



Taxation Laws Amendment Act (No. 7) 2000

Act No. 173 of 2000 as amended

This compilation was prepared on 8 January 2004

[This Act was amended by Act Nos. 101 and 142 of 2003]

Amendment from Act No. 101 of 2003

[Schedule 6 (item 43) repealed Schedule 4 (item 30)

Schedule 6 (item 43) commenced on 21 December 2000]

Amendment from Act No. 142 of 2003

[Schedule 2 (item 50) amended Schedule 4 (item 31)

Schedule 2 (item 50) commenced on 17 December 2003]

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An Act to amend the law relating to taxation, and for related purposes

[Assented to 21 December 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 7) 2000*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 2 is taken to have commenced immediately after the commencement of item 10 of Schedule 1 to the *A New Tax System (Tax Administration) Act (No. 1) 2000*.
- (3) Items 46 and 50 of Schedule 4 are taken to have commenced at the start of the 1998-99 income year.
- (4) Schedule 5 commences, or is taken to have commenced, immediately after the commencement of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 2000*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Income tax deductions for gifts etc.

Income Tax Assessment Act 1997

1 Subsection 30-25(2) (at the end of the table)

Add:

2.2.19	the Foundation for Gambling Studies	the gift must be made after 8 March 2000
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2 Subsection 30-45(2) (after table item 16)

Insert:

4.2.17	the Community Disaster Relief (Sydney Hail Storm Assistance) Fund	the gift must be made after 14 April 1999 and before 15 April 2001
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3 Subsection 30-50(2) (table item 5.2.8)

After “9 February 1999”, insert “or after 30 June 2000 and before 1 July 2001”.

4 Subsection 30-50(2) (at the end of the table)

Add:

5.2.9	the Australian Ex-Prisoners of War Memorial Fund	the gift must be made after 19 October 1999 and before 20 October 2001
5.2.10	the RSL and 6th Division Australian-Hellenic Educational Memorial Fund	the gift must be made after 13 June 2000 and before 14 June 2002

5 Subsection 30-80(2) (at the end of the table)

Add:

9.2.8	The Global Foundation	the gift must be made after 2 November 1999
9.2.9	the United Hellenic Earthquake Appeal	the gift must be made after 6 September 1999 and before 7 September 2000

6 Section 30-105 (at the end of the table)

Add:

13.2.2	the Foundation for Rural and Regional Renewal Public Fund	the gift must be made after 28 March 2000
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7 Subsection 30-315(2) (after table topic 25)

Insert:

25A	Australian Ex-Prisoners of War Memorial Fund	item 5.2.9
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8 Subsection 30-315(2) (after table topic 34)

Insert:

34A	Community Disaster Relief (Sydney Hail Storm Assistance) Fund	item 4.2.19
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9 Subsection 30-315(2) (after table topic 50)

Insert:

50A	Foundation for Gambling Studies	item 2.2.19
50B	Foundation for Rural and Regional Renewal Public Fund	item 13.2.2

Schedule 2—Pay as you go (PAYG) instalments for certain beneficiaries of trusts

Taxation Administration Act 1953

1 At the end of section 45-280 in Schedule 1

Add:

Exception for certain resident unit trusts

- (5) Your *instalment income* for the current period does *not* include an amount for a trust under subsection (1) if the conditions in either subsection 45-285(1) or (2) are satisfied for you for that trust for that period.

Note: Your instalment income will instead include a distribution by the trust: see section 45-285.

Exception for trusts whose beneficiary is absolutely entitled

- (6) Your *instalment income* for the current period does *not* include an amount for a trust under subsection (1) if, throughout the current period:
- (a) the trustee of the trust did not have any active duties to perform in the management of the trust (other than the duty to deal with the trust income and capital in accordance with any requests made or directions given by the beneficiary or beneficiaries); and
 - (b) if there was only one beneficiary, the beneficiary:
 - (i) was absolutely entitled to the trust assets; and
 - (ii) had a vested and indefeasible interest in any trust income arising from time to time; and
 - (c) if there was more than one beneficiary, each beneficiary:
 - (i) was absolutely entitled to that beneficiary's interest in the trust assets; and

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- (ii) had a vested and indefeasible interest in a proportion of any trust income arising from time to time, being a proportion that corresponded to the beneficiary's proportional interest in the trust capital.

