





# **Taxation Laws Amendment Act (No. 2) 2004**

**No. 20, 2004**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Taxation Laws Amendment Act (No. 2) 2004**

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

*[Assented to 23 March 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 2004*.

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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>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 March 2004
2. Schedules 1 to 5	The day on which this Act receives the Royal Assent.	23 March 2004
3. Schedule 6	1 July 2000.	1 July 2000
4. Schedules 7 and 8	The day on which this Act receives the Royal Assent.	23 March 2004

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 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—Amendment of the A New Tax System (Goods and Services Tax) Act 1999**

**1 Section 195-1 (paragraph (b) of the definition of *first aid or life saving course*)**

Omit “a body that is”, substitute “an entity”.

**2 Section 195-1 (subparagraph (b)(i) of the definition of *first aid or life saving course*)**

Before “registered”, insert “that is”.

**3 Section 195-1 (subparagraph (b)(i) of the definition of *first aid or life saving course*)**

Omit “bodies”, substitute “entities”.

**4 Section 195-1 (subparagraph (b)(ii) of the definition of *first aid or life saving course*)**

Before “approved”, insert “that is”.

**5 Section 195-1 (at the end of paragraph (b) of the definition of *first aid or life saving course*)**

Add:

- ; or (iii) that uses, as the instructor for the course, a person who holds a training qualification for that course that was issued by Austswim Limited (ACN 097 784 122); or
- (iv) that uses, as the instructor for the course, a person who holds a training qualification for that course that was issued by Surf Life Saving Australia Limited (ACN 003 147 180); or
- (v) that uses, as the instructor for the course, a person who holds a training qualification for that course that was issued by The Royal Life Saving Society—Australia (ACN 008 594 616); or
- (vi) that uses, as the instructor for the course, a person who holds a training qualification for that course that is a

qualification (in life saving) specified in, or of a kind specified in, the regulations.

## **6 Application**

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting on or after 1 July 2000.

## **Schedule 2—Value shifting: transitional exclusion for certain indirect value shifts relating mainly to services**

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

#### **1 At the end of Division 727**

Add:

#### **727-230 Transitional exclusion for certain indirect value shifts relating mainly to services**

- (1) An indirect value shift does not have consequences under Division 727 of the *Income Tax Assessment Act 1997* if, to the extent of at least 95% of their total market value, the greater benefits consist entirely of:
  - (a) a right to have services that are covered by section 727-240 of that Act provided directly by the losing entity to the gaining entity; or
  - (b) services that are covered by that section and have been, are being, or are to be, so provided;or both, and the IVS time for the scheme that results in the indirect value shift is before:
  - (c) unless paragraph (d) applies—the start of the losing entity’s 2003-2004 income year; or
  - (d) if the losing entity’s 2002-2003 income year ends before 30 June 2003—the start of the losing entity’s 2004-2005 income year.

*How subsection (1) applies to a presumed indirect value shift*

- (2) For the purposes of section 727-850 (about a presumed indirect value shift affecting a realisation event) of the *Income Tax Assessment Act 1997*, subsection (1) of this section applies to the presumed indirect value shift:
  - (a) on the assumptions set out in subsection 727-865(3) of that Act; and

**Schedule 2** Value shifting: transitional exclusion for certain indirect value shifts relating mainly to services

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(b) as if the exclusion in subsection (1) of this section were an exclusion in Subdivision 727-C of that Act.

## **Schedule 3—Amendments relating to personal services income**

### **Part 1—Amendments**

#### *Fringe Benefits Tax Assessment Act 1986*

##### **1 After section 61F**

Insert:

##### **61G Reduction of taxable value of fringe benefits if certain deductions relating to payments to associates are not allowed**

If:

- (a) a fringe benefit is provided in the year of tax in respect of the employment of a current employee; and
- (b) the person providing the benefit cannot deduct an amount under the *Income Tax Assessment Act 1997* for providing the benefit because of section 85-15, 85-20 or 86-60 of that Act; the amount that, but for this section, would be the taxable value of the fringe benefit in relation to the year of tax is reduced by the amount mentioned in paragraph (b).

Note: Sections 85-15, 85-20 and 86-60 of the *Income Tax Assessment Act 1997* limit the extent to which a person can deduct payments to associates that relate to personal services income.

