Tax Laws Amendment (Transfer of Provisions) Act 2010

No. 79, 2010

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Tax Laws Amendment (Transfer of Provisions) Act 2010

No. 79, 2010

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

[*Assented to 29 June 2010*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Transfer of Provisions) Act 2010*.

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.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2010
2. Schedule 1	1 July 2010.	1 July 2010
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 4.	1 July 2010
4. Schedules 3 to 5	1 July 2010.	1 July 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Collection and recovery of tax

Part 1—Main amendments

Income Tax Assessment Act 1936

1 After section 169

Insert:

169AA Consolidated assessments

(1) This section applies if 2 or more persons (the ***recipients***) are in receipt of income, or of profits or gains of a capital nature, for or on behalf of:

(a) a non-resident; or

(b) a person absent from Australia.

(2) The Commissioner may, if it appears to him or her to be expedient to do so:

(a) consolidate all or any of the assessments of the income, profits or gains; and

(b) declare one of the recipients to be the agent of the non-resident or absent person in respect of the consolidated assessment; and

(c) require the agent to pay income tax on the amount assessed.

(3) If the Commissioner does so, the agent is liable to pay the tax.

2 Part VI

Repeal the Part.

Income Tax Assessment Act 1997

3 After Division 4

Insert:

Division 5—How to work out when to pay your income tax

Table of Subdivisions

Guide to Division 5
5-A How to work out when to pay your income tax

Guide to Division 5

5-1 What this Division is about

If your assessed income tax liability exceeds the credits available to you under the PAYG system, this Division explains *when* you must pay the excess to the Commissioner.

If your assessment is amended so that you must pay income tax, or pay more income tax than under the previous assessment, this Division explains:

(a) *when* you must pay the additional tax; and

(b) *when* any associated interest charges must be paid.

Note: For provisions about the collection and recovery of income tax and other tax-related liabilities, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

Subdivision 5-A—How to work out when to pay your income tax

Table of sections

5-5 When income tax is payable
5-10 When shortfall interest charge is payable
5-15 General interest charge payable on unpaid income tax or shortfall interest charge

5-5 When income tax is payable

Scope

(1) This section tells you when income tax you must pay for a *financial year is due and payable.

Note: The Commissioner may defer the time at which the income tax is due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) The income tax is only due and payable if the Commissioner makes an *assessment of your income tax for the year.

(3) However, if the Commissioner does make an *assessment of your income tax for the year, the tax may be taken to have been due and payable at a time before your assessment was made.

Note: This is to ensure that general interest charge begins to accrue from the same date for all like entities. General interest charge on unpaid income tax is calculated from when the tax is due and payable, not from when the assessment is made: see section 5-15.

Original assessments—self-assessment entities

(4) If you are a *self-assessment entity, the income tax is due and payable on the first day of the sixth month after the end of the income year.

Example: If your income year is the same as the financial year, your income tax would be due and payable on 1 December.

Original assessments—other entities

(5) If you are *not* a *self-assessment entity, the income tax is due and payable 21 days after the day (the ***return day***) on or before which you are required to lodge your *income tax return with the Commissioner.

Note: For rules about income tax returns and when they are due, see Part IV of the *Income Tax Assessment Act 1936.*

(6) However, if you lodge your return *on or before* the return day and the Commissioner gives you a notice of *assessment (other than an amended assessment) *after* the return day, the income tax is due and payable 21 days after the Commissioner gives you the notice.

Amended assessments

(7) If the Commissioner amends your *assessment, any extra income tax resulting from the amendment is due and payable 21 days after the day on which the Commissioner gives you notice of the amended assessment.

Note: Shortfall interest charge may be payable, on any amount of extra income tax payable as a result of the amended assessment, for each day in the period that:

(a) starts at the time income tax was due and payable on your original assessment; and

(b) ends the day before the day on which the Commissioner gives you notice of the amended assessment.

5-10 When shortfall interest charge is payable

An amount of *shortfall interest charge that you are liable to pay is due and payable 21 days after the day on which the Commissioner gives you notice of the charge.

Note: Shortfall interest charge is imposed if the Commissioner amends an assessment and the amended assessment results in an increase in some tax payable. For provisions about liability for shortfall interest charge, see Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

5-15 General interest charge payable on unpaid income tax or shortfall interest charge

If an amount of income tax or *shortfall interest charge that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) starts at the beginning of the day on which the amount was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the income tax or shortfall interest charge;

(ii) general interest charge on any of the income tax or shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Note 2: Shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

4 Subsection 995-1(1)

Insert:

self-assessment entity means a full self-assessment taxpayer (within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*).