Instead, your *instalment income* for the current period includes the following amount:

Your proportion of the vested and indefeasible interests in the trust income arising from time to time \times Trust's * instalment income for the current period

2 After section 45-280 in Schedule 1

Insert:

45-285 Instalment income includes distributions by certain resident unit trusts

- (1) Your *instalment income* for a period includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
 - (a) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (b) throughout that period:
 - (i) any of the units in the trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere; or
 - (ii) any of the units in the trust were offered to the public; or
 - (iii) the units in the trust were held by at least 50 persons; and
 - (c) section 45-287 in this Schedule did not apply to the trust at any time during that period; and
 - (d) throughout that period, the trust's activities consisted only of activities listed in the definition of *eligible investment business* in section 102M of the *Income Tax Assessment Act 1936*.

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

- (2) Your *instalment income* for a period also includes trust income or trust capital that a unit trust distributes to you, or applies for your benefit, during that period if:
- (a) the income or capital is *not* included in your instalment income under subsection (1); and
 - (b) the unit trust is a resident unit trust (within the meaning of section 102Q of the *Income Tax Assessment Act 1936*) for the income year of the trust that is or includes that period; and
 - (c) throughout that period, the trust's activities consisted only of activities listed in the definition of *eligible investment business* in section 102M of the *Income Tax Assessment Act 1936*; and
 - (d) throughout that period, either:
 - (i) you are yourself the trustee of a unit trust that satisfies each of paragraphs (1)(a) to (d) of this section; or
 - (ii) you are yourself the trustee of one or more trusts covered by section 45-288; or
 - (iii) you are exempt from tax; or
 - (iv) you are a *complying superannuation entity or a statutory fund of a *life insurance company.

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

Extension—nominee and bare trust situations

- (3) In determining, for the purposes of subparagraph (1)(b)(iii), how many persons hold units in a unit trust, if:
- (a) another trust (the *holding trust*) is a unit holder in the unit trust; and
 - (b) the holding trust is a trust of the kind covered by subsection 45-280(6); and
 - (c) the beneficiary's or beneficiaries' absolute entitlement exists at all times while the holding trust is in existence;
- the beneficiary or beneficiaries count as persons who hold units in the unit trust, and the trustee of the holding trust does not.

45-287 When trusts are disqualified due to concentrated ownership

Concentrated ownership

- (1) This section applies to a trust if an individual holds, or up to 20 individuals hold between them directly or indirectly and for their own benefit, interests in the trust:
 - (a) carrying fixed entitlements to:
 - (i) at least 75% of the trust's income; or
 - (ii) at least 75% of the trust's capital; or
 - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

Single individual

- (2) Subsection (1) operates as if all of these were a single individual:
 - (a) an individual, whether or not the individual holds interests in the trust; and
 - (b) the individual's *associates; and
 - (c) for any interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

Concentrated ownership—potential due to possible variation of rights etc.

- (3) This section also applies to a trust if, because of:
 - (a) any provision in the trust's constituent document, or in any contract, agreement or instrument:
 - (i) authorising the variation or abrogation of rights attaching to any of the interests in the trust; or
 - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
 - (b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those interests; or
 - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those interests;it is reasonable to conclude that the rights attaching to any of the interests are capable of being varied or abrogated in such a way
-

(even if they are not in fact varied or abrogated in that way) that, directly or indirectly, the trust would be disqualified under subsection (1).

Tracing

- (4) In applying this section:
- (a) if a *complying superannuation fund, *approved deposit fund or *foreign superannuation fund has more than 50 members and has, directly or indirectly, a fixed entitlement to any of the trust's income or capital—that entitlement is taken to be held by more than 20 individuals for their own benefit; and
 - (b) if a complying superannuation fund, approved deposit fund or foreign superannuation fund has 50 or fewer members and has, directly or indirectly, a fixed entitlement to any of the trust's income or capital—each of the members is taken to have a share of that entitlement, in equal proportions, for his or her own benefit.

45-288 Resident investment trusts for beneficiaries who are absolutely entitled

This section covers a trust if:

- (a) the trust is a resident trust within the meaning of section 102Q of the *Income Tax Assessment Act 1936*; and
- (b) the trust is of the kind covered by subsection 45-280(6) in this Schedule; and
- (c) the requests or directions that beneficiaries may give the trustee are limited to requests or directions as to which of the activities listed in the definition of ***eligible investment business*** in section 102M of the *Income Tax Assessment Act 1936* the trustee should engage in; and
- (d) all of the trust's beneficiaries became beneficiaries as a result of a public offer to invest in the trust; and
- (e) either:
 - (i) the trust has 50 or more beneficiaries; or
 - (ii) if the trustee of the trust is also the trustee of one or more other trusts that satisfy paragraphs (a), (b), (c) and (d) of this section—all those trusts together have a total of 50 or more beneficiaries.

