market value of certain retained**
4 **cost base assets**

5 *Income Tax Assessment Act 1997*

6 **132 After section 705-25**

7 Insert:

8 **705-27 Reduction in tax cost setting amount that exceeds market**
9 **value of certain retained cost base assets**

10 (1) If:

- 11 (a) a *retained cost base asset of the joining entity is a right to
12 receive a specified amount of such Australian currency,
13 covered by paragraph 705-25(5)(b); and
14 (b) the *market value of the asset is less than the *tax cost setting
15 amount of the asset; and
16 (c) the head company makes a *capital gain under *CGT event
17 L3 (disregarding this subsection) as a result of the joining
18 entity becoming a *subsidiary member of the group;

19 reduce the tax cost setting amount of the asset by the amount of the
20 gain (but not below zero).

21 Note: Reducing the tax cost setting amount of the asset will also reduce the
22 amount of the capital gain (see paragraph 104-510(1)(b)). The amount
23 of the capital gain might be reduced to nil.

24 (2) If:

- 25 (a) the requirements in subsection 701-58(1) (intra-group assets)
26 are satisfied in relation to the asset; and
27 (b) the joining entity has been entitled to a deduction for an
28 income year ending on or before the joining time because of
29 the *market value of the asset being less than the specified
30 amount mentioned in paragraph (1)(a); and
31 (c) the accounting liability that corresponds to the asset has *not*
32 been reduced under subsection 705-75(2);

Schedule 5 Consolidation

Part 13 Reduction in tax cost setting amount that exceeds market value of certain retained cost base assets

- 1 reduce the amount of the reduction under subsection (1) by the
2 amount of the deduction (but not below zero).
- 3 (3) If the *tax cost setting amount of 2 or more of the joining entity's
4 assets could be reduced in accordance with subsections (1) and (2):
5 (a) subsections (1) and (2) apply sequentially to each of those
6 assets; and
7 (b) the *head company may choose the sequence of assets to
8 which subsections (1) and (2) apply; and
9 (c) if the head company does not make such a choice—
10 subsections (1) and (2) apply sequentially to each of those
11 assets according to the time at which they were created, from
12 earliest to latest.
- 13 Note: Once the amount of the capital gain is reduced to nil as a result of the
14 application of subsections (1) and (2), no further reductions of tax cost
15 setting amount can be made under those subsections.
- 16 (4) A choice the *head company can make under paragraph (3)(b)
17 must be made:
18 (a) by the day the head company lodges its *income tax return
19 for the income year in which the *CGT event happened; or
20 (b) within a further time allowed by the Commissioner.
- 21 (5) The way the *head company prepares its *income tax return is
22 sufficient evidence of the making of the choice.

23 **133 Paragraph 705-35(1)(b)**

24 Omit “in accordance with section 705-25”.

25 **134 Application provision**

- 26 (1) The amendments made by this Part apply in relation to entities that
27 become members of a consolidated group or MEC group on or after:
28 (a) if the head company of the group makes a choice in
29 accordance with subitems (2) and (3)—1 July 2002; or
30 (b) otherwise—the day on which the Bill that became this Act
31 was introduced into the House of Representatives.
- 32 (2) A choice mentioned in paragraph (1)(a) must be made:
33 (a) on or before 30 June 2011; or
34 (b) within a further time allowed by the Commissioner.

- 1 (3) A choice mentioned in paragraph (1)(a) must be made in writing.

1

2 **Part 14—Blackhole expenditure for MEC Groups**

3 *Income Tax Assessment Act 1997*

4 **135 Paragraph 110-35(10)(a)**

5 After “a *consolidated group”, insert “or *MEC group”.

6 **136 Application provision**

7 The amendment made by this Part applies to CGT events happening on
8 or after 1 July 2005.

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2

Part 15—Transitional concession for SAPs

3

New Business Tax System (Consolidation and Other Measures) Act 2003

4

5

137 Subsection 2(1) (table item 2)

6

Repeal the item, substitute:

| | | |
|--------------------------------|--|-----------------|
| 1A. Schedule 1, items 1 to 27 | Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i> | 24 October 2002 |
| 1B. Schedule 1, item 27A | Immediately after the commencement of the provisions covered by table item 1A | 24 October 2002 |
| 1C. Schedule 1, items 28 to 36 | Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i> | 24 October 2002 |
| 2. Schedules 2 and 3 | Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i> | 24 October 2002 |

7

138 After item 27 of Schedule 1

8

Insert:

9

27A Paragraph 701-30(1)(a)

10

Repeal the paragraph, substitute:

11

(a) on or before the first day of the first income year of the head company starting after 30 June 2003; and

12

13

Note: Section 701-30 of the *Income Tax (Transitional Provisions) Act 1997* was repealed by item 285 of Schedule 1 to the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* on 14 September 2006. Therefore the amendment made by this item will not apply after that repeal.

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139 Application provision

1 (1) The amendments made by this Part apply in relation to a consolidated
2 group or MEC group only if the head company of the group makes a
3 choice in accordance with subitems (2) and (3).

4 (2) The choice must be made:

5 (a) on or before 30 June 2011; or

6 (b) within a further time allowed by the Commissioner.

7 (3) The choice must be made in writing.

8 **140 Transitional provision—revocation of choice for**
9 **transitional entities**

10 (1) This item applies in relation to a consolidated group or MEC group if:

11 (a) the head company of the group makes a choice in accordance
12 with subitems (2) and (3) of the previous item; and

13 (b) the group came into existence:

14 (i) on or after 1 July 2003; and

15 (ii) on a day other than the first day of the first income year
16 of the head company starting after 1 July 2003.

17 (2) In determining whether a choice under subsection 701-5(1) of the
18 *Income Tax (Transitional Provisions) Act 1997* in relation to the group
19 can be revoked, treat the reference in paragraph 701-5(4)(a) of that Act
20 to 31 December 2005 as instead being a reference to the day that is 6
21 months after the commencement of this item.

1
2 **Part 16—Loss multiplication rules for widely held**
3 **companies**

4 ***Income Tax Assessment Act 1997***

5 **141 After subsection 165-115X(2)**

6 Insert:

7 (2A) A *widely held company that, apart from this subsection, would
8 have a relevant equity interest in a *loss company at a particular
9 time does not have such an interest at that time.

10 (2B) Subsection (2A) does not apply if:

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

13 (b) that entity has a direct or indirect interest in, or is owed a
14 debt by, the *widely held company, being an interest or debt
15 in respect of which:

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

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

26 (2C) Subsection (2A) does not apply in respect of a particular time if an
27 entity that had a direct or indirect interest in, or was owed a debt
28 by, the *widely held company at an earlier time, and had a
29 controlling stake in the loss company (see section 165-115Z) at the
30 earlier time:

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

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

7 **142 After subsection 165-115X(3)**

8 Insert:

- 9 (3A) Subsection (3) does not apply if the first entity is a *widely held
10 company.

11 **143 Subsection 165-115X(4)**

12 Omit "However, subsection (3)", substitute "Subsection (3)".

13 **144 After subsection 165-115Y(3)**

14 Insert:

- 15 (3A) A *widely held company that, apart from this subsection, would
16 have a relevant debt interest in a *loss company at a particular time
17 does not have such an interest at that time.

18 (3B) Subsection (3A) does not apply if:

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

21 (b) that entity has a direct or indirect interest in, or is owed a
22 debt by, the *widely held company, being an interest or debt
23 in respect of which:

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

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

1 (3C) Subsection (3A) does not apply in respect of a particular time if an
2 entity that had a direct or indirect interest in, or was owed a debt
3 by, the *widely held company at an earlier time, and had a
4 controlling stake in the *loss company (see section 165-115Z) at
5 the earlier time:

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

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

16 **145 After subsection 165-115Y(4)**

17 Insert:

18 (4A) Subsection (4) does not apply if the first entity is a *widely held
19 company.

20 **146 Subsection 165-115Y(5)**

21 Omit "However, subsection (4)", substitute "Subsection (4)".

22 **147 After paragraph 715-255(1)(b)**

23 Insert:

24 and (ba) the *head company has a relevant equity interest under
25 section 165-115X in the leaving entity at the leaving time;

26 **148 After subsection 715-255(1)**

27 Insert:

28 (1A) For the purposes of paragraph (1)(ba), in determining whether the
29 *head company has the relevant equity interest, disregard the
30 operation of subsection 701-1(1) (the single entity rule) in applying
31 subsections 165-115X(2C) and 165-115X(4).

32 **149 Subsection 715-270(5)**

1 Omit “If the trust is a *loss company at the leaving time, the *head
2 company must”, substitute “If the trust is a *loss company at the leaving
3 time and the *head company has a relevant equity interest under
4 section 165-115X in the leaving entity at the leaving time, the head
5 company must”.

6 **150 After subsection 715-270(5)**

7 Insert:

8 (5A) For the purposes of subsection (5), in determining whether the
9 *head company has the relevant equity interest, disregard the
10 operation of subsection 701-1(1) (the single entity rule) in applying
11 subsections 165-115X(2C) and 165-115X(4).

12 **151 After section 719-735**

13 Insert:

14 **719-740 Head company does not have relevant equity or debt**
15 **interest in a loss company if widely held top company**
16 **does not have such an interest**

- 17 (1) For the purposes of Subdivision 165-CD, treat the *head company
18 of a *MEC group as *not* having a relevant equity interest in a *loss
19 company at a particular time if:
20 (a) the *top company of the group is a *widely held company at
21 that time; and
22 (b) because of subsections 165-115X(2A), (2B) and (2C), the top
23 company does not have a relevant equity interest under
24 section 165-115X in the loss company at that time.
- 25 (2) For the purposes of paragraph (1)(b), disregard the operation of
26 subsection 701-1(1) (the single entity rule) in determining whether
27 subsection 165-115X(2C) has the effect that the *top company has
28 the relevant equity interest mentioned in that paragraph.
- 29 (3) For the purposes of Subdivision 165-CD, treat the *head company
30 of a *MEC group as *not* having a relevant debt interest in a *loss
31 company at a particular time if:
32 (a) the *top company of the group is a *widely held company at
33 that time; and

1 (b) because of subsections 165-115Y(3A), (3B) and (3C), the top
2 company does not have a relevant debt interest under
3 section 165-115Y in the loss company at that time.