5 Subsection 995-1(1)

Insert:

statutory demand has the same meaning as in the *Corporations Act 2001*.

Taxation Administration Act 1953

6 Before subsection 255-10(1) in Schedule 1

Insert:

Deferrals for particular taxpayers

7 After subsection 255-10(2) in Schedule 1

Insert:

Deferrals for classes of taxpayers

(2A) The Commissioner, having regard to the circumstances of the case, may, by notice published on the Australian Taxation Office website, defer the time at which amounts of *tax-related liabilities are, or would become, due and payable by a class of taxpayers (whether or not the liabilities have already arisen).

(2B) If the Commissioner does so, that time is varied accordingly.

Note: General interest charge and any other relevant penalties, if applicable for any unpaid amounts of the liabilities, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the *Income Tax Assessment Act 1997*.

(2C) A notice published under subsection (2A) is not a legislative instrument.

Deferral does not affect time for giving form

8 Subsection 255-10(3) in Schedule 1

Omit "subsection (1)", substitute "this section".

9 At the end of Division 255 in Schedule 1

Add:

Subdivision 255-D—Security deposits

Table of sections

255-100 Commissioner may require security deposit
255-105 Notice of requirement to give security
255-110 Offence

255-100 Commissioner may require security deposit

(1) The Commissioner may require you to give security for the due payment of an existing or future *tax-related liability of yours if:

(a) the Commissioner has reason to believe that:

(i) you are establishing or *carrying on an *enterprise in Australia; and

(ii) you intend to carry on that enterprise for a limited time only; or

(b) the Commissioner reasonably believes that the requirement is otherwise appropriate, having regard to all relevant circumstances.

Note: A requirement to give security under this section is *not* a tax-related liability. As such, the collection and recovery provisions in this Part do not apply to it.

(2) The Commissioner may require you to give the security:

(a) by way of a bond or deposit (including by way of payments in instalments); or

(b) by any other means that the Commissioner reasonably believes is appropriate.

(3) The Commissioner may require you to give security under this section:

(a) at any time the Commissioner reasonably believes is appropriate; and

(b) as often as the Commissioner reasonably believes is appropriate.

Example: The Commissioner may require additional security if he or she reasonably believes that the original security requirement underestimated the amount of the likely tax-related liability.

255-105 Notice of requirement to give security

Commissioner must give notice of requirement to give security

(1) If the Commissioner requires you to give security under section 255-100, he or she must give you written notice of the requirement.

Content of notice

(2) The notice must:
  (a) state that you are required to give the security to the Commissioner; and
  (b) explain why the Commissioner requires the security; and
  (c) set out the amount of the security; and
  (d) describe the means by which you are required to give the security under subsection 255-100(2); and
  (e) specify the time by which you are required to give the security; and
  (f) explain how you may have the Commissioner's decision to require you to give the security reviewed.

(3) To avoid doubt, a single notice may relate to security for the payment of 2 or more existing or future *tax-related liabilities, but must comply with subsection (2) in relation to each of them.

When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Miscellaneous

(5) A failure to comply with this section does not affect the validity of the requirement to give the security under section 255-100.

255-110 Offence

You commit an offence if:

(a) the Commissioner requires you to give security under section 255-100; and

(b) you fail to give that security as required.

Penalty: 100 penalty units.

10 At the end of Part 4-15 in Schedule 1

Add:

Division 268—Estimates and recovery of PAYG withholding liabilities

Table of Subdivisions

Guide to Division 268
268-A Object
268-B Making estimates
268-C Liability to pay estimates
268-D Reducing and revoking estimates
268-E Late payment of estimates
268-F Miscellaneous

Guide to Division 268

268-1 What this Division is about

This Division enables the Commissioner to make an estimate of amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding), and to recover the amount of the estimate.

If you are given an estimate, you are liable to pay the amount of the estimate. That liability is distinct from your liability to pay the amounts required by Part 2-5. However, you can ensure that the Commissioner does not require you to pay more than the amounts not paid under that Part.

Other Divisions of this Part provide for the recovery of amounts payable under this Division.

Subdivision 268-A—Object

Table of sections

268-5 Object of Division

268-5 Object of Division

The object of this Division is to enable the Commissioner to take prompt and effective action to recover amounts not paid as required by Part 2-5 (Pay as you go (PAYG) withholding).

Subdivision 268-B—Making estimates

Table of sections

268-10 Commissioner may make estimate
268-15 Notice of estimate

268-10 Commissioner may make estimate

Estimate

(1) The Commissioner may estimate the unpaid and overdue amount of a liability (the ***underlying liability***) of yours under section 16-70.