3 Subsection 45-290(3) in Schedule 1

Omit “*life insurance entity or *registered organisation”, substitute “*life insurance company”.

4 Subsection 45-290(3) in Schedule 1

Omit “the *CS/RA class of its assessable income”, substitute “the *complying superannuation class of its taxable income”.

5 Application of amendments

The amendments made by this Schedule apply to the 2000-2001 income year and later income years.

Schedule 3—CGT small business provisions

Income Tax Assessment Act 1997

1 Subsection 116-30(1) (note)

Omit “section 138-30”, substitute “sections 138-30 and 139-20”.

2 At the end of paragraph 152-10(1)(a)

Add:

Note: This condition does not apply in the case of CGT event D1: see section 152-12.

3 At the end of paragraph 152-10(1)(d)

Add:

Note: This condition does not apply in the case of CGT event D1: see section 152-12.

4 Subsection 152-10(4)

Omit “This Division, apart from Subdivision 152-E, does not apply”, substitute “Subdivisions 152-B and 152-C do not apply”.

5 After section 152-10

Insert:

152-12 Special conditions for CGT event D1

- (1) Paragraphs 152-10(1)(a) and (d) do not apply in the case of *CGT event D1.
- (2) Instead, it is a basic condition that the right you create that triggers the *CGT event must be inherently connected with a *CGT asset of yours that satisfies the active asset test (see section 152-35).

6 Subparagraph 152-15(a)(iii)

After “affiliates” (second occurring), insert “(not counting any assets already counted under subparagraph (ii))”.

7 Subsection 152-20(3)

Repeal the subsection, substitute:

- (3) Subsection (4) applies in working out the *net value of the CGT assets* of an entity that is:
- (a) your *small business CGT affiliate; or
 - (b) *connected with your small business CGT affiliate.
- (4) Disregard assets of that entity that are not used, or held ready for use, in the carrying on of a *business (whether alone or jointly with others) by:
- (a) you; or
 - (b) an entity *connected with you (unless the connection with you is only because of your *small business CGT affiliate).

Example: You and your husband decide to sell a florist's business that you jointly carry on. Your husband also wholly owns a company that carries on a newsagency business. You yourself have no other involvement with the newsagency business.

You need to work out whether you satisfy the maximum net asset value just before the sale. For this purpose, you disregard the newsagency company's assets. This is because, even though the company is "connected" with you, in that your small business CGT affiliate (ie your husband) owns it (see section 152-30), this connection arises *only because* your husband controls the company.

8 Subsection 152-45(1) (heading)

Repeal the heading, substitute:

Asset compulsorily acquired, lost or destroyed

9 Subsection 152-115(1) (heading)

Repeal the heading, substitute:

Asset compulsorily acquired, lost or destroyed

10 Subsection 152-125(1)

Repeal the subsection, substitute:

- (1) This section applies if:
- (a) under section 152-110, a *capital gain of a company or trust is disregarded; or

- (b) under section 152-110, an amount of income is treated as neither assessable income nor *exempt income of the company or trust; or
- (c) paragraph (a) of this subsection would have applied to an amount except that the *capital gain was disregarded anyway because the relevant *CGT asset was *acquired before 20 September 1985.

In this section, that amount is called the *exempt amount*.

11 At the end of Subdivision 152-C

Add:

152-220 You may choose not to apply this Subdivision

You may choose not to apply the reduction mentioned in section 152-205 to a particular *capital gain.

Note: Making this choice might allow a company or trust to make larger tax-free eligible termination payments under the small business retirement exemption: see section 152-325.

12 Paragraph 152-305(1)(b)

Omit “(disregarding section 103-10)”.

13 Subsection 152-325(4)

Repeal the subsection, substitute:

- (4) In working out those *capital proceeds, disregard the market value substitution rule (see section 116-30).

14 Subsection 152-325(7)

Omit “(disregarding section 103-10)”.

15 Paragraphs 152-425(1)(b) and (2)(b)

Omit “subsection 104-190(1)”, substitute “section 104-190”.

New Business Tax System (Capital Gains Tax) Act 1999

16 Item 61 of Schedule 1

Omit “if a CGT event happens”, substitute “but only for CGT events that happen”.

17 Application of amendments

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Schedule 4—Minor CGT changes

Income Tax Assessment Act 1936

1 Subsection 177A(1) (definition of *capital loss*)

Repeal the definition, substitute:

capital loss has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

2 Subparagraphs 177C(2)(c)(i) and (ii)

After “declaration,” (wherever occurring), insert “agreement,”.