4 **152 Application provision**

5 The amendments made by this Part apply on and after 1 July 2002.

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Part 17—CGT straddles

Income Tax Assessment Act 1997

153 At the end of Subdivision 716-Z

Add:

716-860 CGT event straddling joining or leaving time

(1) This section applies if:

- (a) an entity (the *joining entity*) becomes a subsidiary member of a *consolidated group at a particular time (the *joining time*); and
- (b) disregarding the operation of subsection 701-1(1) (the single entity rule), the joining entity held a *CGT asset at the joining time; and
- (c) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group held the CGT asset at the joining time; and
- (d) a *CGT event happened in relation to the asset at a time before the joining time (disregarding this section), but the circumstances that gave rise to the CGT event first existed at a time on or after the joining time.

(2) This section also applies if:

- (a) an entity (the *leaving entity*) ceases to be a *subsidiary member of a *consolidated group at a particular time (the *leaving time*); and
- (b) taking into account the operation of subsection 701-1(1) (the single entity rule), the *head company of the group held a *CGT asset at the leaving time; and
- (c) disregarding the operation of subsection 701-1(1) (the single entity rule), the leaving entity held the CGT asset at the leaving time; and
- (d) a *CGT event happened in relation to the asset at a time before the leaving time (disregarding this section), but the circumstances that gave rise to the CGT event first existed at a time on or after the leaving time.

1 (3) For the purposes of this Act, treat the *CGT event as happening at
2 the time when the circumstances that gave rise to the CGT event
3 first existed.

4 **154 Application provision**

5 The amendment made by this Part applies in relation to CGT events that
6 happen after 8 May 2007.

1

2 **Part 18—Choice to consolidate**

3 ***Income Tax Assessment Act 1997***

4 **155 Subsection 703-50(1)**

5 Omit “in the *approved form given to the Commissioner within the
6 period described in subsection (3)”, substitute “in writing”.

7 **156 At the end of subsection 703-50(1)**

8 Add:

9 Note: The head company of the group must give the Commissioner a notice
10 in the approved form containing information about the group (see
11 sections 703-58 and 703-60).

12 **157 Subsection 703-50(3)**

13 Repeal the subsection, substitute:

14 (3) The choice can be made no later than:

15 (a) if the company is required to give the Commissioner its
16 *income tax return for the income year during which the
17 specified day mentioned in subsection (1) occurs—the day on
18 which the company gives the Commissioner that income tax
19 return; or

20 (b) otherwise—the last day in the period within which the
21 company would be required to give the Commissioner such a
22 return if it were required to give the Commissioner such a
23 return.

24 **158 Subsections 703-50(5) and (6)**

25 Repeal the subsections.

26 **159 Before section 703-60 (after the group heading)**

27 Insert:

28 **703-58 Notice of choice to consolidate**

29 (1) If a *consolidated group comes into existence on the day specified
30 in a choice under section 703-50, the *head company of the group

1 must give the Commissioner a notice in the *approved form
2 containing the following information:

- 3 (a) the identity of the head company;
4 (b) the day specified in the choice on which the *consolidatable
5 group is taken to be consolidated;
6 (c) the identity of each *subsidiary member of the group on that
7 day;
8 (d) the identity of each entity that was a subsidiary member of
9 the group on that day but was *not* such a subsidiary member
10 when the notice is given;
11 (e) the identity of each entity that was *not* a subsidiary member
12 of the group on that day but was such a subsidiary member
13 when the notice is given;
14 (f) the identity of each entity that became a subsidiary member
15 of the group after that day but was *not* such a subsidiary
16 member when the notice is given.

17 (2) The notice must be given no later than:

- 18 (a) if the *head company is required to give the Commissioner its
19 *income tax return for the income year during which that day
20 occurs—the day on which the company gives the
21 Commissioner that income tax return; or
22 (b) otherwise—the last day in the period within which the head
23 company would be required to give the Commissioner such a
24 return if it were required to give the Commissioner such a
25 return.

26 **160 Paragraph 703-60(2)(b)**

27 Omit “more than 28 days before the choice is made”, substitute “before
28 the relevant notice is given to the Commissioner under section 703-58
29 (notice of choice to consolidate)”.

30 **161 Subsection 703-60(2)**

31 Omit “at the same time as the choice is made”.

32 **162 After subsection 703-60(2)**

33 Insert:

34 (2A) The notice must be given no later than:

- 1 (a) if the *head company is required to give the Commissioner its
2 *income tax return for the income year during which that day
3 occurs—the day on which the company gives the
4 Commissioner that income tax return; or
5 (b) otherwise—the last day in the period within which the head
6 company would be required to give the Commissioner such a
7 return if it were required to give the Commissioner such a
8 return.

9 **163 Paragraph 703-60(3)(b)**

10 Omit “a notice of choice under section 719-50 is given after that time”,
11 substitute “a choice under section 719-50 is made after that time”.

12 **164 Paragraph 703-60(3)(c)**

13 Omit “more than 28 days before the notice of choice is given”,
14 substitute “before the relevant notice is given to the Commissioner
15 under section 719-76 (notice of choice to consolidate)”.

16 **165 Subsection 703-60(3)**

17 Omit “at the same time as the notice of choice is given”.

18 **166 At the end of section 703-60**

19 Add:

- 20 (4) The notice must be given no later than:
21 (a) if the *head company is required to give the Commissioner its
22 *income tax return for the income year during which that day
23 occurs—the day on which the company gives the
24 Commissioner that income tax return; or
25 (b) otherwise—the last day in the period within which the head
26 company would be required to give the Commissioner such a
27 return if it were required to give the Commissioner such a
28 return.

29 **167 Paragraph 719-5(4)(c)**

30 Omit “within the applicable period worked out under subsection (6), the
31 *provisional head company of the MEC group gives the Commissioner
32 a written notice, in the *approved form”, substitute “the *provisional
33 head company of the MEC group makes a choice in writing no later
34 than the day mentioned in subsection (6)”.

1 **168 Paragraph 719-5(4)(d)**

2 Omit “the notice under paragraph (c)” (wherever occurring), substitute
3 “the choice”.

4 **169 Paragraph 719-5(4)(f)**

5 Omit “the notice under paragraph (c)”, substitute “the choice”.

6 **170 At the end of subsection 719-5(4)**

7 Add:

8 Note: The provisional head company of the group must give the
9 Commissioner a notice in the approved form containing information
10 about each entity that becomes a subsidiary member of the group on
11 that day because of the choice (see sections 719-77 and 719-80).

12 **171 Subsection 719-5(6)**

13 Repeal the subsection, substitute:

14 (6) The day mentioned in paragraph (4)(c) is:

- 15 (a) if the company mentioned in subsection (6A) is required to
16 give the Commissioner its *income tax return for the income
17 year during which the time mentioned in paragraph (4)(b)
18 occurs—the day on which that company gives the
19 Commissioner that income tax return; or
20 (b) otherwise—the last day in the period within which that
21 company would be required to give the Commissioner such a
22 return if it were required to give the Commissioner such a
23 return.

24 (6A) The company is:

- 25 (a) in a case where subsection 719-75(1) or (2) applies—the
26 company that will be the *head company of the group as at
27 the end of the income year; and
28 (b) in a case where subsection 719-75(3) applies—the company
29 that will be the head company of the group immediately
30 before the group ceased to exist.

31 **172 Paragraph 719-40(1)(e)**

1 Omit “within the applicable period worked out under subsection (2), the
2 company mentioned in paragraph (b) gives the Commissioner a written
3 notice, in the *approved form”, substitute “the company mentioned in
4 paragraph (b) makes a choice in writing no later than the day mentioned
5 in subsection (2)”.

6 **173 Subparagraph 719-40(1)(e)(ii)**

7 After “comes into existence”, insert “at that time”.

8 **174 Paragraph 719-40(1)(f)**

9 Omit “the notice under paragraph (e)” (wherever occurring), substitute
10 “the choice”.

11 **175 At the end of subsection 719-40(1)**

12 Add:

13 Note: The company mentioned in paragraph (b) must give the Commissioner
14 a notice in the approved form containing information about the special
15 conversion event (see sections 719-78 and 719-80).

16 **176 Subsection 719-40(2)**

17 Repeal the subsection, substitute:

- 18 (2) The day mentioned in paragraph (1)(e) is:
- 19 (a) if the company is required to give the Commissioner its
20 *income tax return for the income year during which that
21 time occurs—the day on which the company gives the
22 Commissioner that income tax return; or
23 (b) otherwise—the last day in the period within which the
24 company would be required to give the Commissioner such a
25 return if it were required to give the Commissioner such a
26 return.

27 **177 Subsection 719-50(1)**

28 Repeal the subsection, substitute:

29 *Making a choice to consolidate*

- 30 (1) If:
- 31 (a) a *potential MEC group (the *first group*) derived from 2 or
32 more *eligible tier-1 companies of a *top company is in
33 existence at the start of a particular day; and

- 1 (b) that day is after 30 June 2002; and
2 (c) none of those eligible tier-1 companies is already a member
3 of a *MEC group or a *consolidated group;
4 those eligible tier-1 companies, jointly, may make a choice in
5 writing that the first group be consolidated on and after that day. If
6 they do so, the choice must specify that day.

7 Note: The provisional head company must give the Commissioner a notice
8 in the approved form containing information about the group (see
9 sections 719-76 and 719-80).

10 **178 Subsection 719-50(3)**

11 Repeal the subsection, substitute:

- 12 (3) A choice can be made no later than:
13 (a) if the company mentioned in subsection (3A) is required to
14 give the Commissioner its *income tax return for the income
15 year during which that day occurs—the day on which that
16 company gives the Commissioner that income tax return; or
17 (b) otherwise—the last day in the period within which that
18 company would be required to give the Commissioner such a
19 return if it were required to give the Commissioner such a
20 return.

21 (3A) The company is:

- 22 (a) in a case where subsection 719-75(1) or (2) applies—the
23 company that will be the *head company of the group as at
24 the end of the income year; and
25 (b) in a case where subsection 719-75(3) applies—the company
26 that will be the head company of the group immediately
27 before the group ceased to exist.

28 **179 Paragraph 719-50(4)(b)**

29 Repeal the paragraph, substitute:

- 30 (b) another company (the *other company*) that was an eligible
31 tier-1 company at the start of the specified day ceased to exist
32 at a time before:
33 (i) the day on which the company mentioned in
34 paragraph (a) gives the Commissioner its *income tax
35 return for the income year during which the day
36 specified in the choice occurs; or

- 1 (ii) the last day in the period within which the company
2 mentioned in paragraph (a) would be required to give
3 the Commissioner such a return if it were required to
4 give the Commissioner such a return; and

5 **180 Section 719-55**

6 Repeal the section, substitute:

7 **719-55 When choice starts to have effect**

8 A choice under section 719-50 is taken to have started to have
9 effect on the day specified in the choice.

10 **181 Subsection 719-60(1)**

11 Omit “give notice of a choice under section 719-50, the notice”,
12 substitute “make a choice under section 719-50, the choice”.

