



# **Treasury Laws Amendment (Income Tax Consolidation Integrity) Act 2018**

**No. 14, 2018**

**An Act to amend the law in relation to taxation,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Income Tax Consolidation Integrity) Act 2018

No. 14, 2018

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**An Act to amend the law in relation to taxation,  
and for related purposes**

[Assented to 28 March 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (Income Tax Consolidation Integrity) Act 2018*.

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No. 14, 2018      *Treasury Laws Amendment (Income Tax Consolidation Integrity) Act*      1  
2018

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 March 2018
2. Schedule 1, Parts 1, 2 and 3	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018
3. Schedule 1, Part 4	Immediately after the commencement of the provisions covered by table item 2.	1 April 2018
4. Schedule 1, Parts 5 to 8	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Consolidation**

### **Part 1—Deductible liabilities**

#### *Income Tax Assessment Act 1997*

#### **1 Before subsection 705-70(2)**

Insert:

##### *Exclusion for deductible liability*

- (1AA) Subsection (1AB) applies if:
- (a) the accounting liability is covered by subsection (1AC); and
  - (b) assuming that the \*head company had made a payment to discharge the accounting liability to the extent that it is covered under that subsection just after the joining time, that payment would result in an amount equal to all or part of the accounting liability being a deduction to the head company of the group.
- (1AB) An amount is not to be added for the accounting liability under subsection (1) to the extent of that deduction.
- (1AC) A liability is covered by this subsection except to the extent that:
- (a) any of the following provisions apply in relation to the liability:
    - (i) section 713-520 (certain liabilities etc. of life insurance company that joins a consolidated group);
    - (ii) section 715-375 (accounting liabilities that are, or are part of, a Division 230 financial arrangement held by an entity that joins a consolidated group); or
  - (b) section 713-515 (certain assets taken to be retained cost base assets where life insurance company joins a consolidated group) applies in relation to an asset to which the liability relates; or
  - (c) the liability is any of the following:
    - (i) the outstanding claims liability of a \*general insurance company, or a private health insurer (within the meaning of the *Private Health Insurance (Prudential*

*Supervision) Act 2015*), under \*general insurance policies;

- (ii) the unearned premium liability of a general insurance company, or a private health insurer (within the meaning of that Act), under general insurance policies;
- (iii) the unexpired risk liability of a general insurance company, or a private health insurer (within the meaning of that Act), under general insurance policies;

or

(d) the liability arises under any of the following:

- (i) a \*retirement village residence contract;
- (ii) a \*retirement village services contract.

(1AD) To avoid doubt, for the purposes of paragraph (1AC)(c), section 713-710 (certain liabilities, reserves, costs etc. of general insurance company that joins or leaves a consolidated group) does not affect the amount of the liability.

## **2 Before subsection 705-75(1)**

Insert:

### *Application*

- (1A) This section applies to an accounting liability to the extent that it is a liability of a kind described in:
- (a) paragraph 705-70(1AC)(c); or
  - (b) paragraph 705-70(1AC)(d).

## **3 Before subsection 705-80(1)**

Insert:

### *Application*

- (1A) This section applies to an accounting liability to the extent that it is a liability of a kind described in:
- (a) paragraph 705-70(1AC)(c); or
  - (b) paragraph 705-70(1AC)(d).



#### **4 Paragraph 705-80(1)(a) (example)**

Repeal the example.

#### **5 After subsection 705-90(2A)**

Insert:

- (2B) Also, if an amount is not added under subsection 705-70(1) for an accounting liability to an extent because of subsection 705-70(1AB), the accounting liability is not to be taken into account, to that extent, in working out the undistributed profits.

#### **6 Application**

The amendments made by this Part apply in relation to an entity that becomes a subsidiary member of a consolidated group or MEC group if the arrangement under which the entity becomes a subsidiary member of the group commences (see Part 8 of this Schedule) on or after 1 July 2016.

## Part 2—Deferred tax liabilities

### *Income Tax Assessment Act 1997*

#### **7 Subsection 705-70(1A)**

Repeal the subsection, substitute:

*Exclusion for deferred tax liability*

- (1B) An amount is not to be added for an accounting liability that is an amount recorded in a deferred tax liability account in accordance with the joining entity's \*accounting principles for tax cost setting.
- (1C) Subsection (1B) does not apply to an accounting liability that relates to an asset mentioned in paragraph 713-515(1)(a) or (b) (certain assets of life insurance company).