3 Subparagraph 177C(2)(c)(i)

Repeal the subparagraph, substitute:

- (i) the incurring of the capital loss by the taxpayer is attributable to the making of a declaration, agreement, choice, election or selection, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B or 170-B of the *Income Tax Assessment Act 1997*; and

4 Subparagraph 177C(2A)(a)(i)

Repeal the subparagraph, substitute:

- (i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act; and

5 Subparagraph 177C(2A)(b)(i)

Repeal the subparagraph, substitute:

- (i) the incurring of the capital loss by the taxpayer is attributable to the making of a choice under Subdivision 126-B of the *Income Tax Assessment Act*

1997 or an agreement under Subdivision 170-B of that Act; and

Income Tax Assessment Act 1997

6 Subsection 100-30(2)

Repeal the subsection, substitute:

- (2) There are 4 categories of exemptions:
1. exempt assets: for example, cars;
 2. exempt or loss-denying transactions: for example, compensation for personal injury or your tenancy comes to an end;
 3. anti-overlap provisions (that reduce your capital gain by the amount that is otherwise assessable);
 4. small business relief.

Note: Most of the exceptions are in Division 104. You will find most of the possible exemptions in Division 118. The small business relief provisions are in Division 152.

7 Section 103-5

Omit “one does”, substitute “such a provision does say that a payment, cost or expenditure can include giving property”.

8 Paragraph 104-10(5)(b)

After “for a lease”, insert “that you granted”.

9 Paragraph 104-25(5)(b)

After “for a lease”, insert “that you granted”.

10 Paragraph 104-60(5)(b)

Repeal the paragraph, substitute:

- (b) you transferred the asset from another trust and the beneficiaries and terms of both trusts are the same.

11 At the end of subsection 104-70(2)

Add:

; or (d) repaid by you; or

-
- (e) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment.

The payment can include giving property: see section 103-5.

12 After subsection 104-70(2)

Insert:

- (2A) However, the non-assessable part is not reduced by any part of the payment that you can deduct.

13 At the end of subsection 104-70(5)

Add:

Note: A capital gain under section 160ZM of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see subsection 104-70(3) of the *Income Tax (Transitional Provisions) Act 1997*.

14 After subsection 104-135(1)

Insert:

- (1A) In working out the non-assessable part, disregard any part of the payment that is:
- (a) repaid by you; or
 - (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment.

The payment can include giving property: see section 103-5.

- (1B) However, the non-assessable part is not reduced by any part of the payment that you can deduct.

15 Subsection 104-135(3) (note)

Omit “Note”, substitute “Note 1”.

16 At the end of subsection 104-135(3)

Add:

Note 2: A capital gain under section 160ZL of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see section 104-135 of the *Income Tax (Transitional Provisions) Act 1997*.

17 After subsection 104-150(1)

Insert:

(1A) The amount of the deposit is reduced by any part of the deposit that is:

- (a) repaid by you; or
- (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the deposit.

The payment can include giving property: see section 103-5.

(1B) However, the deposit is not reduced by any part of the payment that you can deduct.

18 Subdivision 104-J (heading)

Repeal the heading, substitute:

Subdivision 104-J—CGT events relating to roll-overs

19 Subsection 104-175(7)

After “Subdivision 126-B”, insert “(except where the roll-over asset has stopped being a *pre-CGT asset, for example, because of Division 149)”.

20 Paragraph 104-185(1)(a)

Omit “an *active asset”, substitute “your *active asset”.

21 Subsection 104-185(1) (note)

Omit “Note”, substitute “Note 1”.

22 At the end of subsection 104-185(1)

Add:

Note 2: CGT event J1 can also happen in relation to a capital gain you rolled-over under Division 17A of Part IIIA of the *Income Tax Assessment Act 1936* or Division 123 of the *Income Tax Assessment Act 1997* if the status of the replacement asset changes: see section 104-185 of the *Income Tax (Transitional Provisions) Act 1997*.

23 At the end of subsection 104-190(1)

Add:

Note: CGT event J2 can also happen in relation to a capital gain you rolled-over under Division 17A of Part IIIA of the *Income Tax Assessment Act 1936* or Division 123 of the *Income Tax Assessment Act 1997* if certain circumstances change: see section 104-190 of the *Income Tax (Transitional Provisions) Act 1997*.

24 Subsection 104-205(3) (note)

Omit “Note”, substitute “Note 1”.