13 **182 Subsection 719-60(3)**

14 Repeal the subsection, substitute:

15 *Appointment after formation of group*

16 (3) If a *cessation event happens to the *provisional head company of a
17 *MEC group, the *eligible tier-1 companies that are or were
18 members of the MEC group immediately after the cessation event
19 may make a choice in writing, jointly appointing one of those
20 companies to be the provisional head company of the group. The
21 appointment is taken to have come into force immediately after the
22 cessation event.

23 **183 Before section 719-80 (after the group heading)**

24 Insert:

25 **719-76 Notice of choice to consolidate**

- 26 (1) This section applies if:
27 (a) a *MEC group comes into existence on the day specified in a
28 choice under section 719-50; and
29 (b) subsection 719-75(1), (2) or (3) would apply to the MEC
30 group in relation to the *income year of a company in which
31 the specified day occurred; and

- 1 (c) in a case where subsection 719-75(1) or (2) applies—the
2 company will be the *head company of the group as at the
3 end of the income year; and
4 (d) in a case where subsection 719-75(3) applies—the company
5 will be the head company of the group immediately before
6 the group ceased to exist.
- 7 (2) The company must give the Commissioner a notice in the
8 *approved form containing the following information:
9 (a) the identity of the company;
10 (b) the day specified in the choice on which the *MEC group
11 comes into existence;
12 (c) the identity of each *eligible tier-1 company of the *top
13 company in relation to the MEC group on that day;
14 (d) the identity of each *subsidiary member of the group on that
15 day;
16 (e) the identity of each entity that was a subsidiary member of
17 the group on that day but was *not* such a subsidiary member
18 when the notice is given;
19 (f) the identity of each entity that was *not* a subsidiary member
20 of the group on that day but was such a subsidiary member
21 when the notice is given;
22 (g) the identity of each entity that became a subsidiary member
23 of the group after that day but was *not* such a subsidiary
24 member when the notice is given.
- 25 (3) The notice must be given no later than:
26 (a) if the company is required to give the Commissioner its
27 *income tax return for the income year during which that day
28 occurs—the day on which the company gives the
29 Commissioner that income tax return; or
30 (b) otherwise—the last day in the period within which the
31 company would be required to give the Commissioner such a
32 return if it were required to give the Commissioner such a
33 return.

34 **719-77 Notice in relation to new eligible tier-1 members etc.**

- 35 (1) This section applies if:

- 1 (a) a *MEC group consists of the members of a *potential MEC
2 group derived from one or more *eligible tier-1 companies of
3 a *top company; and
4 (b) one or more other companies become eligible tier-1
5 companies of the top company at a time because of a choice
6 under subsection 719-5(4).
- 7 (2) The *head company of the *MEC group must give the
8 Commissioner a notice in the *approved form containing the
9 following information:
10 (a) the identity of the head company;
11 (b) the time mentioned in paragraph (1)(b);
12 (c) the identity of each entity that became an *eligible tier-1
13 company of the *top company in relation to the MEC group
14 at that time because of the choice;
15 (d) the identity of each entity that became a *subsidiary member
16 of the group at that time because of the choice;
17 (e) the identity of each entity that was a subsidiary member of
18 the group at that time but was not such a subsidiary member
19 when the notice is given.
- 20 (3) The notice must be given no later than:
21 (a) if the *head company is required to give the Commissioner its
22 *income tax return for the income year during which that
23 time occurs—the day on which the head company gives the
24 Commissioner that income tax return; or
25 (b) otherwise—the last day in the period within which the head
26 company would be required to give the Commissioner such a
27 return if it were required to give the Commissioner such a
28 return.

29 **719-78 Notice of special conversion event**

- 30 (1) This section applies if a *MEC group comes into existence at the
31 time because of a choice under paragraph 719-40(e).
- 32 (2) The company mentioned in paragraph 719-40(b) must give the
33 Commissioner a notice in the *approved form containing the
34 following information:
35 (a) the identity of the company;
36 (b) the time at which the *MEC group comes into existence;

- 1 (c) the identity of each *eligible tier-1 company of the *top
2 company in relation to the MEC group on that day;
3 (d) the identity of each *subsidiary member of the group at that
4 time;
5 (e) the identity of each entity that was a subsidiary member of
6 the group at that time but was *not* such a subsidiary member
7 when the notice is given;
8 (f) the identity of each entity that was *not* a subsidiary member
9 of the group at that time but was such a subsidiary member
10 when the notice is given;
11 (g) the identity of each entity that became a subsidiary member
12 of the group after that time but was *not* such a subsidiary
13 member when the notice is given.
- 14 (3) The notice must be given no later than:
15 (a) if the company is required to give the Commissioner its
16 *income tax return for the income year during which that
17 time occurs—the day on which the company gives the
18 Commissioner that income tax return; or
19 (b) otherwise—the last day in the period within which the
20 company would be required to give the Commissioner such a
21 return if it were required to give the Commissioner such a
22 return.

23 **719-79 Notice of appointment of provisional head company after**
24 **formation of group**

- 25 (1) This section applies if an entity is appointed to be the *provisional
26 head company of a *MEC group because of a choice under
27 subsection 719-60(3).
- 28 (2) The *provisional head company must give the Commissioner a
29 notice in the *approved form containing the following information:
30 (a) the identity of the provisional head company;
31 (b) the day on which the choice was made;
32 (c) the day on which the *cessation event mentioned in
33 subsection 719-60(3) occurs.
- 34 (3) The notice must be given no later than:
35 (a) if:

- 1 (i) the group came into existence because of a choice under
2 section 719-50; and
3 (ii) the event happens more than 28 days before a notice
4 under section 719-76 in relation to the choice is given;
5 the day on which the notice mentioned in subparagraph (ii) is
6 given; or
7 (b) in any other case—28 days after the *cessation event.

8 **184 Subparagraph 719-80(2)(a)(ii)**

9 Omit “more than 28 days before notice of the choice is given”,
10 substitute “before the relevant notice is given to the Commissioner
11 under section 719-76 (notice of choice to consolidate)”.

12 **185 Paragraph 719-80(2)(a)**

13 Omit “on the day on which notice of the choice is given”, substitute “no
14 later than the day mentioned in subsection (3)”.

15 **186 Subparagraph 719-80(2)(b)(iii)**

16 Omit “more than 28 days before notice of the choice is given”,
17 substitute “before the relevant notice is given to the Commissioner
18 under section 703-58 (notice of choice to consolidate)”.

19 **187 Paragraph 719-80(2)(b)**

20 Omit “on the day on which notice of the choice is given”, substitute “no
21 later than the day mentioned in subsection (3)”.

22 **188 At the end of section 719-80**

23 Add:

- 24 (3) The day is:
25 (a) if the entity is required to give the Commissioner its *income
26 tax return for the income year during which the notifiable
27 event happens—the day on which the company gives the
28 Commissioner that income tax return; or
29 (b) otherwise—the last day in the period within which the entity
30 would be required to give the Commissioner such a return if
31 it were required to give the Commissioner such a return.

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

2 **189 Paragraph 701-5(2)(a)**

3 Repeal the paragraph, substitute:

- 4 (a) the day on which the head company must give the notice
5 under section 703-58 of the *Income Tax Assessment Act 1997*
6 (notice of choice to consolidate); and

7 **190 Paragraph 701D-15(3)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) the day on which the head company must give the notice
10 under section 703-58 of the *Income Tax Assessment Act 1997*
11 (notice of choice to consolidate); and

12 ***Taxation Administration Act 1953***

13 **191 Paragraph 45-885(1)(e) in Schedule 1**

14 Omit “the Commissioner receives the choice to consolidate”, substitute
15 “the Commissioner receives the notice under section 703-58 of the
16 *Income Tax Assessment Act 1997* in relation to the choice to
17 consolidate”.

18 **192 Section 45-935 in Schedule 1 (table item 1)**

19 Omit “the Commissioner receives a notice of the consolidation”,
20 substitute “the Commissioner receives a notice under section 719-76 of
21 the *Income Tax Assessment Act 1997* in relation the consolidation”.

22 **193 Application provision**

23 The amendments made by this Part apply on and after 1 July 2002.

1

2 **Part 19—Life insurance companies**

3 **Division 1—Amendments applying before the**
4 **introduction of first home saver accounts**

5 *Income Tax Assessment Act 1997*

6 **194 After section 713-510**

7 Insert:

8 **713-510A Disregard single entity rule in working out certain**
9 **amounts in respect of life insurance company**

- 10 (1) This section applies if a *life insurance company is a *member of a
11 *consolidated group.
- 12 (2) However, if the *life insurance company is a *subsidiary member
13 of the group, this section does not apply:
- 14 (a) for the purposes of working out the *tax cost setting amount
15 of an asset of the life insurance company when it becomes a
16 subsidiary member of the group; and
- 17 (b) for the purposes of working out the tax cost setting amount of
18 a *membership interest in the life insurance company if it
19 ceases to be a subsidiary member of the group.
- 20 (3) Disregard section 701-1 (the single entity rule) in working out any
21 of the following for the purposes of Division 320 in relation to the
22 *life insurance company:
- 23 (a) amounts of the *head company's ordinary income and
24 statutory income derived from *segregated exempt assets that
25 are not assessable income and are not *exempt income under
26 paragraph 320-37(1)(a);
- 27 (b) the head company's taxable income of the *complying
28 superannuation class (see section 320-137);
- 29 (c) the head company's *tax loss of the complying
30 superannuation class (see section 320-141);
- 31 (d) the total *transfer value of the head company's *virtual PST
32 assets (see paragraph 320-175(1)(a));

- 1 (e) the amount of the head company’s virtual PST liabilities (see
2 paragraph 320-175(1)(b));
3 (f) the total transfer value of the head company’s segregated
4 exempt assets (see paragraph 320-230(1)(a));
5 (g) the amount of the head company’s *exempt life insurance
6 policy liabilities (see paragraph 320-230(1)(b)).

7 **195 Group heading before section 713-553**

8 Repeal the heading.

9 **196 Sections 713-553, 713-555 and 713-560**

10 Repeal the sections.

11 **197 Application provision**

12 The amendments made by this Division apply on and after 1 July 2002.

13 **Division 2—Amendments applying from the introduction**
14 **of first home savers accounts**

15 ***Income Tax Assessment Act 1997***

16 **198 Paragraph 713-510A(3)(b)**

17 Omit “*complying superannuation class”, substitute “*complying
18 superannuation/FHSA class”.

19 **199 Paragraph 713-510A(3)(c)**

20 Omit “complying superannuation class”, substitute “complying
21 superannuation/FHSA class”.

22 **200 Paragraph 713-510A(3)(d)**

23 Omit “*virtual PST”, substitute “*complying superannuation/FHSA”.

24 **201 Paragraph 713-510A(3)(e)**

25 Omit “*virtual PST”, substitute “*complying superannuation/FHSA”.

26 **202 Application provision**

27 The amendments made by this Division apply on and after the
28 commencement of the *First Home Saver Accounts (Consequential*
29 *Amendments) Act 2008*.