#### *Income Tax Assessment Act 1997*

##### **2 Subsection 86-20(1) (note 2)**

Repeal the note, substitute:

Note 2: If the amount of the deductions exceeds the amount of the personal services income, a deduction for the excess is available to you under section 86-27. The personal services entity cannot deduct the amount of the excess: see section 86-87.

##### **3 After section 86-25**

Insert:

### **86-27 Deduction for net personal services income loss**

If your personal services deduction amount exceeds your unreduced personal services income, then you can deduct the excess amount. For this purpose:

- (a) your *personal services deduction amount* is the amount of deductions relating to your \*personal services income worked out under step 1 of the method statement in section 86-20, increased by the amount (if greater than zero) worked out under step 4 of the method statement; and
- (b) your *unreduced personal services income* is the personal services income that would have been included in your assessable income for the income year if there had not been any reduction under section 86-20.

### **4 After section 86-85**

Insert:

### **86-87 Personal services entity cannot deduct net personal services income loss**

The total amount of the deductions to which a \*personal services entity is entitled for an income year is reduced by the amount of any deduction that an individual, whose \*personal services income is ordinary or statutory income of the entity for that income year, is entitled to under section 86-27.

## **Part 2—Application of amendments**

### **5 Application of amendment in item 1**

The amendment made by item 1 of this Schedule applies to fringe benefits provided after 30 June 2000.

### **6 Application of amendments in items 2, 3 and 4**

The amendments made by items 2, 3 and 4 of this Schedule apply to assessments for the 2000-2001 income year and each subsequent income year.

## Schedule 4—Sugar industry exit grants

### *Income Tax Assessment Act 1936*

#### **1 Subsection 170(10AA) (before table item 1)**

Insert:

1A      Subsection 15-65(2)                      Sugar industry exit grant becomes assessable  
because of breach of undertaking

### *Income Tax Assessment Act 1997*

#### **2 Section 10-5 (after table item headed “subsidies”)**

Insert:

**sugar industry exit grants**  
..... 15-65

#### **3 Section 11-10 (at the end of the table)**

Add:

**sugar industry exit grants**  
..... 53-10

#### **4 At the end of Division 15**

Add:

#### **15-65 Sugar industry exit grants**

- (1) Your assessable income includes the amount of a sugar industry exit grant that you receive under the program known as the Sugar Industry Reform Program if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of a sugar industry \*enterprise within 5 years after receiving the grant.
- (2) Your assessable income also includes the amount of a sugar industry exit grant that you receive under that program if:
  - (a) as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any

agricultural \*enterprise within 5 years after receiving the grant; and

(b) you become the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within that period.

(3) The amount is included for the income year in which you receive it.

Note: You will be required to repay the grant if you re-enter the sugar industry within the 5 year period. If you repay the grant in an income year after the year in which you receive it, section 59-30 will exclude the grant from your assessable income.

### **5 Section 53-10 (after table item 4A)**

Insert:

4B	<b>Sugar industry exit grant</b>	The program known as the Sugar Industry Reform Program	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant
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### **6 Section 53-10 (note)**

Omit “Note”, substitute “Note 1”.

### **7 At the end of section 53-10**

Add:

Note 2: A sugar industry exit grant referred to in table item 4B is included in assessable income if the recipient becomes the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within 5 years after receiving the grant: see subsection 15-65(2).

### **8 At the end of subsection 118-37(1)**

Add:

; (f) a sugar industry exit grant that you receive under the program known as the Sugar Industry Reform Program.

### **9 Application**

The amendments made by this Schedule apply to sugar industry exit grants received on or after 1 February 2003.

## **Schedule 5—Foreign resident etc. withholding**

### ***Taxation Administration Act 1953***

#### **1 Section 12-7 in Schedule 1**

After “This Division”, insert “(other than the provisions mentioned in subsection (2))”.

#### **2 At the end of section 12-7 in Schedule 1**

Add:

- (2) The provisions are:
  - (a) Subdivision 12-FB; and
  - (b) any other provisions in this Division to the extent that they apply in relation to that Subdivision.

## **Schedule 6—Demutualisation of friendly societies**

### ***Income Tax Assessment Act 1936***

#### **1 Subparagraph 121AB(1)(b)(iii)**

Omit “members.”, substitute “members; or”.