25 At the end of subsection 104-205(3)

Add:

Note 2: A capital gain under section 160ZZD of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see section 104-205 of the *Income Tax (Transitional Provisions) Act 1997*.

26 At the end of section 108-50

Add:

Note: In addition to the circumstances set out in this Subdivision, separate asset treatment can apply under section 124-595 (about a roll-over for a Crown lease) and section 124-725 (about a roll-over for a prospecting or mining entitlement).

27 At the end of subsection 109-5(1)

Add “In this case, the time when you *acquire the asset is when you become its owner.”.

28 Subsection 109-5(2)

Omit “for when”, substitute “for the circumstances in which, and the time at which,”.

29 Section 109-10

Omit “specific rules for some cases where”, substitute “some specific rules for the circumstances in which, and the time at which,”.

31 After the group heading before section 110-40

Insert:

110-37 Expenditure forming part of cost base or element

- (1) If a later provision of this Subdivision says that:
- (a) certain expenditure does not form part of the *cost base of a *CGT asset; or
 - (b) the cost base is reduced by certain expenditure;
- the expenditure is initially included in the cost base, which is then reduced by the amount of the expenditure just before a *CGT event happens in relation to the asset.

Note: This has the effect of recognising in the cost base any indexed component relating to the expenditure.

- (2) On the other hand, if such a provision says that:
- (a) certain expenditure does not form part of one or more *elements* of the *cost base of a *CGT asset; or
 - (b) one or more *elements* of the cost base are reduced by certain expenditure;
- the expenditure is never included in the relevant elements of the cost base.

Note: This has the effect of *not* recognising to any extent this expenditure in the cost base.

32 Subsection 110-40(1)

After “part of”, insert “one or more elements of”.

33 Subsection 110-43(1)

After “part of”, insert “one or more elements of”.

34 Subsection 110-45(1)

After “*cost base”, insert “, or of an element of the cost base,”.

35 Subsection 110-50(1)

After “*cost base”, insert “, or of an element of the cost base,”.

36 Subsection 110-53(1)

Omit “the first, fourth or fifth element of”.

37 Section 112-97 (table item 10, column referring to “element affected”)

Omit “The total cost base”, substitute “First element of cost base”.

38 Section 112-97 (table item 11, column referring to “element affected”)

Omit “The total reduced cost base”, substitute “First element of reduced cost base”.

39 Section 112-97 (after table item 12)

Insert:

12A	You own an interest in infrastructure borrowing just before and just after the end of an exemption period	First element of cost base and reduced cost base	section 159G ZZZZE
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40 Section 112-115 (table item 1, column referring to “rules about this roll-over”)

After “individual”, insert “or trustee”.

41 Section 116-75

Repeal the section, substitute:

116-75 Special rule for CGT event happening to a lease

The *capital proceeds from the expiry, surrender or forfeiture of a lease include any payment (because of the lease ending) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the leased property.

The payment or expenditure can include giving property: see section 103-5.

42 Subsection 118-10(1)

Repeal the subsection, substitute:

- (1) A *capital gain or *capital loss you make from a *collectable is disregarded if the first element of its *cost base is \$500 or less.
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43 Subsection 118-10(3)

Repeal the subsection, substitute:

- (3) A *capital gain you make from a *personal use asset, or part of the asset, is disregarded if the first element of the asset's *cost base is \$10,000 or less.

Note: A capital loss you make from a personal use asset is disregarded: see subsection 108-20(1).

44 At the end of Subdivision 118-A

Add:

118-65 Transactions by exempt entities

A *capital loss made by an entity is disregarded if it was an *exempt entity at the time it made the loss.

45 Paragraph 118-210(5)(a)

After "E2," insert "E5,".

46 After section 118-405

Insert:

118-407 Special conditions for CGT event D1

- (1) Section 118-405 applies differently in the case of *CGT event D1 (about creating contractual or other rights).
- (2) In that case:
- (a) the *CGT event does not have to happen in relation to a *CGT asset; and
 - (b) paragraph 118-405(1)(e) does not have to be satisfied; and
 - (c) instead, the right you create that triggers the CGT event must be inherently connected with a CGT asset of yours that satisfies the *active asset test (see section 118-445).

47 Subdivision 122-A (heading)

Repeal the heading, substitute:

Subdivision 122-A—Disposal or creation of assets by an individual or trustee to a wholly-owned company

48 Subsection 122-25(5)

Omit “because of Division 50”, substitute “because it is an *exempt entity”.

49 Subsection 122-135(5)

Omit “because of Division 50”, substitute “because it is an *exempt entity”.