#### **8 After subsection 711-45(1A)**

Insert:

*Exclusion for deferred tax liability*

- (1B) An amount is not to be added for an accounting liability that is an amount recorded in a deferred tax liability account in accordance with the leaving entity's \*accounting principles for tax cost setting.
- (1C) Subsection (1B) does not apply to an accounting liability that relates to an asset mentioned in paragraph 713-575(2)(a) or (b) (certain assets of life insurance company).

#### **9 Application**

- (1) The amendment made by item 7 of this Schedule applies in relation to an accounting liability of an entity that becomes a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) on or after the start of the day on which the Bill that became this Act was introduced into the House of Representatives.

- (2) The amendment made by item 8 of this Schedule applies in relation to an accounting liability of an entity that ceases to be a subsidiary member of a consolidated group or MEC group if the entity ceases to be a subsidiary member of the group under an arrangement that commences (see Part 8 of this Schedule) on or after the start of the day on which the Bill that became this Act was introduced into the House of Representatives.

## Part 3—Securitised assets: 2014 Budget

### *Income Tax Assessment Act 1997*

#### **10 At the end of section 705-70**

Add:

##### *Exclusion of amounts for certain securitisation liabilities*

- (4) An amount is not to be added for an accounting liability of the joining entity under subsection (1) if the accounting liability is covered under section 705-76 (securitisation liabilities).

#### **11 After section 705-75**

Insert:

#### **705-76 Liability arising from transfer or assignment of securitised assets**

This section covers an accounting liability (the *securitisation liability*) if the following circumstances exist:

- (a) at the joining time, a \*member of the joined group is an \*ADI or a \*financial entity;
- (b) in working out the step 2 amount mentioned in subsection 705-70(1) in relation to the joining entity, an amount would be added under that subsection for the securitisation liability (disregarding subsection 705-70(4));
- (c) the joining entity transferred or equitably assigned one or more assets (the *underlying securitised assets*) to another entity before the joining time;
- (d) the securitisation liability:
  - (i) arose from the transfer or equitable assignment of the underlying securitised assets; and
  - (ii) is a liability of the joining entity at the joining time (according to the joining entity's \*accounting principles for tax cost setting);

- (e) the other entity was established for the purpose of securitising assets;
- (f) the underlying securitised assets were securitised in accordance with that purpose before the joining time;
- (g) at the joining time the \*market value of the joining entity's interest in the underlying securitised assets is nil, or is substantially less than the amount of the securitisation liability.

## **12 At the end of section 711-45**

Add:

*Exclusion of amounts for certain securitisation liabilities*

- (11) An amount is not to be added for an accounting liability of the leaving entity if the accounting liability is covered under section 711-46 (securitisation liabilities).

## **13 After section 711-45**

Insert:

### **711-46 Liability arising from transfer or assignment of securitised assets**

This section covers an accounting liability (the *securitisation liability*) if the following circumstances exist:

- (a) just before the leaving time, a \*member of the old group is an \*ADI or a \*financial entity;
- (b) in working out the step 4 amount mentioned in subsection 711-45(1) in relation to the leaving entity, an amount would be added under that subsection for the securitisation liability (disregarding subsection 711-45(11));
- (c) a member of the old group transferred or equitably assigned one or more assets (the *underlying securitised assets*) to another entity before the leaving time;
- (d) the securitisation liability:
  - (i) arose from the transfer or equitable assignment of the underlying securitised assets; and

- (ii) is a liability of the leaving entity at the leaving time (according to the leaving entity's \*accounting principles for tax cost setting);
- (e) the other entity was established for the purpose of securitising assets;
- (f) the underlying securitised assets were securitised in accordance with that purpose before the leaving time;
- (g) at the leaving time the \*market value of the leaving entity's interest in the underlying securitised assets is nil, or is substantially less than the amount of the securitisation liability.

#### 14 Application—joining case

- (1) The amendments made by items 10 and 11 of this Schedule apply in relation to an entity that becomes a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) after the 2014 budget time.
- (2) Subject to subitems (3) and (6), the amendments made by items 10 and 11 of this Schedule also apply in relation to an entity (the *joining entity*) that becomes a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) on or before the 2014 budget time.
- (3) Subitem (2) does not apply if the Commissioner considers that it is reasonable to conclude that:
  - (a) the circumstances mentioned in section 705-76 of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) existed in respect of the joining entity; and
  - (b) before the 2014 budget time, the head company of the group:
    - (i) worked out the group's allocable cost amount for the joining entity; and
    - (ii) for the purposes of working out that allocable cost amount, worked out the step 2 amount mentioned in subsection 705-70(1) of that Act; and
  - (c) in working out that step 2 amount before the 2014 budget time, the head company added the amount mentioned in paragraph 705-76(b) of that Act (as inserted by this Schedule).