Note: Section 16-70 requires you to pay to the Commissioner amounts you have withheld under the Pay as you go withholding rules.

Amount of estimate

(2) The amount of the estimate must be what the Commissioner thinks is reasonable.

(3) In making the estimate, the Commissioner may have regard to anything he or she thinks relevant.

Example: The Commissioner may have regard to information about amounts you withheld under the Pay as you go rules before the period in relation to which the underlying liability arose.

Only one estimate for each liability

(4) While the estimate is in force, the Commissioner cannot make another estimate relating to the underlying liability.

(5) For the purposes of subsection (4), the estimate is in force if:
(a) the Commissioner has given you notice of the estimate; and
(b) the estimate has not been revoked; and
(c) your liability to pay the estimate has not been discharged.

268-15 Notice of estimate

Commissioner must give notice of estimate

(1) The Commissioner must give you written notice of the estimate.

Content of notice

(2) The notice must:
(a) identify the underlying liability; and
(b) specify the date of the estimate; and
(c) set out the amount of the estimate; and
(d) state that the amount of the estimate is due and payable; and
(e) explain how you may have the amount of the estimate reduced or the estimate revoked.

(3) To avoid doubt, a single notice may relate to 2 or more estimates, but must comply with subsection (2) in relation to each of them.

When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Subdivision 268-C—Liability to pay estimates

Table of sections

268-20 Nature of liability to pay estimate
268-25 Accuracy of estimate irrelevant to liability to pay
268-30 Estimate provable in bankruptcy or winding up

268-20 Nature of liability to pay estimate

Liability to pay amount of estimate

(1) You must pay to the Commissioner the amount of the estimate if the Commissioner gives you notice of the estimate in accordance with section 268-15. The amount is due and payable when the Commissioner gives you the notice.

Note: The amount of the estimate may be reduced, or the estimate revoked, under Subdivision 268-D.

Liability to pay amount of estimate is distinct from underlying liability

(2) Your liability to pay the amount of the estimate is separate and distinct from the underlying liability. It is separate and distinct for all purposes.

Example: The Commissioner may take:

(a) proceedings to recover the unpaid amount of the estimate; or

(b) proceedings to recover the unpaid amount of the underlying liability; or

(c) proceedings of both kinds.

Discharging one liability discharges other liabilities

(3) Despite subsection (2), if, at a particular time, one of the liabilities to which this subsection applies is discharged, to the extent of an amount, for either of the following reasons, each of the other liabilities to which this subsection applies is discharged to the extent of the same amount:

(a) an amount is paid or applied towards discharging the liability;

(b) the liability is discharged because of section 269-40 (Effect of director paying penalty or company discharging liability).

(4) Subsection (3) applies to whichever of the following liabilities are in existence at the particular time:

(a) your liability to pay the amount of the estimate;

(b) the underlying liability;

(c) a liability of yours under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

(5) Subsection (3) does not discharge a liability to a greater extent than the amount of the liability.

268-25 Accuracy of estimate irrelevant to liability to pay

You are liable to pay the unpaid amount of the estimate even if:

(a) the underlying liability never existed or has been discharged in full; or

(b) the unpaid amount of the underlying liability is less than the unpaid amount of the estimate.

Note 1: Section 268-40 revokes the estimate if you give the Commissioner a statutory declaration, or file an affidavit, to the effect that the underlying liability never existed.

Note 2: Subdivision 268-D provides ways in which you can challenge the estimate or its amount.

268-30 Estimate provable in bankruptcy or winding up

(1) Your liability (the ***estimate liability***) to pay the unpaid amount of the estimate is provable in a bankruptcy or winding up, even if the estimate was made after:

(a) the date of the bankruptcy; or

(b) the relevant date (within the meaning of the *Corporations Act 2001*).

(2) However, the estimate liability is provable only to the extent that the underlying liability would be provable if the unpaid amount of the underlying liability were the same as the unpaid amount of the estimate.

Example: Subsection (2) prevents proof of the estimate liability if the underlying liability could not be proved because, for example, of when it arose.

(3) Subsections (1) and (2) do not apply if:

(a) the underlying liability has already been admitted to proof; and

(b) the proof has not been set aside.

(4) If the estimate liability has been admitted to proof at a particular amount, the underlying liability is provable only to the extent the unpaid amount of the underlying liability exceeds that particular amount.

(5) To the extent that a liability is provable because of this section, it is taken, for the purposes of the *Bankruptcy Act 1966*, to be provable in bankruptcy under that Act.