50 After section 123-5

Insert:

123-7 Special conditions for CGT event D1

- (1) Section 123-5 applies differently in the case of *CGT event D1 (about creating contractual or other rights).
- (2) In that case:
 - (a) the *CGT event does not have to happen in relation to a *CGT asset; and
 - (b) paragraph 123-5(2)(a) does not have to be satisfied; and
 - (c) instead, the right you create that triggers the CGT event must be inherently connected with a CGT asset of yours that satisfies the *active asset test (see section 123-65).

51 Subsection 124-140(1) (note 1)

Repeal the note, substitute:

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original licence. The new asset is the licence you get by renewing or extending the original licence.

52 Subsection 126-50(4)

Omit “because of Division 50”, substitute “because it is an *exempt entity”.

53 Subsection 126-60(3) (note)

Omit “see Division 149”, substitute “see, for example, Division 149”.

54 Subsection 130-20(2) (note 3, second occurring)

Omit “Note 3”, substitute “Note 4”.

55 Subsection 130-83(3)

Repeal the subsection, substitute:

- (3) If that event does not happen in relation to the *share or right (or any *share you *acquired by exercising the right) in an arm’s length transaction at the *cessation time, or within 30 days after that time, the first element of the *cost base and *reduced cost base of the share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) at that time.

56 At the end of subsection 134-1(1)

Add:

- Note 3: Item 1 in the table is modified for shares or rights acquired at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an employee share scheme—in certain circumstances you can be taken to have paid the market value for an option: see Subdivision 130-D and section 112-15.

57 Subsection 140-15(2)

After “entity”, insert “(being a *controller (for CGT purposes) of the company)”.

58 Subsection 995-1(1) (paragraph (a) of the definition of *acquire*)

Repeal the paragraph, substitute:

- (a) a *CGT asset: you *acquire* a CGT asset (in its capacity as a CGT asset) in the circumstances and at the time worked out under Division 109 (including under a provision listed in Subdivision 109-B); and

Note: A CGT asset acquired before 20 September 1985 may be treated as having been acquired on or after that day: see, for example, Division 149.

59 Subsection 995-1(1) (definition of *dispose of*)

Repeal the definition, substitute:

dispose of a *CGT asset: you *dispose of* a CGT asset (in its capacity as a CGT asset) in the circumstances specified in section 104-10.

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60 At the end of section 104-70

Add:

- (3) Subsection 104-70(5) of the *Income Tax Assessment Act 1997* also reduces the cost base and reduced cost base of a unit or interest to nil if an amount was taken into account as a capital gain for the unit or interest under section 160ZM of the *Income Tax Assessment Act 1936*.

61 After section 104-72

Insert:

Subdivision 104-G—Shares

104-135 Capital payment for shares

Subsection 104-135(3) of the *Income Tax Assessment Act 1997* also reduces the cost base and reduced cost base of a share to nil if an amount was taken into account as a capital gain for the share under section 160ZL of the *Income Tax Assessment Act 1936*.

62 After section 104-175

Insert:

104-185 Change of status of replacement asset for a roll-over under Division 17A of Part IIIA of the 1936 Act or Division 123 of the 1997 Act

Section 104-185 of the *Income Tax Assessment Act 1997* applies to a CGT asset you chose as a replacement asset for a roll-over under:

-
- (a) Division 17A of Part IIIA of the *Income Tax Assessment Act 1936*; or
 - (b) Division 123 of the *Income Tax Assessment Act 1997*;
in the same way as it applies to a CGT asset you chose as a replacement asset for a roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997*.

104-190 Change of circumstances where a share or interest is a replacement asset for a roll-over under Division 17A of Part IIIA of the 1936 Act or Division 123 of the 1997 Act

Section 104-190 of the *Income Tax Assessment Act 1997* applies to a share in a company or an interest in a trust you chose as a replacement asset for a roll-over under:

- (a) Division 17A of Part IIIA of the *Income Tax Assessment Act 1936*; or
- (b) Division 123 of the *Income Tax Assessment Act 1997*;
in the same way as it applies to a share or interest you chose as a replacement asset for a roll-over under Subdivision 152-E of the *Income Tax Assessment Act 1997*.

63 Before section 104-210

Insert:

104-205 Partial realisation of intellectual property

Subsection 104-205(3) of the *Income Tax Assessment Act 1997* also reduces the cost base and reduced cost base of the item to nil if an amount was taken into account as a capital gain for the item under section 160ZZD of the *Income Tax Assessment Act 1936*.