#### **2 At the end of subsection 121AB(1)**

Add:

- (c) that satisfies all of the following conditions:
  - (i) at 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995, it was a friendly society (within the meaning of this Act as in force at that time);
  - (ii) it was an insurance company on 1 July 1999;
  - (iii) it does not have capital divided into shares held by its members.

## **Schedule 7—Roll-over relief for partnerships that are STS taxpayers**

### *Income Tax Assessment Act 1997*

#### **1 Subsection 40-340(3) (note)**

Omit “Note”, substitute “Note 1”.

#### **2 At the end of subsection 40-340(3)**

Add:

Note 2: There can also be roll-over relief as a result of a variation in the constitution of a partnership or in the interests of the partners where the transferor and transferee partnerships are STS taxpayers and certain conditions are met: see section 328-240.

#### **3 At the end of subsection 328-175(3)**

Add:

Note: A choice made by a transferor partnership under this subsection for an asset applies also to the transferee partnership if roll-over relief under section 328-240 is chosen: see section 328-245.

#### **4 At the end of section 328-190**

Add:

Note: The amounts that a transferor partnership and transferee partnership can deduct under this section are modified if roll-over relief under section 328-240 is chosen: see section 328-247.

#### **5 At the end of section 328-200**

Add:

Note: A transferor partnership does not subtract anything for certain balancing adjustment events under paragraph (a) of step 2 if roll-over relief under section 328-240 is chosen: see section 328-245.

#### **6 At the end of subsection 328-205(1)**

Add:

Note 3: This subsection does not apply to a transferee partnership for certain assets if roll-over relief under section 328-240 is chosen: see section 328-257.

## **7 At the end of subsection 328-225(1)**

Add:

Note: This section is modified in its application to a transferee partnership for certain assets if roll-over relief under section 328-240 is chosen: see section 328-257.

## **8 At the end of Subdivision 328-D**

Add:

### **328-240 Roll-over relief for partnership changes**

- (1) There is roll-over relief if:
- (a) \*balancing adjustment events occur for \*depreciating assets on a day (the **BAE day**) because of subsection 40-295(2) as a result of a variation in the constitution of a partnership or in the interests of the partners; and
  - (b) deductions for the assets are calculated under this Subdivision; and
  - (c) the entity or entities that had an interest in the assets just before the balancing adjustment events occurred (the **transferor**) and the entity or entities that have an interest in the assets just after the events occurred (the **transferee**) jointly choose the roll-over relief; and
  - (d) the conditions in section 328-243 are met.

Note: There will be another BAE day in the income year if there is a variation in the constitution of the transferee partnership or in the interests of the partners and a further roll-over is chosen.

- (2) The choice must:
- (a) be in writing; and
  - (b) contain enough information about the transferor's \*holding of the assets for the transferee to work out how this Subdivision applies to the transferee's holding of the assets; and
  - (c) be made within 6 months after the end of the transferee's income year (the **BAE year**) in which the \*balancing adjustment events occurred, or within a longer period allowed by the Commissioner.
- (3) If a person dies before the end of the time allowed for jointly choosing roll-over relief, the trustee of the person's estate may be a party to the choice.

- (4) The transferor must keep the choice or a copy of it for 5 years after the \*balancing adjustment events occurred.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) The transferee must keep the choice or a copy of it until the end of 5 years after the next \*balancing adjustment event occurs for any of the \*depreciating assets.

Penalty: 30 penalty units.

### **328-243 Conditions for roll-over relief**

- (1) The transferee must become an \*STS taxpayer for the BAE year.
- (2) All of the \*depreciating assets that, just before the \*balancing adjustment events occurred, were:
- (a) \*held by the transferor; and
  - (b) allocated to the transferor's \*general STS pool or \*long life STS pool;
- must be held by the transferee just after those events occurred.

### **328-245 Consequences of roll-over**

- (1) The transferor does not subtract anything for the \*balancing adjustment events under:
- (a) paragraph (a) of step 2 in the method statement in section 328-200; or
  - (b) subsection 328-210(2).
- (2) Subsection 328-215(4) does not apply to the \*balancing adjustment events for the transferor.
- (3) A choice made by the transferor for a \*depreciating asset under subsection 328-175(3) (about primary production assets) applies to the transferee as if it had been made by the transferee.
- (4) Sections 328-247 to 328-257 have effect.