1

2

Part 20—Non-membership equity interests

3

Income Tax Assessment Act 1997

4

203 Subsection 705-65(6)

5

Repeal the subsection, substitute:

6

Non-membership equity interests

7

- (6) For the purposes of this section, if at the joining time a *member of the joined group holds a *non-membership equity interest in the joining entity, that non-membership equity interest is treated as if it were a *membership interest in the joining entity.

8

9

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204 Subsection 705-85(3) (heading)

12

Repeal the heading, substitute:

13

Increase to cover certain non-membership equity interests and certain equity interests

14

15

205 Paragraph 705-85(3)(a)

16

Repeal the paragraph, substitute:

17

- (a) the amount that would be the balance of the joining entity's *non-share capital account, assuming that:

18

19

- (i) if the joining entity is not a company—the joining entity were a company; and

20

21

- (ii) each *non-membership equity interest (if any) in the joining entity held at the joining time by a person other than a *member of the joined group were a *non-share equity interest in the joining entity; and

22

23

24

25

- (iii) the non-share equity interests (if any) mentioned in subparagraph (ii) were the only non-share equity interests in the joining entity; and

26

27

28

206 Paragraph 705-85(3)(b)

29

Omit “market value”, substitute “*market value”.

30

207 Subsection 705-145(5)

1 Repeal the subsection, substitute:

2 *Non-membership equity interests*

3 (5) For the purposes of this section, if, on becoming a *subsidiary
4 member, an entity holds a *non-membership equity interest in
5 another entity that becomes a subsidiary member at the same time,
6 that non-membership equity interest is treated as if it were a
7 *membership interest in that other entity.

8 **208 Subsection 705-195(1)**

9 Omit “rights or options”, substitute “*non-membership equity interests”.

10 **209 Subsection 705-195(2)**

11 Repeal the subsection, substitute:

12 *Non-membership equity interests*

13 (2) Subsection 705-65(6) has effect as if it also treated as a
14 *membership interest in the *head company of the acquired group a
15 *non-membership equity interest in a *subsidiary member of the
16 acquired group, where that interest was held at the acquisition time
17 by a *member of the acquiring group.

18 **210 Paragraph 705-200(1)(b)**

19 Omit “rights or options to acquire *membership interests”, substitute
20 “*non-membership equity interests”.

21 **211 Subsection 705-200(3)**

22 Repeal the subsection, substitute:

23 *Non-membership equity interests*

24 (3) Paragraph 705-85(3)(a) has effect as if it also increased the step 2
25 amount worked out under section 705-70 by the amount that would
26 be the sum of the balances of the *non-share capital accounts of the
27 *subsidiary members of the acquired group, assuming that:
28 (a) for a subsidiary member that is not a company—the
29 subsidiary member were a company; and
30 (b) each *non-membership equity interest (if any) in a subsidiary
31 member held at the acquisition time by a person other than a

- 1 *member of the acquiring group or acquired group were a
2 *non-share equity interest in the subsidiary member; and
3 (c) the non-share equity interests (if any) mentioned in
4 paragraph (b) were the only non-share equity interests in the
5 subsidiary member.

6 **212 Subsection 705-225(5)**

7 Repeal the subsection, substitute:

8 *Non-membership equity interests*

- 9 (5) For the purposes of this section, if, on becoming a *subsidiary
10 member, a linked entity holds a *non-membership equity interest in
11 another linked entity, that interest is treated as if it were a
12 *membership interest in that other linked entity.

13 **213 Subsection 711-15(2)**

14 Repeal the subsection, substitute:

15 *Non-membership equity interests*

- 16 (2) For the purposes of this section, if at the leaving time a *member of
17 the old group holds a *non-membership equity interest in the
18 leaving entity, that non-membership equity interest is treated as if:
19 (a) it were a *membership interest in the leaving entity; and
20 (b) it were of a different class than any other membership
21 interest in the leaving entity.

22 **214 Subsection 711-20(1) (cell at table item 4, column headed**
23 **“Purpose of the step”)**

24 Omit “*market”.

25 **215 After subsection 711-45(6A)**

26 Insert:

27 *Increase for non-share capital account balance*

- 28 (6B) The step 4 amount is increased by the amount that would be the
29 balance of the leaving entity’s *non-share capital account,
30 assuming that:

- 1 (a) if the leaving entity is not a company—the leaving entity
2 were a company; and
3 (b) each *non-membership equity interest (if any) in the leaving
4 entity held at just before the leaving time by a person other
5 than a *member of the old group were a *non-share equity
6 interest in the leaving entity; and
7 (c) the non-share equity interests (if any) mentioned in
8 paragraph (b) were the only non-share equity interests in the
9 leaving entity.

10 **216 Subsection 715-50(6)**

11 Repeal the subsection, substitute:

12 *Non-membership equity interests*

- 13 (6) Subsection 705-65(6) (which treats *non-membership equity
14 interests as *membership interests) also applies for the purposes of
15 this section.

16 **217 Subsection 715-255(6)**

17 Repeal the subsection, substitute:

18 *Non-membership equity interests*

- 19 (6) Subsection 711-15(2) (which treats *non-membership equity
20 interests as *membership interests) also applies for the purposes of
21 this section, on the basis that the *consolidated group referred to in
22 section 715-240 is the old group referred to in that subsection.

23 **218 Subsection 715-270(10)**

24 Repeal the subsection, substitute:

25 *Non-membership equity interests*

- 26 (10) Subsection 711-15(2) (which treats *non-membership equity
27 interests as *membership interests) also applies for the purposes of
28 this section, on the basis that the *consolidated group is the old
29 group referred to in that subsection.

30 **219 Subsection 995-1(1)**

31 Insert:

- 1 ***non-membership equity interest***: an interest in an entity is a
2 ***non-membership equity interest*** in the entity at a time to the extent
3 that it is *not* an accounting liability (within the meaning of
4 subsection 705-70(1)) of the entity at that time, if:
5 (a) the interest is *not* a *membership interest in the entity at that
6 time; and
7 (b) the interest is *not* a *debt interest in the entity at that time.
8 In determining the extent to which the interest is *not* an accounting
9 liability at that time:
10 (c) treat each reference in subsection 705-70(1) to the joining
11 entity as instead being a reference to the entity; and
12 (d) treat the reference in that subsection to the joining time as
13 instead being a reference to that time.

14 **220 Application provision**

- 15 (1) The amendments made by this Part apply in relation to a consolidated
16 group or MEC group on and after:
17 (a) if the head company of the group makes a choice in
18 accordance with subitems (2) and (3)—1 July 2002; or
19 (b) otherwise—the day on which the Bill that became this Act
20 was introduced into the House of Representatives.
21 (2) A choice mentioned in paragraph (1)(a) must be made:
22 (a) on or before 30 June 2011; or
23 (b) within a further time allowed by the Commissioner.
24 (3) A choice mentioned in paragraph (1)(a) must be made in writing.

1
2 **Schedule 6—Miscellaneous amendments**

3 **Part 1—CGT main residence exemption for**
4 **replacement dwelling**

5 *Income Tax Assessment Act 1997*

6 **1 After subsection 118-145(3)**

7 Insert:

- 8 (3A) This section does not apply if the *dwelling was your main
9 residence because of section 118-147 and ceases to be your main
10 residence because of subsections 118-147(3) and (4).

11 **2 After section 118-145**

12 Insert:

13 **118-147 Absence from dwelling replacing main residence that was**
14 **compulsorily acquired, destroyed etc.**

15 (1) This section applies if:

- 16 (a) a *dwelling (the *old dwelling*) is treated as your main
17 residence because of your choice under section 118-145; and
18 (b) because of an event (the *key event*) described in subsection
19 124-70(1):
20 (i) you cease to have any *ownership interest in the old
21 dwelling; or
22 (ii) the old dwelling is lost or destroyed; and
23 (c) after the key event you have an ownership interest (the
24 *substitute property interest*) in:
25 (i) a dwelling (the *substitute dwelling*); or
26 (ii) land (the *substitute land*) that did not have a dwelling
27 on it at the later of the time just after the key event and
28 the time you *acquired the interest; and
29 (d) you acquired the substitute property interest at a time (the
30 *substitute property acquisition time*) no later than one year,
31 or within such further time as the Commissioner allows in

Schedule 6 Miscellaneous amendments

Part 1 CGT main residence exemption for replacement dwelling

1 special circumstances, after the end of the income year in
2 which the key event happens.

3 Note 1: Subsection 124-70(1) deals with compulsory acquisitions, disposals in
4 circumstances involving powers of compulsory acquisition, expiry of
5 leases granted by Australian government agencies and loss or
6 destruction of a CGT asset.

7 Note 2: The substitute property acquisition time may be before, at or after the
8 time the key event happened. The old dwelling and the substitute
9 dwelling may be different or the same. The land on which the old
10 dwelling is erected and the substitute land may be different or the
11 same.

12 (2) You may choose to treat the substitute dwelling, or a *dwelling you
13 built on the substitute land within 4 years after the later of the time
14 of the key event and the substitute property acquisition time, as
15 your main residence from the later of the following times (or from
16 either of them if they are the same):

- 17 (a) the substitute property acquisition time;
18 (b) the time one year before the key event happened.

19 (3) Subsection (4) limits the time you can treat a *dwelling as your
20 main residence under this section if you use all or part of it or the
21 substitute land, after the later of the key event and the substitute
22 property acquisition time, for the *purpose of producing assessable
23 income.

24 (4) The maximum period you can treat the *dwelling that way while
25 you use it or the substitute land as described in subsection (3) is:
26 (a) 6 years; or
27 (b) if, just before the key event, you used all or part of the old
28 dwelling for that purpose—so much of the period of 6 years
29 described in subsection 118-145(2) in relation to the old
30 dwelling as had not passed before the event.

31 (5) If you do not use the *dwelling or substitute land as described in
32 subsection (3) you can treat the dwelling as your main residence
33 under this section indefinitely.