Subdivision 268-D—Reducing and revoking estimates

Table of sections

268-35 How estimate may be reduced or revoked—Commissioner's powers
268-40 How estimate may be reduced or revoked—statutory declaration or affidavit
268-45 How estimate may be reduced or revoked—rejection of proof of debt
268-50 How estimate may be reduced—amount paid or applied
268-55 When reduction or revocation takes effect
268-60 Consequences of reduction or revocation—refund
268-65 Consequences of reduction or revocation—statutory demand changed or set aside
268-70 Consequences of reduction or revocation—underlying liability

268-35 How estimate may be reduced or revoked—Commissioner's powers

Reduction

(1) The Commissioner may at any time reduce the amount of the estimate, but is not obliged to consider whether or not to do so.

(2) If the Commissioner reduces the amount of the estimate under subsection (1), he or she must give you a written notice that:
  (a) identifies the underlying liability; and
  (b) sets out the reduced amount of the estimate.

Note: The estimate is taken always to have had effect as reduced: see section 268-55.

Revocation

(3) The Commissioner may at any time revoke the estimate, but is not obliged to consider whether or not to do so.

(4) If the Commissioner revokes the estimate under subsection (3), he or she must give you a written notice that:
  (a) identifies the underlying liability; and

(b) states that the estimate has been revoked.

Note: The estimate is taken never to have been made: see section 268-55.

Matters for Commissioner to consider

(5) In exercising his or her power under this section to reduce the amount of the estimate, or to revoke the estimate, the Commissioner must have regard to:

(a) the following principles:

(i) the estimate is of the unpaid amount of the underlying liability as at a particular time;

(ii) the purpose of reducing the amount of the estimate is to bring it closer to the unpaid amount of the underlying liability as at the time the estimate was made;

(iii) reductions of the unpaid amount of the underlying liability that happen after the time the estimate was made are dealt with by section 268-20 (Nature of liability to pay estimate) and so should not be taken into account in exercising such a power; and

(b) the effects of sections 268-55 and 268-70 (effect of reduction or revocation on liabilities).

268-40 How estimate may be reduced or revoked—statutory declaration or affidavit

Scope

(1) This section applies as set out in the following table:

Statutory declaration or affidavit			
Item	**This section applies if ...**	**and ...**	**within ...**
1	the Commissioner gives you notice of the estimate	you give the Commissioner a statutory declaration for the purposes of this section	(a) 7 days after the Commissioner gives you the notice; or (b) a longer period allowed by the Commissioner.
2	you are a party to proceedings before a court	you: (a) file an affidavit for the	(a) 14 days after you first take a

Statutory declaration or affidavit			
Item	**This section applies if ...**	**and ...**	**within ...**
	that relate to the recovery of the unpaid amount of the estimate	purposes of this section; and (b) serve a copy on the Commissioner	procedural step as a party to the proceedings; or (b) a longer period allowed by the court.
3	(a) the estimate is of the unpaid amount of a liability of a company; and (b) the Commissioner serves on the company a *statutory demand relating to the company's liability to pay the unpaid amount of the estimate; and (c) an application is made to a court under section 234, 459P, 462 or 464 of the *Corporations Act 2001* for the company to be wound up	the company: (a) files an affidavit for the purposes of this section; and (b) serves a copy on the applicant	(a) 14 days after notice of the application was served on the company; or (b) a longer period allowed by the court.

Example: For the purposes of item 2 of the table, taking a procedural step as a party to proceedings includes entering an appearance, filing a notice of intention to defend, or applying to set aside judgment entered in default of appearance.

Note 1: Section 459C of the *Corporations Act 2001* creates a presumption that a company is insolvent, and may be wound up, if the company fails to comply with a statutory demand.

Note 2: See section 268-90 for what the statutory declaration or affidavit must contain and who must make, swear or affirm it.

Reduction

(2) The amount of the estimate is reduced if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that a specified lesser amount is the unpaid amount of the underlying liability.

Example: Subsection (2) will apply if the statutory declaration etc. is to the effect that the underlying liability has been discharged in full (and therefore the unpaid amount of the liability is nil).

(3) The amount of the reduction is the amount by which the unpaid amount of the estimate (just before the reduction) exceeds the amount specified.

Note: The effect of subsection (3) is to reduce the unpaid amount of the estimate to the amount specified.

Revocation

(4) The estimate is revoked if the statutory declaration is to the effect, or the affidavit verifies facts sufficient to prove, that the underlying liability never existed.

268-45 How estimate may be reduced or revoked—rejection of proof of debt

Scope

(1) This section applies if:

(a) the Commissioner lodges a proof of debt relating to the unpaid amount of the estimate; and

(b) section 268-95 applies to an entity (your ***supervising entity***) in relation to you.