### **328-247 Pool deductions**

- (1) The amount that can be deducted for the transferor's \*general STS pool and \*long life STS pool for the BAE year under subsection 328-190(1) or section 328-210 for the BAE year is split equally between:
  - (a) the transferor and the transferee; or
  - (b) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the BAE year and a roll-over is chosen for each variation—the partnerships concerned.

**Example:** John and Dave operate a dry cleaning business in partnership (the transferor). The transferor is an STS taxpayer. On the 90th day of an income year, Jonathan joins the partnership. The new partnership (the transferee) becomes an STS taxpayer for the income year. Had there been no partnership change, a deduction of \$6,600 would have been available for the transferor's general STS pool. The transferor and transferee jointly choose the roll-over.

The deduction available to the transferor and the transferee for the pool under subsection 328-190(1) is \$3,300 each.

- (2) The transferor cannot deduct any amount for the transferor's \*general STS pool or \*long life STS pool for an income year after the BAE year.

### **328-250 Deductions for assets first used in BAE year**

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(1) (low-cost assets) or subsection 328-190(2) (assets that will be pooled) for a \*depreciating asset that the transferor or transferee started to use, or have \*installed ready for use, for a \*taxable purpose during the BAE year.

#### *Asset first used by transferor*

- (2) If the asset was first used or \*installed ready for use by the transferor, the amount that can be deducted under subsection 328-180(1) or subsection 328-190(2) for the asset for the BAE year is split equally between:
  - (a) the transferor and the transferee; or
  - (b) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the

BAE year and a roll-over is chosen for each variation—the partnerships concerned.

*Asset first used by transferee*

- (3) If the asset was first used or \*installed ready for use by the transferee:
- (a) the transferor cannot deduct anything for the asset for the BAE year; and
  - (b) the amount that can be deducted under subsection 328-180(1) or 328-190(2) for the asset for the BAE year is:
    - (i) deductible by the transferee; or
    - (ii) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the BAE year and a roll-over is chosen for each variation—split equally between the partnerships concerned (except ones that did not use the asset or have it installed ready for use).

Example: To continue the example from section 328-247, the transferee buys a low-cost asset on the 150th day of the BAE year for \$800.

On the 250th day of the year, Evan joins the transferee partnership. The new transferee partnership becomes an STS taxpayer for the BAE year, and a further roll-over is chosen.

The original transferor cannot deduct anything for the asset. The original transferee (now a transferor) and the new transferee can deduct \$400 each.

*Special rule for low-cost assets*

- (4) Subsection (5) applies if:
- (a) the transferor started to use, or have \*installed ready for use, a \*low-cost asset during the BAE year; and
  - (b) a \*balancing adjustment event occurs for that asset before the BAE day.
- (5) The transferee cannot deduct anything for the asset for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

### **328-253 Deductions for cost addition amounts**

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(2) or 328-190(3) for expenditure incurred by the transferor or transferee during the BAE year that is included in the second element of the \*cost of a depreciating asset.

#### *Expenditure incurred by transferor*

- (2) If the expenditure was incurred by the transferor, the amount that can be deducted under subsection 328-180(2) or 328-190(3) for the BAE year is split equally between:
- (a) the transferor and the transferee; or
  - (b) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the BAE year and a roll-over is chosen for each variation—the partnerships concerned.

#### *Expenditure incurred by transferee*

- (3) If the expenditure was incurred by the transferee:
- (a) the transferor cannot deduct anything for the expenditure for the BAE year; and
  - (b) the amount that can be deducted under subsection 328-180(1) or 328-190(2) for the expenditure for the BAE year is:
    - (i) deductible by the transferee; or
    - (ii) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the BAE year after the expenditure was incurred and a roll-over is chosen for each variation—split equally between the partnerships concerned.

#### *Special rule for expenditure on low-cost assets*

- (4) Subsection (5) applies if:
- (a) the transferor incurred the expenditure in relation to a \*low-cost asset; and
  - (b) a \*balancing adjustment event occurs for that asset before the BAE day.

- (5) The transferee cannot deduct anything for the expenditure for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

### **328-255 Closing pool balance etc. below zero**

- (1) This section applies if:
- (a) the \*closing pool balance of the transferor's \*general STS pool or \*long life STS pool for the BAE year is less than zero; or
  - (b) the amount worked out under subsection 328-210(2) for that pool for the BAE year is less than zero;
- because a \*balancing adjustment event occurred for an asset allocated to that pool during that year.
- (2) The amount included in assessable income under subsection 328-215(2) is split equally between:
- (a) the transferor and transferee; or
  - (b) if there are 2 or more variations in the constitution of a relevant partnership or in the interests of the partners for the BAE year and a roll-over is chosen for each variation—the partnerships concerned.