34 (6) If you make the choice:
35 (a) you cannot treat any other *dwelling as your main residence
36 while you apply this section; and
37 (b) section 118-140 does not apply in relation to your
38 *acquisition, while you still have an *ownership interest in

- 1 the old dwelling, of an ownership interest in the dwelling you
2 choose to treat as your main residence under this section; and
3 (c) section 118-150 does not apply after the key event to the land
4 on which the old dwelling is erected or the substitute land;
5 and
6 (d) section 118-155 does not apply after the key event in relation
7 to the old dwelling, the substitute dwelling or a dwelling built
8 on the substitute land.
- 9 (7) Paragraph (6)(a) does not prevent the old dwelling from being your
10 main residence at any time before the key event happened.

11 **3 Paragraph 118-150(3)(a)**

12 After “residence”, insert “(except because of section 118-147)”.

13 **4 After subsection 118-190(3)**

14 Insert:

- 15 (3A) Also, you ignore any use of the *dwelling for the *purpose of
16 producing assessable income during any period that you treat it as
17 your main residence under section 118-147 (about absences) to the
18 extent that any part of the old dwelling mentioned in that section
19 was not used for that purpose just before the old dwelling last
20 ceased to be your main residence.

21 **5 At the end of paragraph 118-200(4)(b)**

22 Add “or (3A)”.

23 **6 Application provision**

24 Section 118-147 of the *Income Tax Assessment Act 1997* applies in
25 relation to CGT events happening on or after the day this Act receives
26 the Royal Assent in relation to dwellings described in subsection (2) of
27 that section (whether the key events described in that section happen
28 before, on or after that day).

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Part 2—Small business retirement exemption

Division 1—Main amendment

Income Tax Assessment Act 1997

7 Paragraph 152-310(2)(a)

Omit “exempt from income tax for”, substitute “not assessable income,
and is not *exempt income, of”.

8 Application provision

The amendment of paragraph 152-310(2)(a) of the *Income Tax Assessment Act 1997* made by this Division applies in relation to payments made after 30 June 2007.

Division 2—Related amendments

Income Tax Assessment Act 1997

9 Section 11-15 (table item headed “small business retirement exemption”)

Repeal the item.

10 Section 11-55 (table item headed “capital gains tax”)

Repeal the item, substitute:

capital gains tax

small business retirement exemption, payments made
directly or indirectly to CGT concession stakeholder so
company or trust complies with section 152-325..... 152-310

11 Section 12-5 (table item headed “capital gains tax”)

After:

no deduction for an amount that would otherwise be
deductible only because a net capital gain is included
in assessable income..... **51AAA**

insert:

small business retirement exemption, no deduction for
payments made directly or indirectly to CGT
concession stakeholder so company or trust complies
with section 152-325 152-310

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Part 3—Waiver connected with proceeds of crime proceedings

3

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Taxation Administration Act 1953

5

12 Division 340 in Schedule 1 (heading)

6

Repeal the heading, substitute:

7

Division 340—Commissioner’s power in cases of hardship

8

13 At the end of Part 4-50 in Schedule 1

9

Add:

10

Division 342—Commissioner’s power relating to proceeds of crime proceedings

11

12

Table of Subdivisions

13

Guide to Division 342

14

342-A Power to waive right to payment of tax-related liabilities

15

Guide to Division 342

16

342-1 What this Division is about

17

18

19

To facilitate the starting, conduct and ending of proceedings under the *Proceeds of Crime Act 2002*, the Commissioner may waive the right to payment of certain tax-related liabilities.

20

Subdivision 342-A—Power to waive right to payment of tax-related liabilities

21

22

Table of sections

23

342-5 Object of this Subdivision

24

342-10 Power to waive right to payment of tax-related liability

1 **342-5 Object of this Subdivision**

2 The object of this Subdivision is to facilitate the starting, conduct
3 and ending of proceedings under the *Proceeds of Crime Act 2002*
4 by allowing the Commissioner to waive the right to payment of
5 certain liabilities to the Commonwealth arising under *taxation
6 laws.

7 Note: The Commissioner may also exercise other powers so as to facilitate
8 the starting, conduct and ending of proceedings under the *Proceeds of*
9 *Crime Act 2002*. Examples of those other powers include:

- 10 (a) the power under section 255-10 to defer the time a tax-related
11 liability is due and payable; and
12 (b) the power under section 8AAG to remit general interest charge.

13 **342-10 Power to waive right to payment of tax-related liability**

14 (1) The Commissioner may waive the Commonwealth's right to
15 payment of all or part of a *tax-related liability if the
16 Commissioner is satisfied that:

- 17 (a) the waiver will facilitate the starting, conduct or ending (by
18 settlement or otherwise) of proceedings under the *Proceeds*
19 *of Crime Act 2002*; and
20 (b) the liability is connected with circumstances associated with
21 the proceedings.

22 Note: The Commissioner may waive the right to payment only after the
23 liability has arisen, but may do so whether or not the liability is due
24 and payable.

25 Example: A liability is connected with circumstances associated with the
26 proceedings if the liability arose because of activities constituting an
27 offence to which the proceedings relate.

28 (2) In deciding whether to waive the right, the Commissioner must
29 consider:

- 30 (a) the amount the Commonwealth will forgo as a result of the
31 waiver and the time the Commonwealth could reasonably be
32 expected to receive that amount apart from the waiver; and
33 (b) the amount the Commonwealth could reasonably be expected
34 to receive as a result of the proceedings and the time the
35 Commonwealth could reasonably be expected to receive that
36 amount.

37 (3) Subsection (2) does not limit the matters that the Commissioner
38 may consider in making the decision.

1 *Extended operation of this section*

2 (4) This section (except this subsection) applies in relation to a
3 pecuniary liability to the Commonwealth that arises directly under
4 a *taxation law, but is not a *tax-related liability, in the same way
5 as this section applies in relation to a tax-related liability.

6 Example: This section applies to a civil penalty under Division 290 (which
7 penalises certain conduct involving promotion of schemes) in the
8 same way as this section applies to a tax-related liability.

9 **14 Application provision**

10 (1) Division 342 in Schedule 1 to the *Taxation Administration Act 1953*
11 applies in relation to:

12 (a) proceedings started, or proposed to be started, on or after the
13 commencement of that Division; and

14 (b) proceedings started, and not ended, before that
15 commencement.

16 That Division applies whether the liability was incurred before, on or
17 after that commencement.

18 (2) For the purposes of paragraph (1)(b), proceedings are taken not to have
19 ended before that commencement if any appeal relating to the
20 proceedings has not ended, or a period for lodging an appeal relating to
21 the proceedings has not ended, before that commencement.

1

2 **Part 4—Amendments relating to higher education**

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

4 **15 Section 195-1 (definition of *higher education institution*)**

5 Repeal the definition, substitute:

6 *higher education institution* means an entity that is a higher
7 education provider as defined in section 16-1 of the *Higher*
8 *Education Support Act 2003*.

9 *Fringe Benefits Tax Assessment Act 1986*

10 **16 Section 135M (first paragraph)**

11 Omit “the *Higher Education Funding Act 1988* or”.

12 *Income Tax Assessment Act 1936*

13 **17 Subsection 82A(2) (paragraphs (a), (ab) and (b) of the**
14 **definition of *expenses of self-education*)**

15 Repeal the paragraphs.

16 **18 Application provision**

17 The amendment of section 82A of the *Income Tax Assessment Act 1936*
18 made by this Part applies in relation to assessments for the income year
19 in which this Act receives the Royal Assent and later income years.

20 *Income Tax Assessment Act 1997*

21 **19 Paragraphs 26-20(1)(a), (b) and (c)**

22 Repeal the paragraphs.

23 **20 Application provision**

24 The amendment of subsection 26-20(1) of the *Income Tax Assessment*
25 *Act 1997* made by this Part applies in relation to assessments for the
26 income year in which this Act receives the Royal Assent and later
27 income years.

1 **21 Subsection 30-25(1) (cell at table item 2.1.3, column**
2 **headed “Fund, authority or institution”)**

3 Repeal the cell, substitute:
a charitable or public institution that is a
higher education provider within the meaning
of the *Higher Education Support Act 2003*

4 **22 Subsection 30-25(1) (cell at table item 2.1.6, column**
5 **headed “Fund, authority or institution”)**

6 Repeal the cell, substitute:
a residential educational institution that is
affiliated with a charitable or public institution
that is a higher education provider within the
meaning of the *Higher Education Support Act*
2003

7 **23 Application provision**

8 The amendments of subsection 30-25(1) of the *Income Tax Assessment*
9 *Act 1997* made by this Part apply in relation to gifts made on or after the
10 day this Act receives the Royal Assent.

11 **24 Subparagraph 52-132(a)(x)**

12 Repeal the subparagraph.

13 **25 Subparagraph 52-140(3)(a)(x)**

14 Repeal the subparagraph.

15 **26 Application provision**

16 The amendments of sections 52-132 and 52-140 of the *Income Tax*
17 *Assessment Act 1997* made by this Part apply in relation to payments
18 received on or after the day this Act receives the Royal Assent.

19 ***Taxation Administration Act 1953***

20 **27 Section 8AAZA (definition of *HEC assessment debt*)**

21 Repeal the definition.

22 **28 Paragraph 8AAZLD(a)**

23 Repeal the paragraph.

1 Note: The heading to section 8AAZLD is altered by omitting “**HEC and**”.

2 **29 Paragraph 8AAZLD(aa)**

3 Omit “secondly,”, substitute “first,”.

4 **30 Paragraph 11-1(c) in Schedule 1**

5 Repeal the paragraph.

6 **31 Subsection 15-25(1) in Schedule 1**

7 Omit “(c),”.

8 **32 Paragraph 15-30(c) in Schedule 1**

9 Repeal the paragraph.

10 **33 Paragraph 15-50(1)(b) in Schedule 1**

11 Omit “(c),”.

12 **34 Paragraph 45-5(1)(c) in Schedule 1**

13 Repeal the paragraph.

14 **35 Section 45-340 in Schedule 1 (method statement, step 3)**

15 Omit “an accumulated HEC debt under the *Higher Education Funding*
16 *Act 1988*, or an *accumulated HELP debt under the *Higher Education*
17 *Support Act 2003*,”, substitute “an *accumulated HELP debt”.

18 **36 Section 45-375 in Schedule 1 (method statement, step 3)**

19 Omit “an accumulated HEC debt under the *Higher Education Funding*
20 *Act 1988*, or an *accumulated HELP debt under the *Higher Education*
21 *Support Act 2003*,”, substitute “an *accumulated HELP debt”.