Rejection of proof of debt

(2) Your supervising entity may give the Commissioner a statutory declaration to the effect that:

(a) the underlying liability has been discharged in full; or

(b) the unpaid amount of the underlying liability is a specified, lesser amount; or

(c) the underlying liability never existed.

Note: See section 268-90 for what the statutory declaration must contain and who must make it.

(3) If your supervising entity does so, he or she may reject the proof of debt (in whole or in part) on the ground made out in the statutory declaration.

(4) If the Commissioner appeals, or applies for review of, your supervising entity's decision to reject the proof of debt, nothing in subsection (2) or (3) prevents evidence being adduced to contradict statements in the declaration.

Note: Such evidence might also be relevant to a prosecution for an offence, such as an offence against section 11 of the *Statutory Declarations Act 1959* (False declarations).

Revocation or reduction of estimate

(5) The following table applies in relation to the outcome following all (if any) appeals from, and applications for review of, your supervising entity's decision to reject the proof of debt. (If there are no appeals or applications for review, the outcome is your supervising entity's decision as originally made.)

Rejecting proof of debt

Item	If the outcome is that ...	then ...
1	the proof is rejected in whole on the ground that the estimate has been discharged in full	the amount of the estimate is reduced by the unpaid amount of the estimate (just before the reduction).
2	the proof is rejected in part	the amount of the estimate is reduced by so much of the unpaid amount of the estimate (just before the reduction) as is rejected.
3	the proof is rejected in whole on the ground that the underlying liability never existed	the estimate is revoked.

Note 1: The effect of item 1 of the table is to reduce the unpaid amount of the estimate to nil.

Note 2: The effect of item 2 of the table is to reduce the unpaid amount of the estimate to the amount admitted to proof.

268-50 How estimate may be reduced—amount paid or applied

(1) This section applies if:

(a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and

(b) the amount paid or applied exceeds the unpaid amount of the underlying liability as at the time just before the payment or application.

(2) The amount of the estimate is reduced so that it does not exceed the unpaid amount, at the time mentioned in paragraph (1)(b), of the underlying liability.

268-55 When reduction or revocation takes effect

Scope

(1) This section applies for the purposes of the following:
(a) Subdivision 268-C (Liability to pay estimates);
(b) section 268-60 (refund of overpayments);
(c) Subdivision 268-E (Late payment of estimates);
(d) Division 269 (Penalties for directors of non-complying companies).

When reduction or revocation takes effect

(2) If the amount of the estimate is reduced, the estimate has effect, and is taken always to have had effect, as if the original amount of the estimate had been the reduced amount.

(3) If the estimate is revoked, the estimate is taken never to have been made.

268-60 Consequences of reduction or revocation—refund

(1) This section applies if:
(a) an amount is paid or applied towards discharging your liability to pay the amount of the estimate; and
(b) the amount paid or applied exceeds the unpaid amount of the estimate as at the time just before the payment or application.

Example: You pay an amount towards discharging the estimate and the estimate is later reduced to a lesser amount.

Note: Section 268-50 provides for the reduction of the amount of the estimate in the case of overpayment.

(2) The Commissioner must pay you the excess.

Note: See Division 3A of Part IIB of this Act for the rules about how the Commissioner must pay you. Division 3 of that Part allows the Commissioner to apply the amount owing as a credit against tax debts that you owe the Commonwealth.

268-65 Consequences of reduction or revocation—statutory demand changed or set aside

Scope

(1) This section applies if:

(a) the estimate is of the unpaid amount of a liability of a company; and

(b) the Commissioner has served a *statutory demand on the company relating to the company's liability to pay the unpaid amount of the estimate; and

(c) the amount of the estimate is later reduced, or the estimate is revoked.

Statutory demand changed

(2) The *statutory demand is changed accordingly.

(3) The *statutory demand is taken to have had effect (as so changed) from the time the Commissioner served it on the company.

Statutory demand set aside

(4) The *statutory demand is set aside if subsection (2) reduces the amount of the debt (or the total of the amounts of the debts) below the statutory minimum (within the meaning of the *Corporations Act 2001*).

268-70 Consequences of reduction or revocation—underlying liability

Reduction of the amount of the estimate, or revocation of the estimate, does not affect the Commissioner's rights or remedies in relation to the underlying liability (except to the extent that this Division expressly provides otherwise).

Subdivision 268-E—Late payment of estimates

Table of sections

268-75 Liability to pay the general interest charge
268-80 Effect of paying the general interest charge

268-75 Liability to pay the general interest charge

(1) This section applies if your liability to pay the amount of the estimate remains undischarged at the end of 7 days after the Commissioner gives you notice of the estimate.