- (4) Subitem (5) applies if:
- (a) subitem (2) does not apply because of subitem (3); and
  - (b) the Commissioner considers that it is reasonable to conclude that, before the 2014 budget time, the head company of the group worked out a tax cost setting amount for the joining entity's interest in the underlying securitised assets mentioned in paragraph 705-76(c) of the *Income Tax Assessment Act 1997* (as inserted by this Schedule).
- (5) Reduce the group's allocable cost amount for the joining entity by the tax cost setting amount mentioned in paragraph (4)(b).
- (6) Subitem (2) does not apply if the Commissioner considers that it is reasonable to conclude that:
- (a) the circumstances mentioned in section 705-76 of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) existed in respect of the joining entity; and
  - (b) the head company of the group first worked out the group's allocable cost amount for the joining entity:
    - (i) after the 2014 budget time; and
    - (ii) before the commencement of this item.
- (7) In this item:
- 2014 budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2014.

## **15 Application—leaving case**

- (1) The amendments made by items 12 and 13 of this Schedule apply in relation to an entity that ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) after the 2014 budget time.
- (2) Subject to subitem (3), the amendments made by items 12 and 13 of this Schedule also apply in relation to an entity (the **leaving entity**) that ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) on or before the 2014 budget time.
- (3) Subitem (2) does not apply if the Commissioner considers that it is reasonable to conclude that:
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- (a) the circumstances mentioned in section 711-46 of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) existed in respect of the leaving entity; and
  - (b) before the 2014 budget time, the head company of the group (the **old group**):
    - (i) worked out the old group's allocable cost amount for the leaving entity; and
    - (ii) for the purposes of working out that allocable cost amount, worked out the step 4 amount mentioned in subsection 711-45(1) of that Act; and
  - (c) in working out that step 4 amount before the 2014 budget time, the head company added the amount mentioned in paragraph 711-46(b) of that Act (as inserted by this Schedule).
- (4) Subitem (5) applies if:
  - (a) subitem (2) does not apply because of subitem (3); and
  - (b) the Commissioner considers that it is reasonable to conclude that, in working out that allocable cost amount before the 2014 budget time, the head company of the old group included in the step 1 amount mentioned in subsection 711-25(1) of the *Income Tax Assessment Act 1997* an amount (the **addition to step 1**) in respect of the leaving entity's interest in the underlying securitised assets mentioned in paragraph 711-46(c) of that Act (as inserted by this Schedule).
- (5) Increase the old group's allocable cost amount for the leaving entity by the addition to step 1.
- (6) In this item:

**2014 budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2014.



## Part 4—Securitised assets: 2016 Budget

### *Income Tax Assessment Act 1997*

#### **16 Paragraph 705-76(a)**

Repeal the paragraph.

#### **17 Paragraph 711-46(a)**

Repeal the paragraph.

#### **18 Application—joining case**

- (1) The amendment made by item 16 of this Schedule applies in relation to an entity that becomes a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) after the 2016 budget time.
- (2) In this item:  
*2016 budget time* means 7.30 pm, by legal time in the Australian Capital Territory, on 3 May 2016.

#### **19 Application—leaving case**

- (1) The amendment made by item 17 of this Schedule applies in relation to an entity that ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) after the 2016 budget time.
- (2) In this item:  
*2016 budget time* means 7.30 pm, by legal time in the Australian Capital Territory, on 3 May 2016.

## Part 5—Churning

### *Income Tax Assessment Act 1997*

#### **20 At the end of Subdivision 716-S**

Add:

#### **716-440 Membership interests in joining entity not subject to CGT under Division 855—foreign entity ceasing to hold interests**