22 ***Taxation (Interest on Overpayments and Early Payments) Act***
23 ***1983***

24 **37 Subsection 3(1) (definition of *HEC assessment debt*)**

25 Repeal the definition.

26 **38 Section 3C (table item 40)**

27 Repeal the item.

1 **39 Subparagraph 8A(1)(a)(ii)**

2 Repeal the subparagraph.

3 **40 Paragraph 8A(2)(b)**

4 Repeal the paragraph.

5 **41 Subparagraphs 8E(1)(d)(iii) and (2)(d)(iii)**

6 Omit “an HEC assessment debt or”, substitute “a”.

7 **42 Sub-subparagraph 12A(1)(a)(iv)(B)**

8 Repeal the sub-subparagraph.

9 **43 Paragraph 12A(2)(b)**

10 Repeal the paragraph.

1

2

Part 5—PAYG withholding from delayed payments for termination of employment

3

4

Division 1—Main amendments

5

Taxation Administration Act 1953

6

44 Subsection 10-5(1) in Schedule 1 (table item 8)

7

Omit “an *employment termination payment”, substitute “a payment for
termination of employment”.

8

9

45 Subsection 12-5(2) in Schedule 1 (table item 2)

10

Omit “an *employment termination payment”, substitute “a payment for
termination of employment”.

11

12

46 Subdivision 12-C in Schedule 1 (heading)

13

Repeal the heading, substitute:

14

Subdivision 12-C—Payments for retirement or because of termination of employment

15

16

47 Section 12-85 in Schedule 1 (heading)

17

Repeal the heading, substitute:

18

12-85 Superannuation lump sums and payments for termination of employment

19

20

48 Paragraph 12-85(b) in Schedule 1

21

Repeal the paragraph, substitute:

22

(b) a payment that is an *employment termination payment or
would be one except that it is received more than 12 months
after termination of employment.

23

24

25

49 Section 16-165 in Schedule 1 (heading)

26

Repeal the heading, substitute:

1 **16-165 Payment summaries for superannuation lump sums and**
2 **payments for termination of employment**

3 **50 Paragraph 16-165(2)(b) in Schedule 1**

4 Omit “an *employment termination payment,”, substitute “a payment
5 that is an *employment termination payment or would be one except
6 that it is received more than 12 months after termination of
7 employment.”.

8 **51 Subparagraph 18-65(3)(d)(ii) in Schedule 1**

9 Omit “(*superannuation benefits, annuities, *employment termination
10 payments and unused leave payments)”, substitute “(Payments for
11 retirement or because of termination of employment)”.

12 **52 Section 390-1 in Schedule 1 (note)**

13 Omit “and employment termination payments”.

14 **53 Application provision**

15 The amendments made by this Division apply in relation to payments
16 made on or after the later of the following days (or either of them if they
17 are the same):

- 18 (a) the day this Division commences;
19 (b) 1 July 2010.

20 **Division 2—Related amendments**

21 ***Child Support (Registration and Collection) Act 1988***

22 **54 Subsection 4(1) (note at the end of the definition of *work***
23 ***and income support related withholding payments*)**

24 Omit “employment termination payments,”, substitute “payments for
25 termination of employment.”.

26 ***Income Tax Assessment Act 1936***

27 **55 Subsection 6(1) (note at the end of the definition of *work***
28 ***and income support related withholding payments and***
29 ***benefits*)**

1 Omit “employment termination payments,”, substitute “payments for
2 termination of employment.”

3 ***Income Tax Assessment Act 1997***

4 **56 Subsection 28-185(3) (cell at table item 5, column headed**
5 **“Subject matter”)**

6 Repeal the cell, substitute:

Payments for retirement or because of termination
of employment

7 **57 Subsection 900-12(3) (cell at table item 5, column headed**
8 **“Subject matter”)**

9 Repeal the cell, substitute:

Payments for retirement or because of termination
of employment

1

2

Part 6—Administrative penalties for false or misleading statements

3

4

Division 1—Main amendments

5

Taxation Administration Act 1953

6

58 Section 284-25 in Schedule 1

7

Omit “in an *approved form”.

8

59 Paragraph 284-75(1)(a) in Schedule 1

9

Omit “or your agent makes”, substitute “make”.

10

60 Paragraph 284-75(1)(b) in Schedule 1

11

Omit “it; and”, substitute “it.”.

12

61 Paragraph 284-75(1)(c) in Schedule 1

13

Repeal the paragraph.

14

62 Subsection 284-75(1) in Schedule 1 (note)

15

Omit “Note:”, substitute “Note 1:”.

16

63 At the end of subsection 284-75(1) in Schedule 1

17

Add:

18

Note 2: This section applies to a statement made by your agent as if it had been made by you: see section 284-25.

19

20

64 Paragraph 284-75(2)(a) in Schedule 1

21

Omit “or your agent makes”, substitute “make”.

22

65 Paragraph 284-75(2)(b) in Schedule 1

23

Omit “or your agent”.

24

66 Paragraph 284-75(2)(c) in Schedule 1

25

Repeal the paragraph.

1 **67 At the end of section 284-75 in Schedule 1**

2 Add:

3 (4) You are liable to an administrative penalty if:

4 (a) you make a statement to an entity other than:

5 (i) the Commissioner; and

6 (ii) an entity exercising powers or performing functions
7 under a *taxation law; and

8 (b) the statement is, or purports to be, one required or permitted
9 by a taxation law; and

10 (c) the statement is false or misleading in a material particular,
11 whether because of things in it or omitted from it.

12 (5) You are not liable to an administrative penalty under subsection (1)
13 or (4) for a statement that is false or misleading in a material
14 particular if you, and your *agent (if relevant), took reasonable care
15 in connection with the making of the statement.

16 **68 Subsection 284-80(1) in Schedule 1 (note)**

17 Repeal the note.

18 **69 Subsection 284-90(1) in Schedule 1**

19 After “this table”, insert “and section 284-224 if relevant”.

20 **70 Subsection 284-90(1) in Schedule 1 (table items 1, 2 and 3)**

21 Omit “Your *shortfall amount or part of it”, substitute “You have a
22 *shortfall amount as a result of a statement described in subsection
23 284-75(1) or (4) and the amount, or part of the amount,”.

24 **71 Subsection 284-90(1) in Schedule 1 (after table item 3)**

25 Insert:

| | | | |
|----|----|--|------------------|
| 26 | 3A | A statement described in subsection 284-75(1) or (4) was false or misleading because of intentional disregard of a *taxation law by you or your *agent but did not result in you having a *shortfall amount | 60 penalty units |
| | 3B | A statement described in subsection 284-75(1) or (4) was false or misleading because of recklessness by you or your *agent as to the operation of a *taxation law but did not result in you having a *shortfall amount | 40 penalty units |

Schedule 6 Miscellaneous amendments

Part 6 Administrative penalties for false or misleading statements

3C A statement described in subsection 284-75(1) or (4) 20 penalty units
was false or misleading because of a failure by you or
your *agent to take reasonable care to comply with a
*taxation law but did not result in you having a
*shortfall amount

1 **72 Subsection 284-90(1) in Schedule 1 (table item 4)**

2 Omit “Your *shortfall amount or part of it”, substitute “You have a
3 *shortfall amount, all or part of which”.

4 **73 Subsection 284-90(1) in Schedule 1 (note)**

5 Repeal the note.

6 **74 Subsection 284-90(2) in Schedule 1**

7 Omit “to you for your *shortfall amount or a part of it”.

8 **75 At the end of Subdivision 284-B in Schedule 1**

9 Add:

10 **284-95 Joint and several liability of directors of corporate trustee**
11 **that makes a false or misleading statement**

12 (1) This section applies if a trustee of a *self managed superannuation
13 fund, or of a fund that is treated as a self managed superannuation
14 fund under subsection 10(4) of the *Superannuation Industry*
15 *(Supervision) Act 1993*:

16 (a) is liable to an administrative penalty under subsection
17 284-75(1) or (4); and

18 (b) is a body corporate.

19 (2) The directors of the body corporate at the time it becomes liable to
20 the penalty are jointly and severally liable to pay the amount of the
21 *tax-related liability in respect of the penalty.

22 Note: See section 265-45 for rules on joint liability.

23 **76 Subsection 284-150(2) in Schedule 1 (note)**

24 Repeal the note.

25 **77 Section 284-160 in Schedule 1**

26 After “*scheme is”, insert “, subject to section 284-224”.

1 **78 Section 284-160 in Schedule 1 (note)**

2 Repeal the note.

3 **79 Section 284-215 in Schedule 1**

4 Repeal the section.

5 **80 Subsection 284-220(1) in Schedule 1**

6 Omit “for an accounting period”.

7 **81 Paragraph 284-220(1)(a) in Schedule 1**

8 After “*shortfall amount”, insert “, or the false or misleading nature of a
9 statement,”.

10 **82 Paragraph 284-220(1)(b) in Schedule 1**

11 Repeal the paragraph, substitute:

12 (b) you:

13 (i) became aware of such a shortfall amount after a
14 statement had been made to the Commissioner about the
15 relevant *tax-related liability; or

16 (ii) became aware of the false or misleading nature of a
17 statement made to the Commissioner or another entity
18 after the statement had been made;

19 and you did not tell the Commissioner or other entity about it
20 within a reasonable time; or

21 **83 Paragraph 284-220(1)(c) in Schedule 1**

22 Omit “for a previous accounting period”, substitute “previously”.

23 **84 After paragraph 284-220(1)(c) in Schedule 1**

24 Insert:

25 (ca) the base penalty amount was worked out using item 3A, 3B
26 or 3C of the table in subsection 284-90(1) and a base penalty
27 amount for you was worked out under one of those items
28 previously; or

29 **85 Paragraph 284-220(1)(d) in Schedule 1**

30 Omit “for a previous accounting period”, substitute “previously”.

31 **86 Paragraph 284-220(1)(e) in Schedule 1**

1 After “you were”, insert “previously”.

2 **87 Paragraph 284-220(1)(e) in Schedule 1**

3 Omit “for a previous accounting period”.

4 **88 After section 284-220 in Schedule 1**

5 Insert:

6 **284-224 Reduction of base penalty amount if law was applied in an**
7 **accepted way**

8 (1) If, apart from this section, you would have a *base penalty amount
9 because you or your *agent treated a *taxation law as applying in a
10 particular way, and that way agreed with:

11 (a) advice given to you or your agent by or on behalf of the
12 Commissioner; or

13 (b) general administrative practice under that law; or

14 (c) a statement in a publication approved in writing by the
15 Commissioner;

16 your base penalty amount is reduced to the extent that it was
17 caused by that treatment.

18 (2) For the purposes of subsection (1) it does not matter whether the
19 *base penalty amount also relates to:

20 (a) a statement; or

21 (b) a failure to give the Commissioner a return, notice or other
22 document when required; or

23 (c) a *scheme.