64 Subsection 118-10(2)

Repeal the subsection, substitute:

- (2) A capital gain or capital loss you make from the interest is disregarded if the first element of its cost base is \$500 or less.

65 Application of amendments

- (1) The amendments made by this Schedule (except those made by items 2, 6 and 30) apply to assessments for the 1998-99 income year and later income years.
- (2) The amendment made by item 2 applies to schemes entered into after 3 pm, by legal time in the Australian Capital Territory, on 29 April 1997.
- (3) The amendment made by item 30 applies to things done on or after 1 July 1998.

Schedule 5—Technical amendment

Income Tax Assessment Act 1997

1 Paragraph 26-53(2)(c)

Omit “foreign”.

Schedule 6—Discount capital gains: integrity measures

Income Tax Assessment Act 1997

1 Section 115-20

Repeal the section, substitute:

115-20 Discount capital gain must not have indexed cost base

- (1) To be a *discount capital gain, the *capital gain must have been worked out using a *cost base that has been calculated without reference to indexation at any time.
- (2) For the purposes of working out whether the *capital gain is a *discount capital gain and the amount of that gain, the *cost base taken into account in working out the capital gain may be recalculated without reference to indexation if the cost base had an element including indexation because of another provision of this Act. This subsection has effect despite that other provision.

Note: This lets a capital gain of an entity (the *gain entity*) on a CGT asset be a discount capital gain even if:

- (a) another provision of this Act (such as a provision for a same-asset roll-over or Division 128) set the gain entity's cost base for the asset by reference to the cost base for the asset when it was owned by another entity (the *earlier owner*), and the earlier owner's cost base for the asset included indexation; or
- (b) another provision of this Act (such as a provision for a replacement-asset roll-over) set the cost base of the asset by reference to the cost base of the original asset involved in the roll-over, and the original asset's cost base included indexation.

Example: In 1995 Elizabeth acquired land from her ex-husband under an order made by a court under the *Family Law Act 1975*. Section 160ZZM of the *Income Tax Assessment Act 1936* treated her as having paid \$56,000 for the land, equal to her ex-husband's *indexed* cost base for it. His cost base for the land then was \$40,000.

In 2000, she sold the land for capital proceeds of \$150,000.

Her discount capital gain on the land is \$110,000 (equal to the capital proceeds less the cost base for the land without indexation).

2 Subsection 115-30(1)

Repeal the subsection, substitute:

Entity is treated as acquiring some CGT assets early

- (1) Sections 115-25, 115-40 and 115-45 (the *affected sections*) apply as if an entity (the *acquirer*) had acquired a *CGT asset described in an item of the table at the time mentioned in the item:

When the acquirer is treated as having acquired a CGT asset		
Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
1	A *CGT asset the acquirer *acquired in circumstances giving rise to a *same-asset roll-over	(a) when the entity that owned the CGT asset before the roll-over *acquired it; or (b) if the asset has been involved in an unbroken series of roll-overs—when the entity that owned it before the first roll-over in the series *acquired it
2	A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over	(a) when the acquirer acquired the original asset involved in the roll-over; or (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs—when the acquirer acquired the original asset involved in the first roll-over in the series
3	A *CGT asset the acquirer *acquired as the *legal personal representative of a deceased individual, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset

When the acquirer is treated as having acquired a CGT asset

Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
4	A *CGT asset that *passed to the acquirer as the beneficiary of a deceased individual's estate, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
5	A *CGT asset that: (a) the acquirer *acquired as the *legal personal representative of a deceased individual; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
6	A *CGT asset that: (a) *passed to the acquirer as the beneficiary of a deceased individual's estate; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
7	The interest (or share of an interest) the acquirer is taken under section 128-50 to have *acquired in another *CGT asset that the acquirer and another individual held as joint tenants immediately before he or she died	When the deceased *acquired his or her interest in the other CGT asset

Note: Under section 128-50, the acquirer is taken to acquire the interest of a deceased individual in a CGT asset the acquirer and the deceased held as joint tenants immediately before the deceased's death (or an equal share of that interest if there are other surviving joint tenants).

3 Section 115-45

Repeal the section, substitute:

115-45 Capital gain from equity in an entity with newly acquired assets

Purpose of this section

- (1) The purpose of this section is to deny you a *discount capital gain on your *share in a company or interest in a trust if you would *not*
-

have had *discount capital gains on the majority of *CGT assets (by cost and by value) underlying the share or interest if:

- (a) you had owned them for the time the company or trust did; and
- (b) *CGT events had happened to them when the CGT event happened to your share or interest.