- (1) Subsection (3) applies if:
  - (a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and
  - (b) another entity (the *disposing entity*) ceased to hold \*membership interests in the joining entity during the period that:
    - (i) started 12 months before the joining time; and
    - (ii) ended immediately after the joining time; and
  - (c) a \*CGT event happened because the disposing entity ceased to hold the membership interests; and
  - (d) either:
    - (i) a \*capital gain or \*capital loss of the disposing entity from the CGT event was disregarded because of the operation of Division 855; or
    - (ii) if there had been a capital gain or capital loss of the disposing entity from the CGT event, the capital gain or capital loss would have been disregarded because of the operation of Division 855; and
  - (e) section 701-10 (cost to head company of assets of joining entity) applies to the joining entity's assets in respect of the joining entity becoming a subsidiary member of the group (disregarding subsection (2) of this section); and
  - (f) it is reasonable to conclude that, throughout the period mentioned in paragraph (b), the sum of the \*total participation interests held by an entity (the *control entity*) and its \*associates in the joining entity was 50% or more; and

- (g) in a case where the control entity is *not* the disposing entity— it is reasonable to conclude that the sum of the total participation interests held by the control entity and its associates in the disposing entity was 50% or more at the time the CGT event happened.
- (2) For the purposes of paragraphs (1)(f) and (g), in working out the sum of the \*total participation interests held by the control entity and its \*associates in another entity, take into account:
- (a) a particular \*direct participation interest; or
  - (b) a particular \*indirect participation interest;
- held in the other entity only once if it would otherwise be counted more than once because the entity holding it is an associate of the control entity.
- (3) The following provisions do not apply to the joining entity's assets in respect of the joining entity becoming a \*subsidiary member of the group:
- (a) section 701-10 (cost to head company of assets of joining entity);
  - (b) subsection 701-35(4) (setting value of trading stock at tax-neutral amount);
  - (c) subsection 701-35(5) (setting value of registered emissions unit at tax-neutral amount).
- Note: This subsection does not affect the application of subsection 701-1(1) (the single entity rule).
- (4) Subsection (5) applies if:
- (a) an entity (the **higher level entity**) holds \*membership interests in the joining entity (whether directly or through one or more interposed entities) at a time during the period mentioned in paragraph (1)(b); and
  - (b) the higher level entity becomes a \*subsidiary member of the \*consolidated group at the joining time; and
  - (c) the requirement in paragraph (1)(b) is not satisfied (disregarding subsection (5)); and
  - (d) the requirement in paragraph (1)(b) would be satisfied if the reference in paragraph (1)(b) to membership interests in the joining entity included a reference to membership interests in the higher level entity.
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- (5) Treat the reference in paragraph (1)(b) to \*membership interests in the joining entity as including a reference to membership interests in the higher level entity.

## 21 Application

- (1) The amendments made by this Part apply in relation to an income year in respect of an entity that becomes a subsidiary member of a consolidated group or MEC group under an arrangement that commences (see Part 8 of this Schedule) on or after the 2013 budget time.
- (2) Subitem (3) applies if the arrangement commenced before the start of the day on which the Bill that became this Act was introduced into the House of Representatives.
- (3) Despite subitem (1), section 716-440 of the *Income Tax Assessment Act 1997* (as inserted by this Part) applies as if:
- (a) the words “the sum of” and “and its \*associates” in paragraph (1)(f) of that section were omitted; and
  - (b) the words “the sum of” and “and its associates” in paragraph (1)(g) of that section were omitted; and
  - (c) subsection (2) of that section were repealed.
- (4) In this item:  
**2013 budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

## Part 6—TOFA

### *Income Tax Assessment Act 1997*

#### **22 Section 715-375 (heading)**

Repeal the heading, substitute:

#### **715-375 Cost setting on joining—amount of liability that is Division 230 financial arrangement**

#### **23 Section 715-378 (heading)**

Repeal the heading, substitute:

#### **715-378 Cost setting on joining—head company’s right to receive or obligation to provide payment**

#### **24 After section 715-378**

Insert:

#### **715-379 Cost setting on leaving—amount of intragroup liability that is Division 230 financial arrangement**

(1) Subsection (2) applies if:

- (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and
- (b) a thing (the *accounting liability*) is, in accordance with \*accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board:
  - (i) a liability of the leaving entity at the leaving time that can or must be recognised in the entity’s statement of financial position; or
  - (ii) a liability of the \*head company of the group at the leaving time that can or must be recognised in the head company’s statement of financial position; and