24 **89 Section 284-225 in Schedule 1 (heading)**

25 Repeal the heading, substitute:

26 **284-225 Reduction of base penalty amount if you voluntarily tell the**
27 **Commissioner**

28 **90 Subsections 284-225(1) and (2) in Schedule 1**

29 Repeal the subsections, substitute:

- 1 (1) The *base penalty amount for your *shortfall amount or *scheme
2 shortfall amount, for part of it or for your false or misleading
3 statement is reduced by 20% if:
4 (a) the Commissioner tells you that an examination is to be made
5 of your affairs relating to a *taxation law for a relevant
6 period; and
7 (b) *after* that time, you voluntarily tell the Commissioner, in the
8 *approved form, about the shortfall, the part of it or the false
9 or misleading nature of the statement; and
10 (c) telling the Commissioner can reasonably be estimated to
11 have saved the Commissioner a significant amount of time or
12 significant resources in the examination.
- 13 (2) The *base penalty amount for your *shortfall amount or *scheme
14 shortfall amount, for part of it or for your false or misleading
15 statement is reduced under subsection (3), (4) or (4A) if you
16 voluntarily tell the Commissioner, in the *approved form, about the
17 shortfall amount, the part of it or the false or misleading nature of
18 the statement *before*:
19 (a) the day the Commissioner tells you that an examination is to
20 be made of your affairs relating to a *taxation law for a
21 relevant period; or
22 (b) if the Commissioner makes a public statement requesting
23 entities to make a voluntary disclosure by a particular earlier
24 day about a *scheme or transaction that applies to your
25 affairs—that earlier day.

26 **91 After subsection 284-225(4) in Schedule 1**

27 Insert:

- 28 (4A) The *base penalty amount for your false or misleading statement
29 that does not result in you having a *shortfall amount is reduced to
30 nil.

31 **92 Subsection 284-225(5) in Schedule 1**

32 Omit “or part of it, *after* the Commissioner tells you that a *tax audit is
33 to be conducted of your financial affairs”, substitute “part of it or the
34 false or misleading nature of the statement *after* the Commissioner tells
35 you that an examination is to be conducted of your affairs relating to a
36 *taxation law for a relevant period”.

1 **93 Subsection 284-225(5) in Schedule 1**

2 Omit “the audit”, substitute “the examination”.

3 **94 Section 288-85 in Schedule 1**

4 Repeal the section.

5 **95 Subsection 361-5(1) in Schedule 1 (note 1)**

6 Omit “1”.

7 **96 Subsection 361-5(1) in Schedule 1 (note 2)**

8 Repeal the note.

9 **97 Subsection 361-5(3) in Schedule 1**

10 Repeal the subsection.

11 **Division 2—Consequential amendments**

12 ***Product Grants and Benefits Administration Act 2000***

13 **98 Paragraph 35(1)(b)**

14 After “subsection 284-75(1)”, insert “or (4)”.

15 ***Superannuation Industry (Supervision) Act 1993***

16 **99 Section 38A (subparagraph (ab)(i) of the definition of**
17 ***regulatory provision*)**

18 Repeal the subparagraph, substitute:

19 (i) subsections 284-75(1) and (4) and section 284-95;

20 **100 Subsection 39(1B)**

21 Omit “section 288-85 in Schedule 1 to the *Taxation Administration Act*
22 *1953* as a contravention of that section”, substitute “subsection
23 284-75(1) or (4) in Schedule 1 to the *Taxation Administration Act 1953*
24 as a contravention of that subsection”.

25 **Division 3—Application provision**

26 **101 Application provision—Divisions 1 and 2**

1 The amendments made by Divisions 1 and 2 apply in relation to things
2 done on or after the commencement of those Divisions.

3 **Division 4—Amendments with contingent**
4 **commencement**

5 ***Taxation Administration Act 1953***

6 **102 Subsections 284-75(1A) and (1B) in Schedule 1**

7 Repeal the subsections.

8 **103 Before subsection 284-75(5) in Schedule 1**

9 Insert:

10 *Exceptions to subsections (1) and (4)*

11 **104 At the end of section 284-75 in Schedule 1**

12 Add:

13 (6) You are not liable to an administrative penalty under subsection (1)
14 or (4) if:

15 (a) you engage a *registered tax agent or BAS agent; and

16 (b) you give the registered tax agent or BAS agent all relevant
17 taxation information; and

18 (c) the registered tax agent or BAS agent makes the statement;
19 and

20 (d) the false or misleading nature of the statement did not result
21 from:

22 (i) intentional disregard by the registered tax agent or BAS
23 agent of a *taxation law; or

24 (ii) recklessness by the agent as to the operation of a
25 taxation law.

26 (7) If you wish to rely on subsection (6), you bear an evidential burden
27 in relation to paragraph (6)(b).

28 **105 Application provision***

29 The amendments made by this Division apply in relation to statements
30 made on or after the commencement of this Division.

1

2

Part 7—Offsets against superannuation guarantee charge

3

4

Tax Laws Amendment (2008 Measures No. 2) Act 2008

5

106 After item 7 of Schedule 2

6

Insert:

7

7A Application of section 23A of the *Superannuation Guarantee (Administration) Act 1992* as amended

8

9

(1) Section 23A of the *Superannuation Guarantee (Administration) Act 1992*, as amended by this Schedule, applies to:

10

11

(a) contributions made before, on or after 1 January 2006; and

12

(b) elections made on or after 24 June 2008.

13

Note: The amendments of that section made by this Schedule commenced on 24 June 2008.

14

(2) This item has effect subject to items 8 and 9.

15

(3) To avoid doubt, this item:

16

(a) has effect despite subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005*; and

17

18

19

(b) does not affect the application of amendments of section 23A of the *Superannuation Guarantee (Administration) Act 1992* commencing after the commencement of the amendments of that section made by this Schedule.

20

21

22

23

Note: Subitem 10(1) of Schedule 6 to the *Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Act 2005* applied the amendment inserting section 23A in the *Superannuation Guarantee (Administration) Act 1992* to contributions made on or after 1 January 2006.

24

25

26

27

107 Paragraphs 8(1)(a) and 9(a) of Schedule 2

28

After “this Schedule”, insert “(apart from item 7A)”.

1

2 **Part 8—Status of certain superannuation funds**

3 *Income Tax Assessment Act 1936*

4 **108 Subsection 267(1) (at the end of the definition of**
5 ***constitutionally protected fund*)**

6 Add “and is not established under Schedule 3 to the *Superannuation Act*
7 *1988* of South Australia”.

1

2 **Part 9—Technical corrections**

3 ***A New Tax System (Luxury Car Tax) Act 1999***

4 **109 Section 9-20**

5 Omit “from”, substitute “form”.

6 Note: This item corrects a misspelling.

7 ***Taxation Administration Act 1953***

8 **110 Section 363-35 in Schedule 1**

9 Renumber as section 263-35.

10 Note: This item corrects a numbering error.

11 **111 Subparagraphs 426-165(1)(b)(a) and (b) in Schedule 1**

12 Renumber as subparagraphs (i) and (ii).

13 Note: This item corrects a numbering error.

14 ***Tax Laws Amendment (2009 Measures No. 4) Act 2009***

15 **112 Item 132 of Schedule 5**

16 Omit “the Arts”, substitute “Arts”.

17 Note: This item corrects a misdescribed amendment.

18 **113 Item 133 of Schedule 5**

19 Omit “and Arts”, substitute “and the Arts”.

20 Note: This item corrects a misdescribed amendment.

1

2 **Part 10—Repeal of redundant material**

3 *Income Tax Assessment Act 1936*

4 **114 Subsection 6(1) (definition of *accrued leave transfer***
5 ***payment*)**

6 Repeal the definition.

7 Note: This repeals a definition that is not used any more and defines *accrued leave transfer*
8 *payment* by reference to a repealed provision.

9 *Income Tax Assessment Act 1997*

10 **115 Subsection 116-30(1) (note)**

11 Repeal the note.

12 Note: This repeals a note that merely refers to 2 sections that have been repealed.

13 *Taxation Administration Act 1953*

14 **116 Subsection 16-150(1) in Schedule 1**

15 Omit “(1) An”, substitute “An”.

16 Note: This omits a subsection number from a section that is no longer divided into
17 subsections.

1

2 **Part 11—Other minor changes**

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

4 **117 Section 195-1**

5 Insert:

6 *luxury car* has the same meaning as in section 25-1 of the *A New*
7 *Tax System (Luxury Car Tax) Act 1999*.

8 ***Income Tax Assessment Act 1936***

9 **118 Subsection 6(1) (definition of agent)**

10 Repeal the definition, substitute:

11 *agent*: this Act applies to some entities (within the meaning of the
12 *Income Tax Assessment Act 1997*) that are not agents in the same
13 way as it applies to agents: see section 960-105 of the *Income Tax*
14 *Assessment Act 1997*.

15 **119 Transitional provision relating to agents**

16 A declaration in force for the purposes of paragraph (b) of the definition
17 of *agent* in subsection 6(1) of the *Income Tax Assessment Act 1936*
18 immediately before the repeal of that definition by this Part continues to
19 have effect on and after that repeal as if it were a determination under
20 subsection 960-105(2) of the *Income Tax Assessment Act 1997*.

21 **120 Subsection 6(1) (definition of allowable deduction)**

22 Repeal the definition, substitute:

23 *allowable deduction* has the same meaning as *deduction* has in the
24 *Income Tax Assessment Act 1997*.

25 **121 Subsection 6(1) (definition of friendly society dispensary)**

26 Repeal the definition, substitute:

27 *friendly society dispensary* has the meaning given by subsection
28 995-1(1) of the *Income Tax Assessment Act 1997*.

1 **122 Subsection 6(1) (definition of *paid-up share capital*)**

2 Repeal the definition, substitute:

3 *paid-up share capital* has the meaning given by subsection
4 995-1(1) of the *Income Tax Assessment Act 1997*.

5 **123 Subsection 6(1) (definition of *person*)**

6 Repeal the definition, substitute:

7 *person* has the same meaning as in the *Income Tax Assessment Act*
8 *1997*.

9 **124 Subsection 45B(9)**

10 Omit “a dividend.”, substitute “an assessable dividend.”.

11 **125 Application provision**

- 12 (1) The amendment of subsection 45B(9) of the *Income Tax Assessment Act*
13 *1936* made by this Part applies to capital benefits provided on or after
14 30 November 2009.
- 15 (2) The amendment is to be disregarded for the purposes of interpreting that
16 subsection as in force before the commencement of the amendment.