### **328-257 Taxable use**

- (1) This section applies to \*depreciating assets (the *previously held assets*) that were \*held by the transferor just before the \*balancing adjustment events occurred.
- (2) Subsection 328-205(1) (about estimates of taxable use) does not apply to previously held assets in the hands of the transferee for the BAE year. Instead, the transferee uses for the BAE year:
- (a) the estimate made by the transferor under that subsection for the asset; or
  - (b) if the transferor had made one or more estimates for the asset under subsection 328-225(1) that resulted in an adjustment under section 328-225 (about change in business use)—that estimate or the most recent of those estimates.
- (3) Section 328-225 applies to the transferee for each previously held asset for income years after the BAE year as if:

- (a) the transferee had \*held the asset during the period that the transferor held it; and
- (b) estimates applicable to the transferor for the asset under that section were also applicable to the transferee.

## **9 Application**

The amendments made by this Schedule apply to balancing adjustment events occurring on or after 1 July 2001.

## Schedule 8—Consolidation

### Part 1—Making and revoking certain choices

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

##### 1 Subsection 701-5(1)

After “may”, insert “, subject to subsection (3),”.

##### 2 Subsections 701-5(2) and (3)

Repeal the subsections, substitute:

###### *Period for making choice*

- (2) The choice must be made by the later of:
- (a) the end of the period described in subsection 703-50(3) of the *Income Tax Assessment Act 1997* for giving the Commissioner the choice under section 703-50 of that Act that the group is taken to be consolidated; and
  - (b) the end of 31 December 2004.

###### *Agreement of other entities required in certain cases*

- (3) If the choice is to be made after the end of the period mentioned in paragraph (2)(a) and before the end of the day mentioned in paragraph (2)(b), it cannot be made unless each entity in relation to which the conditions in subsection (5) are satisfied has agreed to it being made.

###### *Choice is irrevocable in certain circumstances*

- (4) The choice cannot be revoked unless:
- (a) the revocation takes place before the end of 31 December 2004; and
  - (b) each entity in relation to which the conditions in subsection (5) are satisfied has agreed to the revocation.
- (5) For the purposes of subsections (3) and (4), the conditions are that:
- (a) the entity (the *leaving entity*) ceased to be a subsidiary member of the group before the choice was made (in a

- subsection (3) case) or before the revocation took place (in a subsection (4) case); and
- (b) an asset became that of the leaving entity because section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* ceased to apply when the leaving entity ceased to be a subsidiary member; and
  - (c) the asset had become that of the head company because that section applied when a chosen transitional entity (whether or not the same entity as the leaving entity) became a subsidiary member.

### **3 Before Subdivision 707-C**

Insert:

#### **Subdivision 707-A—Transfer of previously unutilised losses to head company**

##### **707-145 Certain choices to cancel the transfer of a loss may be revoked**

Subsection 707-145(3) of the *Income Tax Assessment Act 1997* does not apply if:

- (a) the revocation of the choice mentioned in that subsection takes place before 1 January 2005; and
- (b) each entity in relation to which the following conditions are satisfied has agreed to the revocation:
  - (i) the entity (the *leaving entity*) ceased to be a subsidiary member of the group before the revocation took place;
  - (ii) an asset became that of the leaving entity because section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* ceased to apply when the leaving entity ceased to be a subsidiary member;
  - (iii) the asset had become that of the head company because that section applied when the joining entity to which Subdivision 707-A of that Act applies (whether or not the same entity as the leaving entity) became a subsidiary member.

### **4 Subsections 707-325(5) and (6)**

Repeal the subsections, substitute:

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*Choice to work out available fraction using this section*

- (5) The transferee may choose to use a fixed percentage (greater than 0% and not more than 100%) of the value donor's modified market value to work out the available fraction for the bundle. The transferee may do so only by the later of:
  - (a) the day on which it lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; and
  - (b) the end of 31 December 2004.
- (6) The choice cannot be amended, or revoked, after 31 December 2004.