(2) You are liable to pay the *general interest charge on the unpaid amount of the estimate for each day in the period that:

(a) started at the beginning of the day by which the underlying liability was due to be paid; and

(b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the amount of the estimate;

(ii) general interest charge on any of the amount of the estimate.

Note: The general interest charge is worked out under Part IIA of this Act.

268-80 Effect of paying the general interest charge

Scope

(1) If you are liable to pay the *general interest charge under section 268-75 in relation to the estimate, this section applies to the following liabilities:

(a) your liability to pay the general interest charge;

(b) a liability of yours to pay a general interest charge, under a corresponding provision of Subdivision 16-B, because the underlying liability remains undischarged;

(c) liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b);

(d) a liability of yours to pay interest carried by a judgment debt, to the extent that the judgment debt is based on:

(i) the liability to pay the estimate; or

(ii) the liability to pay the general interest charge under section 268-75 on an unpaid amount of the estimate.

Discharging one liability discharges other liabilities

(2) If, at a particular time, an amount is paid or applied towards discharging one of the liabilities, each of the other liabilities that is in existence at that time is discharged to the extent of the same amount.

(3) However, this section does not discharge a liability to a greater extent than the amount of the liability.

(4) If, because a judgment debt carries interest, section 8AAH of this Act reduces the amount of a *general interest charge payable as mentioned in paragraph (1)(b) of this section, the amount of the reduction is taken, for the purposes of subsection (2) of this section, to have been applied towards discharging your liability to the charge.

Subdivision 268-F—Miscellaneous

Table of sections

268-85 Effect of judgment on liability on which it is based
268-90 Requirements for statutory declaration or affidavit
268-95 Liquidators, receivers and trustees in bankruptcy
268-100 Division not to limit or exclude Corporations or Bankruptcy Act

268-85 Effect of judgment on liability on which it is based

Estimate payable despite judgment

(1) The unpaid amount of the estimate, or of the underlying liability, does not stop being payable merely because a judgment has been given by, or entered in, a court.

Division applies to liability under judgment

(2) This Division applies in relation to liability under a judgment, to the extent that it is based on your liability to pay the amount of the estimate, in the same way as this Division applies to that estimate liability.

(3) This Division applies in relation to liability under a judgment, to the extent that it is based on the underlying liability, in the same way as this Division applies to the underlying liability.

(4) Subsections (2) and (3) do not apply for the purposes of the following:
  (a) section 268-20 (Nature of liability to pay estimate);
  (b) section 268-30 (Estimate provable in bankruptcy or winding up);
  (c) section 268-45 (rejection of proof of debt).

Judgment conclusive as to amount of liability

(5) Nothing in this Division affects the conclusiveness of a judgment as to the amount of a liability on which it is based.

268-90 Requirements for statutory declaration or affidavit

Scope

(1) This section applies to a statutory declaration given, or an affidavit filed, for the purposes of section 268-40 or 268-45 in relation to the estimate.

Content

(2) The statutory declaration or affidavit must verify the following facts:
  (a) whichever of the following are applicable:
    (i) the sum of all amounts you withheld under Division 12 during the relevant period, or the fact that you did not withhold any such amounts during the period;
    (ii) the sum of all amounts you were required to pay under Division 13 (Alienated personal services payments) during the relevant period, or the fact that you were not required to pay any such amounts during the period;
    (iii) the sum of all amounts you were required to pay under Division 14 (non-cash benefits and accruing gains) during the relevant period, or the fact that you were not required to pay any such amounts during the period;

(b) what has been done to comply with Division 16 (Payer's obligations and rights) in relation to the amounts referred to in paragraph (a).

Maker or deponent

(3) The statutory declaration or affidavit must be made, sworn or affirmed by:

(a) an individual specified in the following table; or

(b) your liquidator, receiver or trustee in bankruptcy (if and as applicable).

Who must make the statutory declaration or swear or affirm the affidavit

Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
1	an individual	that individual.
2	a body corporate	(a) in the case of a company that has a director or a company secretary (within the meaning of the *Corporations Act 2001*)—a director of the company or the company secretary; or (b) in the case of an *Australian government agency—an individual prescribed by the regulations; or (c) in any case—the public officer of the body corporate (for the purposes of the *Income Tax Assessment Act 1936*).
3	a body politic	an individual prescribed by the regulations.
4	a partnership	a partner of the partnership.
5	any other unincorporated association or body of persons	(a) a member of the association's or body's committee of management; or (b) the public officer of the association or body (for the purposes of the *Income Tax Assessment Act 1936*).