When a capital gain is not a discount capital gain

(2) Your *capital gain from a *CGT event happening to:

- (a) your *share in a company; or
- (b) your *trust voting interest, unit or other fixed interest in a trust;

is *not* a **discount capital gain** if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 115-5 and subsection 115-30(2).

Note: This section does not prevent a capital gain from being a discount capital gain if:

- (a) there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 115-50); or
- (b) the capital gain is from CGT event E4 due to payments from the discounted parts of the trust's discount capital gains (see section 115-60).

You had at least 10% of the equity in the entity before the event

(3) The first condition is that, just before the *CGT event, you and your *associates beneficially owned:

- (a) at least 10% by value of the *shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or
- (b) at least 10% of the *trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

Cost bases of new assets are more than 50% of all cost bases of entity's assets

(4) The second condition is that the total of the *cost bases of *CGT assets that the company or trust owned at the time of the *CGT event and had *acquired *less* than 12 months before then is *more*

than half of the total of the *cost bases of the *CGT assets the company or trust owned at the time of the event.

Note: Section 115-30 may affect the time when the company or trust is treated as having acquired a CGT asset.

Net capital gain on entity's new assets would be more than 50% of net capital gain on all the entity's assets

- (5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).
- (6) Work out the amount that would be the *net capital gain of the company or trust for the income year if:
- (a) just before the *CGT event, the company or trust had *disposed of all of the *CGT assets that it owned then and had *acquired less than 12 months before the *CGT event; and
 - (b) it had received the market value of those assets for the disposal; and
 - (c) the company or trust did not have any *capital gains or *capital losses from *CGT events other than the disposal; and
 - (d) the company or trust did not have a *net capital loss for an earlier income year.

Note: Section 115-30 may affect the time when the company or trust is treated as having acquired a CGT asset.

- (7) Work out the amount that would be the *net capital gain of the company or trust for the income year if:
- (a) just before the *CGT event, the company or trust had *disposed of all of the *CGT assets that it owned then; and
 - (b) it had received the market value of those assets for the disposal; and
 - (c) all of the *capital gains and *capital losses from those assets were taken into account in working out the net capital gain, despite any rules providing that one or more of those capital gains or losses are not to be taken into account in working out the net capital gain; and
 - (d) the company or trust did not have any *capital gains or *capital losses from *CGT events other than the disposal; and

-
- (e) the company or trust did not have a *net capital loss for an earlier income year.

4 At the end of Subdivision 115-A

Add:

[The next section is section 115-60.]

115-60 Discount capital gain from CGT event E4

Purpose of this section

- (1) The purpose of this section is to ensure that section 115-45 does *not* prevent your *capital gain from *CGT event E4 happening in the income year in relation to your unit or interest in a trust from being a *discount capital gain, if the gain is attributable to *CGT assets the trust *acquired at least 12 months before the event.

Note: Basically, you make a capital gain from CGT event E4 if the trustee of a trust makes one or more payments to you in relation to your interest in the trust, and the parts of those payments that are *not* included in your assessable income add up to more than the cost base of your interest: see section 104-70.

- (2) Section 115-45 does *not* prevent your *capital gain described in subsection (1) of this section from being a *discount capital gain if the gain is *not* more than the sum of the amounts that are:
- (a) amounts of the non-assessable parts (mentioned in section 104-70) of the payments made to you in the income year by the trustee in respect of the unit or interest as described in that section; and
 - (b) attributable to *discount capital gains made by the trust.

Note 1: The non-assessable parts of the payments may be from amounts not included in the trust's net income under Division 6 of Part III of the *Income Tax Assessment Act 1936*, such as the discount percentage of amounts of discount capital gains of the trust remaining after applying any capital losses and net capital losses of the trust.

Note 2: If your capital gain from CGT event E4 is a discount capital gain, you must work it out using the cost base of your unit or interest in the trust worked out under section 115-20 without reference to indexation, despite Divisions 110 and 114 (which are about indexation).

5 After subsection 115-215(4)

Insert:

- (4A) To avoid doubt, subsection (3) treats you as having a *capital gain for the purposes of Division 102, despite section 102-20.

6 Application of amendments

The amendments of Division 115 of the *Income Tax Assessment Act 1997* made by this Schedule apply to assessments for the income year including 21 September 1999 and for later income years, in relation to CGT events happening after 11.45 am (by legal time in the Australian Capital Territory) on that day.

*[Minister's second reading speech made in—
House of Representatives on 29 June 2000
Senate on 28 August 2000]*

(125/00)