- (c) because subsection 701-1(1) (the single entity rule) ceases to apply to the leaving entity at the leaving time:
    - (i) if subparagraph (b)(i) applies—the accounting liability becomes a liability of the leaving entity, and an asset (the *corresponding asset*) that consists of the liability becomes an asset of the head company; or
    - (ii) if subparagraph (b)(ii) applies—the accounting liability becomes a liability of the head company, and an asset (the *corresponding asset*) that consists of the liability becomes an asset of the leaving entity; and
  - (d) the corresponding asset's \*tax cost is set at the leaving time under:
    - (i) if subparagraph (b)(i) applies—section 701-20; or
    - (ii) if subparagraph (b)(ii) applies—section 701-45; and
  - (e) the accounting liability is or is part of a \*Division 230 financial arrangement.
- (2) For the purposes of Division 230 of this Act and Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*:
- (a) if subparagraph (1)(b)(i) applies—treat the leaving entity as starting to have the accounting liability at the leaving time for receiving a payment equal to the \*tax cost setting amount of the corresponding asset; or
  - (b) if subparagraph (1)(b)(ii) applies—treat the \*head company as starting to have the accounting liability at the leaving time for receiving a payment equal to the tax cost setting amount of the corresponding asset.

Note: The tax cost setting amount of the corresponding asset is determined under sections 701-60 and 701-60A.

**715-379A Cost setting on leaving—head company's or leaving entity's right to receive or obligation to provide payment**

- (1) This section applies in relation to an asset or a liability if:
- (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group at a time (the *leaving time*); and

- (b) because subsection 701-1(1) (the single entity rule) ceases to apply to the leaving entity at the leaving time, the asset or liability becomes the asset or liability of:
    - (i) the leaving entity; or
    - (ii) the \*head company of the group; and
  - (c) if subparagraph (b)(i) applies:
    - (i) in the case of an asset—subsection 701-55(5A) applies in relation to the asset at the leaving time because of section 701-45; or
    - (ii) in the case of a liability—subsection 715-379(2) applies in relation to the liability at the leaving time; and
  - (d) if subparagraph (b)(ii) applies:
    - (i) in the case of an asset—subsection 701-55(5A) applies in relation to the asset at the leaving time because of section 701-20; and
    - (ii) in the case of a liability—subsection 715-379(2) applies in relation to the liability at the leaving time; and
  - (e) the asset or liability is or is part of a \*Division 230 financial arrangement.
- (2) If subparagraph (1)(b)(i) applies:
- (a) in the case of an asset—for the purposes of section 230-60, assume that the leaving entity acquired the asset (as mentioned in subsection 701-55(5A)) at the leaving time in return for the leaving entity starting to have an obligation to provide the payment mentioned in that subsection; and
  - (b) in the case of a liability—for the purposes of section 230-60, assume that the leaving entity started to have the liability at the leaving time in return for the leaving entity starting to have a right to receive the payment mentioned in subsection 715-379(2).
- (3) If subparagraph (1)(b)(ii) applies:
- (a) in the case of an asset—for the purposes of section 230-60, assume that the head company acquired the asset (as mentioned in subsection 701-55(5A)) at the leaving time in return for the head company starting to have an obligation to provide the payment mentioned in that subsection; and

- (b) in the case of a liability—for the purposes of section 230-60, assume that the head company started to have the liability at the leaving time in return for the head company starting to have a right to receive the payment mentioned in subsection 715-379(2).

## 25 Application

- (1) The amendments made by this Part apply in the same way as Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* applies.

Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that Schedule.

- (2) The Commissioner cannot amend an assessment of an entity for an income year in a particular way if:
- (a) the entity lodged its income tax return for the income year before the 2013 budget time; and
  - (b) the Commissioner could not amend the assessment in that way if the amendments made by this Part and Part 7 were disregarded; and
  - (c) the entity has not requested the Commissioner to amend the assessment in that way.

- (3) In this item:  
**2013 budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.



## Part 7—Value shifting

### *Income Tax Assessment Act 1997*

#### **26 Section 701-60 (table item 3)**

Repeal the item, substitute:

3	section 701-20 (Cost to head company of assets consisting of certain liabilities owed by entity that leaves group)	the *market value of the asset
3A	section 701-45 (Cost of assets consisting of liabilities owed to entity by members of the group)	the amount worked out in accordance with section 701-60A

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#### **27 After section 701-60**

Insert:

#### **701-60A Tax cost setting amount for asset emerging when entity leaves group**

- (1) This section applies for the purpose of working out the \*tax cost setting amount of an asset if:
  - (a) an entity (the *leaving entity*) ceases to be a \*subsidiary member of a \*consolidated group (the *old group*) at a time (the *leaving time*); and
  - (b) the asset's tax cost is set under section 701-45 because it consists of a liability (the *corresponding liability*) owed to the leaving entity.
- (2) The \*tax cost setting amount is:
  - (a) unless subsection (3) or (4) applies—the \*market value of the asset at the leaving time; or
  - (b) if subsection (3) applies—nil; or
  - (c) if subsection (4) applies—the least of the following amounts:
    - (i) the tax cost setting amount mentioned in paragraph (4)(c);