**5 Subsection 707-327(5)**

Repeal the subsection, substitute:

*Choice to treat value donor's loss as included in bundle*

- (5) A choice for the purposes of subsection (4):
  - (a) may be made only by the later of:
    - (i) the day on which the transferee lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; and
    - (ii) the end of 31 December 2004; and
  - (b) cannot be revoked after 31 December 2004.

**6 Subsection 707-328A(4)**

Repeal the subsection, substitute:

*Choice*

- (4) A choice for the purposes of paragraph (1)(e):
  - (a) may be made only by the later of:
    - (i) the day on which the transferee lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses

transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; and

- (ii) the end of 31 December 2004; and
- (b) cannot be amended, or revoked, after 31 December 2004.

## **7 Subsections 707-350(5) and (6)**

Repeal the subsections, substitute:

### *Making choice*

- (5) The transferee may choose that this section apply to the utilisation for any income year of all losses (of any sort) in the bundle that meet the conditions in paragraphs (1)(a), (b), (c) and (d). The transferee may do so only by the later of:
  - (a) the day on which it lodges its income tax return for the first income year for which it could utilise any losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997* (as described in subsection (1) or otherwise); and
  - (b) the end of 31 December 2004.

### *When choice has effect*

- (6) The choice has effect for that income year and all later income years (and cannot be revoked after 31 December 2004).

## **8 After section 719-305**

Insert:

### **719-310 Certain choices may be revoked**

Subsection 719-325(7) of the *Income Tax Assessment Act 1997* does not apply if the revocation of the choice mentioned in that subsection takes place before 1 January 2005.

## Part 2—Research and development

### *Income Tax Assessment Act 1936*

#### 9 Section 73BAA

Omit “, 73BAC, 73BAD, 73BAE and”, substitute “to”.

#### 10 After section 73BAB

Insert:

#### **73BABA History for purposes of eligibility for tax offset: joining entity**

If:

- (a) a company becomes a subsidiary member of a consolidated group or MEC group; and
- (b) things happening in relation to the company before it became a subsidiary member are, because of section 701-5 (the entry history rule) of the *Income Tax Assessment Act 1997*, taken into account as things happening in relation to the head company of the group in applying paragraph 73J(1)(c) or (d) of this Act to determine for the head company core purposes whether the head company is eligible to choose a tax offset; the things happening are not taken into account as mentioned in paragraph (b).

Note: The heading to section 73BAC is altered by inserting “for purposes of sections 73P to 73Z” after “history”.

#### 11 After section 73BAC

Insert:

#### **73BACA History for purposes of eligibility for tax offset: leaving entity**

If:

- (a) a company ceases to be a subsidiary member of a consolidated group or MEC group; and

- (b) while the company was a subsidiary member, things happened in relation to an entity with which, if section 701-1 (the single entity rule) of the *Income Tax Assessment Act 1997* were disregarded, the company would have been grouped (within the meaning of section 73L of this Act); and
- (c) those things would, if section 701-1 of the *Income Tax Assessment Act 1997* were disregarded, have been taken into account in applying paragraph 73J(1)(c) or (d) of this Act to determine whether the company is eligible to choose a tax offset; and
- (d) the things are not also things that, because of section 701-40 (the exit history rule) of the *Income Tax Assessment Act 1997*, are taken into account as things happening in relation to an eligible asset etc. (within the meaning of that section) of the company in applying paragraph 73J(1)(c) or (d) of this Act to determine for the entity core purposes whether the company is eligible to choose a tax offset;

the things are taken into account in applying paragraph 73J(1)(c) or (d) of this Act to determine whether the company is eligible to choose a tax offset.

Note: The heading to section 73BAD is altered by inserting “**for purposes of sections 73P to 73Z**” after “**expenditure**”.

### **Part 3—Technical corrections**

#### *Income Tax Assessment Act 1997*

##### **12 Paragraph 721-25(3)(b)**

Omit “approved form”, substitute “\*approved form”.

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

##### **13 Division 707 (heading)**

Repeal the heading, substitute:

**Division 707—Losses for head companies when entities  
become members etc.**

## **Part 4—Application of amendments**

### **14 Application of amendments made by this Schedule**

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

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*[Minister's second reading speech made in—  
House of Representatives on 4 December 2003  
Senate on 8 March 2004]*

(206/03)

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