17 **126 Subsection 45B(10)**

18 Repeal the subsection, substitute:

19 (10) In this section:

20 *scheme* has the meaning given by subsection 995-1(1) of the
21 *Income Tax Assessment Act 1997*.

22 ***Income Tax Assessment Act 1997***

23 **127 Section 12-5 (table item headed “family tax benefit”)**

24 Repeal the item.

25 **128 Section 25-7**

26 Repeal the section.

27 **129 Section 67-23 (after table item 10)**

Schedule 6 Miscellaneous amendments

Part 11 Other minor changes

1 Insert:
2 12 education expenses the *tax offset available under
 Subdivision 61-M

3 **130 Application provision**

4 Item 12 of the table in section 67-23 of the *Income Tax Assessment Act*
5 1997 applies to tax offsets for the 2009-2010 income year and later
 income years.

6 **131 Section 67-23 (after table item 20)**

7 Insert:
 23 National Rental the *tax offsets available under Division 380
 Affordability Scheme

8 **132 Application provision**

9 Item 23 of the table in section 67-23 of the *Income Tax Assessment Act*
10 1997 applies to tax offsets for the 2008-09 income year and later
11 income years.

12 **133 Subsection 67-25(7)**

13 Repeal the subsection.

14 **134 Application provision**

15 The repeal of subsection 67-25(7) of the *Income Tax Assessment Act*
16 1997 by this Part applies to tax offsets for the 2009-2010 income year
17 and later income years.

18 **135 Section 109-55 (table item 8C)**

19 After "replacement-asset roll-over", insert "(other than a roll-over
20 covered by section 115-34)".

21 **136 At the end of section 109-55**

22 Add:
23 Note: Section 115-34 sets out other acquisition rules for certain cases
24 involving replacement-asset roll-overs covered by that section.

25 **137 Section 112-97 (cell at table item 21, column headed**
26 **"See:")**

27 Repeal the cell, substitute:

subsection
320-200(2)

1 **138 Section 112-97 (cell at table item 22, column headed**
2 **“See:”)**

3 Repeal the cell, substitute:

subsection
320-255(2)

4 **139 Subsection 115-25(1) (note)**

5 Omit “Note”, substitute “Note 1”.

6 **140 At the end of subsection 115-25(1)**

7 Add:

8 Note 2: Section 115-30 or 115-34 may affect the time when the entity is
9 treated as having acquired the CGT asset.

10 **141 Subsection 115-30(1) (table item 2)**

11 Repeal the item, substitute:

- 2 A *CGT asset that the acquirer *acquired (a) when the acquirer acquired
as a replacement asset for a the original asset involved in
*replacement-asset roll-over (other than a the roll-over; or
roll-over covered by paragraph (b) if the acquirer acquired the
115-34(1)(c)) replacement asset for a
roll-over that was the last in
an unbroken series of
replacement-asset roll-overs
(other than roll-overs
covered by paragraph
115-34(1)(c))—when the
acquirer acquired the original
asset involved in the first
roll-over in the series

12 **142 After section 115-30**

13 Insert:

14 **115-32 Special rule about time of acquisition for certain**
15 **replacement-asset roll-overs**

16 (1) This section applies if:

- 1 (a) a *CGT event happens to:
2 (i) your *share in a company; or
3 (ii) your *trust voting interest, unit or other fixed interest in
4 a trust; and
5 (b) you *acquired the share or interest as a replacement asset for
6 a *replacement-asset roll-over (other than a roll-over covered
7 by paragraph 115-34(1)(c)); and
8 (c) at the time of the CGT event, the company or trust:
9 (i) owns a *membership interest in an entity (the *original*
10 *entity*); and
11 (ii) has owned that membership interest for less than 12
12 months; and
13 (d) that membership interest is the original asset for the roll-over.

14 Note: This section does not affect the time when you are treated as having
15 acquired the replacement asset. That time is worked out under item 2
16 of the table in subsection 115-30(1).

17 *Application of tests about the assets of the company or trust*

- 18 (2) Subsection 115-45(4) applies as if the company or trust had
19 *acquired the original asset at least 12 months before the *CGT
20 event, if the condition in that subsection would not be met were it
21 to be applied to the original entity and the CGT event.
22 (3) Subsection 115-45(6) applies as if the company or trust had
23 *acquired the original asset at least 12 months before the *CGT
24 event, if the condition in subsection 115-45(5) would not be met
25 were it to be applied to the original entity and the CGT event.

26 **115-34 Further special rule about time of acquisition for certain**
27 **replacement-asset roll-overs**

- 28 (1) This section applies if:
29 (a) a *CGT event happens to your *share in a company; and
30 (b) at the time of the CGT event, you had owned the share for
31 less than 12 months; and
32 (c) you *acquired the share as a replacement asset for:
33 (i) a *replacement-asset roll-over under Subdivision 122-A
34 (disposal of assets by individuals or trustees to a
35 wholly-owned company) for which you *disposed of a

- 1 *CGT asset, or all the assets of a *business, to the
2 company; or
- 3 (ii) a replacement-asset roll-over under Subdivision 122-B
4 (disposal of assets by partners to a wholly-owned
5 company) for which you disposed of your interests in a
6 CGT asset, or your interests in all the assets of a
7 business, to the company; or
- 8 (iii) a replacement-asset roll-over under Subdivision 124-N
9 (disposal of assets by trusts to a company) for which a
10 trust of which you were a beneficiary disposed of all of
11 its CGT assets to the company.

12 *Application of tests about when you acquired the share*

- 13 (2) Sections 115-25 and 115-40 apply as if you had *acquired the
14 *share at least 12 months before the *CGT event.

15 *Application of tests about the company's assets*

- 16 (3) For each asset mentioned in subparagraph (1)(c)(i), subsections
17 115-45(4) and (6) apply as if the company had *acquired that asset
18 when you acquired it.
- 19 (4) For each asset mentioned in subparagraph (1)(c)(ii), subsections
20 115-45(4) and (6) apply as if the company had *acquired that asset
21 when you acquired your interests in it.
- 22 (5) For each asset mentioned in subparagraph (1)(c)(iii), subsections
23 115-45(4) and (6) apply as if the company had *acquired that asset
24 when the trust acquired it.

25 *Relationship with Subdivision 109-A*

- 26 (6) This section has effect despite Subdivision 109-A (which contains
27 rules about the time of acquisition of CGT assets).

28 **143 Section 115-40 (note)**

29 After “Section 115-30”, insert “or 115-34”.

30 **144 Subsection 115-45(4) (note)**

31 Omit “Section 115-30”, substitute “Sections 115-30 and 115-32, or
32 section 115-34,”.

1 **145 Subsection 115-45(6) (note)**

2 Omit “Section 115-30”, substitute “Sections 115-30 and 115-32, or
3 section 115-34,”.

4 **146 Application provision**

5 The amendments made by items 135, 136 and 139 to 145 apply to
6 assessments for the income year including 21 September 1999 and for
7 later income years, in relation to CGT events happening after 11.45 am
8 (by legal time in the Australian Capital Territory) on that day.

9 **147 At the end of subsection 152-320(1)**

10 Add:

11 Note: The \$500,000 is also reduced by any reduction under old provisions
12 about reduction of the CGT retirement exemption limit: see item 62 of
13 Schedule 1 to the *New Business Tax System (Capital Gains Tax) Act*
14 *1999*.

15 **148 Paragraph 974-110(1)(b)**

16 After “subsequently changed”, insert “, including where one or more
17 (but not all) of the schemes cease to exist”.

18 **149 Application provision**

19 The amendment of paragraph 974-110(1)(b) of the *Income Tax*
20 *Assessment Act 1997* made by this Part applies in relation to changes
21 occurring on or after the day this Act receives the Royal Assent.

22 **150 Subsection 995-1(1)**

23 Insert:

24 *common stake* has the meaning given by section 124-783.

25 **151 Subsection 995-1(1)**

26 Insert:

27 *common stakeholder* has the meaning given by section 124-783.

28 **152 Subsection 995-1(1) (definition of quote)**

29 Repeal the definition, substitute:

30 *quote*:

- 1 (a) *quote* an entity's *ABN means quote in a form and manner
2 approved by the Commissioner;
3 (b) *quote* a *tax file number in connection with a *Part VA
4 investment: you *quote* your tax file number in connection
5 with the investment if you are taken, for the purposes of
6 Part VA of the *Income Tax Assessment Act 1936*, to have
7 quoted the number in connection with the investment.

8 **153 Subsection 995-1(1) (definition of *quoted*)**

9 Repeal the definition.

10 **154 Subsection 995-1(1)**

11 Insert:

12 *significant stake* has the meaning given by section 124-783.

13 **155 Subsection 995-1(1)**

14 Insert:

15 *significant stakeholder* has the meaning given by section 124-783.

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

17 **156 Section 1-10**

18 Repeal the section, substitute:

19 **1-10 Definitions and rules for interpreting this Act**

20 (1) In this Act, an expression has the same meaning as in the *Income*
21 *Tax Assessment Act 1997*.

22 (2) Division 950 of the *Income Tax Assessment Act 1997* (which
23 contains rules for interpreting that Act) applies to this Act as if the
24 provisions of this Act were provisions of that Act.

25 **157 Subsection 770-230(5)**

26 Omit "limit".

27 **158 Application provision—amendment of subsection**
28 **770-230(5)**

1 The amendment of subsection 770-230(5) of the *Income Tax*
2 (*Transitional Provisions*) Act 1997 made by this Part applies in relation
3 to income years, statutory accounting periods and notional accounting
4 periods starting on or after 1 July 2008.

5 ***Taxation Administration Act 1953***

6 **159 Paragraph 45-288(a) in Schedule 1**

7 After “resident”, insert “unit”.

8 **160 At the end of Chapter 2 in Schedule 1**

9 Add:

10 **Part 2-30—Collecting Medicare levy with income**
11 **tax**

12 **Division 90—Medicare levy and Medicare levy surcharge**

13 **Table of Subdivisions**

14 90-A Treatment like income tax

15 **Subdivision 90-A—Treatment like income tax**

16 **Table of sections**

17 90-1 Laws apply in relation to Medicare levy and Medicare levy surcharge as
18 they apply in relation to income tax

19 **90-1 Laws apply in relation to Medicare levy and Medicare levy**
20 **surcharge as they apply in relation to income tax**

21 Except so far as the contrary intention appears, this Schedule and
22 the *Income Tax Assessment Act 1997* apply, and are taken always
23 to have applied, in relation to the following in the same way as
24 they apply in relation to income tax and *tax:

25 (a) Medicare levy (as defined in section 251R of the *Income Tax*
26 *Assessment Act 1936*);

27 (b) *Medicare levy surcharge.