Who must make the statutory declaration or swear or affirm the affidavit		
Item	**A statutory declaration or affidavit in relation to an estimate of a liability of ...**	**must be made, sworn or affirmed by ...**
6	a trust	(a) the trustee of the trust; or (b) the public officer of the trust (for the purposes of the *Income Tax Assessment Act 1936*).
7	a *superannuation fund or an *approved deposit fund	(a) the trustee of the fund; or (b) if the fund does not have a trustee—the entity managing the fund.

(4) If the entity specified in the table in subsection (3) is not an individual, the table is taken to specify the individual who, under that subsection, would be eligible to make a statutory declaration in relation to an estimate of a liability of that entity.

268-95 Liquidators, receivers and trustees in bankruptcy

Scope

(1) This section applies to an entity (your ***supervising entity***), in relation to you, if:

(a) the entity is your liquidator, receiver, trustee in bankruptcy or administrator, or the administrator of a deed of company arrangement executed by you; or

(b) your property is vested in the entity, or the entity has control of your property.

(2) For the purposes of this Division, this section applies to an entity in relation to a partnership if it applies to the entity in relation to a partner of the partnership.

Notices from the Commissioner

(3) For the purposes of this Division, a notice given by the Commissioner to your supervising entity is taken to have been given to you.

(4) You must give your supervising entity a copy of any notice given to you by the Commissioner under this Division. You must do so as soon as practicable, and in any event within 7 days, after:

(a) if the Commissioner gave you the notice before the day when your property vested in, or control of your property passed to, the supervising entity—that day; or

(b) if subsection (2) applies and the Commissioner gave you the notice before the day when the relevant partner's property vested in, or control of the relevant partner's property passed to, the supervising entity—that day; or

(c) otherwise—the day when the Commissioner gave you the notice.

(5) If the Commissioner gives you and your supervising entity a notice at different times, each notice is taken to have been given at the later of those times.

Action taken by your supervising entity

(6) For the purposes of this Division, a statutory declaration given to the Commissioner by your supervising entity is taken to have been given by you.

(7) For the purposes of this Division, an affidavit filed by your supervising entity is taken to have been filed by you.

(8) For the purposes of item 2 in the table in subsection 268-40(1) (recovery proceedings), a procedural step taken by your supervising entity is taken to have been taken by you.

Multiple supervising entities

(9) If you have 2 or more supervising entities, anything this Division provides for to be done by or in relation to your supervising entity may be done by or in relation to any of them.

268-100 Division not to limit or exclude Corporations or Bankruptcy Act

This Division is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001* (External administration), or the *Bankruptcy Act 1966*, to the extent that Chapter or Act can operate concurrently with this Division.

Note: Section 268-30 and Subdivision 268-D affect the operation of Chapter 5 of the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

Division 269—Penalties for directors of non-complying companies

Table of Subdivisions

Guide to Division 269
269-A Object and scope
269-B Obligations and penalties
269-C Discharging liabilities
269-D Miscellaneous

Guide to Division 269

269-1 What this Division is about

The directors of a company have a duty to ensure that the company either:

(a) meets its obligations under Subdivision 16-B (obligation to pay withheld amounts to the Commissioner) and Division 268; or

(b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

The directors' duties are enforced by penalties.

Note: The duties this Division imposes on the directors of the company are in addition to the similar duties imposed on the public officer of the company. See subsection 252(1) of the *Income Tax Assessment Act 1936*.

Subdivision 269-A—Object and scope

Table of sections

269-5 Object of Division
269-10 Scope of Division

269-5 Object of Division

The object of this Division is to ensure that a company either:

(a) meets its obligations under Subdivision 16-B (obligation to pay withheld amounts to the Commissioner) and Division 268; or

(b) goes promptly into voluntary administration under the *Corporations Act 2001* or into liquidation.

Note: The directors' duties are enforced by penalties on the directors. A penalty recovered under this Division is applied towards meeting the company's obligation.

269-10 Scope of Division

(1) This Division applies as set out in the following table:

Obligations that directors must cause company to comply with		
Item	**This Division applies if, on a particular day (the *initial day*), a company registered under the *Corporations Act 2001* ...**	**and the company is obliged to pay to the Commissioner on or before a particular day (the *due day*) ...**
1	withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
4	is given notice of an estimate under Division 268	the amount of the estimate.

Note: In a case covered by item 2, 3 or 4 of the table, the due day is the same as the initial day.

(2) This Division applies in relation to an amount that the company purports to withhold under Division 12, but is not required to withhold, as if the company were required to withhold the amount.