- (ii) if the \*head company of the old group was entitled to a deduction in respect of the asset for an income year ending on or before the leaving time—the tax cost setting amount mentioned in paragraph (4)(c) reduced by the amount of the deduction;
  - (iii) the market value of the asset at the leaving time.
- (3) This subsection applies if:
  - (a) the corresponding liability is *not* a debt; and
  - (b) either:
    - (i) at the time the corresponding liability arose, the entity to whom the corresponding liability was owed and the entity owing the corresponding liability were both \*members of the old group; or
    - (ii) if subparagraph (i) does not apply—after the time the corresponding liability arose, a member of the old group \*acquired the asset or started to have the corresponding liability.
- (4) This subsection applies if:
  - (a) the corresponding liability is *not* a debt; and
  - (b) at the time the corresponding liability arose, the entity to whom the corresponding liability was owed and the entity owing the corresponding liability were *not* both members of the old group; and
  - (c) the \*tax cost of the asset was set under section 701-10 at the time an entity became a \*subsidiary member of the old group, at the asset's \*tax cost setting amount (whether or not section 701-58 applied in relation to the setting of that tax cost).

## 28 Section 711-40

Repeal the section, substitute:

### **711-40 Liabilities owed to the leaving entity by members of the old group—step 3 in working out allocable cost amount**

For the purposes of step 3 in the table in subsection 711-20(1), the step 3 amount is the total, for all liabilities owed by \*members of

the old group to the leaving entity at the leaving time, of the \*tax cost setting amounts of the corresponding assets of the leaving entity.

Note: The tax cost of a corresponding asset of the leaving entity is set under section 701-45. The tax cost setting amount of the corresponding asset is determined under section 701-60A.

## **29 Subsection 711-45(4)**

Omit “\*market value”, substitute “\*tax cost setting amount”.

## **30 Application**

- (1) The amendments made by this Part apply in relation to an entity that ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences on or after the 2013 budget time.
- (2) If an asset mentioned in subsection 701-60A(1) of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) is or is part of a Division 230 financial arrangement at the leaving time mentioned in that subsection, the amendments made by this Part also apply in relation to that asset in the same way as Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* applies.

Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that Schedule.

- (3) Subitem (4) applies if:
  - (a) an entity ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences before the 2013 budget time; and
  - (b) the amendments made by this Part apply because of subitem (2).
- (4) The Commissioner cannot amend an assessment of an entity for an income year in a particular way if:
  - (a) the entity lodged its income tax return for the income year before the 2013 budget time; and
  - (b) the Commissioner could not amend the assessment in that way if the amendments made by Part 6 and this Part were disregarded; and

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(c) the entity has not requested the Commissioner to amend the assessment in that way.

Note: Subitems (2), (3) and (4) have the effect that the amendments made by this Part operate in relation to an asset that is or is part of a Division 230 financial arrangement in the same way that the amendments made by Part 6 of this Schedule operate.

(5) In this item:  
**2013 budget time** means 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

## **Part 8—Commencement of arrangements**

### **31 Commencement of arrangements**

- (1) Subitems (2), (3) and (4) specify, for the purpose of this Schedule, the time of commencement of an arrangement under which:
  - (a) an entity becomes a subsidiary member of a consolidated group or MEC group; or
  - (b) an entity that ceases to be a subsidiary member of a consolidated group or MEC group.
- (2) If the arrangement is or relates to a takeover bid (within the meaning of the *Corporations Act 2001*) the time is when:
  - (a) for an off-market bid (within the meaning of that Act)—step 4 of the table in subsection 633(1) of that Act is completed; or
  - (b) for a market bid (within the meaning of that Act)—step 2 of the table in subsection 635(1) of that Act is completed.
- (3) If a court orders, under subsection 411(1) of the *Corporations Act 2001*:
  - (a) a meeting or meetings of a company’s members about the arrangement; or
  - (b) a meeting or meetings of one or more classes of a company’s members about the arrangement;the time is when the application for the order was made.
- (4) If subitem (2) or (3) does not apply, the time is when the decision to enter into the arrangement was made.

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[*Minister’s second reading speech made in—  
House of Representatives on 15 February 2018  
Senate on 19 March 2018*]

(27/18)

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