Subdivision 269-B—Obligations and penalties

Table of sections

269-15 Directors' obligations
269-20 Penalty
269-25 Notice
269-30 Remission of penalty before end of notice period
269-35 Defences

269-15 Directors' obligations

Directors' obligations

(1) The directors (within the meaning of the *Corporations Act 2001*) of the company (from time to time) on or after the initial day must cause the company to comply with its obligation.

(2) The directors of the company (from time to time) continue to be under their obligation until:
  (a) the company complies with its obligation; or
  (b) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
  (c) the company begins to be wound up (within the meaning of that Act).

Instalment arrangements

(3) The Commissioner must not commence, or take a procedural step as a party to, proceedings to enforce an obligation, or to recover a penalty, of a director under this Division if an *arrangement that covers the company's obligation is in force under section 255-15 (Commissioner's power to permit payments by instalments).

Note 1: The arrangement may also cover other obligations of the company.

Note 2: Subsection (3) does not prevent the Commissioner from giving a director a notice about a penalty under section 269-25.

269-20 Penalty

Penalty for director on or before due day

(1) You are liable to pay to the Commissioner a penalty if:
  (a) at the end of the due day, the directors of the company are still under an obligation under section 269-15; and

(b) you were under that obligation at or before that time (because you were a director).

Note: Paragraph (1)(b) applies even if you stopped being a director before the end of the due day: see subsection 269-15(2).

(2) The penalty is due and payable at the end of the due day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Penalty for new director

(3) You are also liable to pay to the Commissioner a penalty if:

(a) after the due day, you became a director of the company and began to be under an obligation under section 269-15; and

(b) 14 days later, you are still under that obligation.

(4) The penalty is due and payable at the end of that 14th day.

Note: The Commissioner must not commence proceedings to recover the penalty until the end of 21 days after the Commissioner gives you notice of the penalty under section 269-25.

Amount of penalty

(5) The amount of a penalty under this section is equal to the unpaid amount of the company's liability under its obligation.

Note 1: See section 269-40 for the effect on your penalty of the company discharging its obligation, or of another director paying his or her penalty.

Note 2: See section 269-45 for your rights of indemnity and contribution.

269-25 Notice

Commissioner must give notice of penalty

(1) The Commissioner must not commence proceedings to recover from you a penalty payable under this Subdivision until the end of 21 days after the Commissioner gives you a written notice under this section.

Content of notice

(2) The notice must:

(a) set out what the Commissioner thinks is the unpaid amount of the company's liability under its obligation; and

(b) state that you are liable to pay to the Commissioner, by way of penalty, an amount equal to that unpaid amount because of an obligation you have or had under this Division; and

(c) explain the main circumstances in which the penalty will be remitted.

(3) To avoid doubt, a single notice may relate to 2 or more penalties, but must comply with subsection (2) in relation to each of them.

When notice is given

(4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice under subsection (1) is taken to be given at the time the Commissioner leaves or posts it.

Note 1: Section 28A of the *Acts Interpretation Act 1901* may be relevant to giving a notice under subsection (1).

Note 2: Section 269-50 of this Act is also relevant to giving a notice under subsection (1).

269-30 Remission of penalty before end of notice period

A penalty of yours under this Division is remitted if the directors of the company stop being under the relevant obligation under section 269-15:

(a) before the Commissioner gives you notice of the penalty under section 269-25; or

(b) within 21 days after the Commissioner gives you notice of the penalty under that section.

269-35 Defences

Scope

(1) This section applies in relation to:

(a) proceedings to recover from you a penalty payable under this Division; or

(b) proceedings against you in relation to a right referred to in paragraph 269-45(2)(b) (directors jointly and severally liable as guarantors).

Illness

(2) It is a defence in the proceedings if it is proved that, because of illness or for some other good reason, it would have been unreasonable to expect you to take part, and you did not take part, in the management of the company at any time when:

(a) you were a director of the company; and

(b) the directors were under the relevant obligations under section 269-15.

All reasonable steps

(3) It is a defence in the proceedings if it is proved that:

(a) you took all reasonable steps to ensure that the directors complied with their relevant obligations under section 269-15; or

(b) there were no such steps that you could have taken.

(4) In determining what are reasonable steps for the purposes of subsection (3), have regard to:

(a) when, and for how long, you were a director and took part in the management of the company; and

(b) all other relevant circumstances.

Power of courts to grant relief

(5) Section 1318 of the *Corporations Act 2001* does not apply to an obligation or liability of a director under this Division.

Subdivision 269-C—Discharging liabilities

Table of sections

269-40 Effect of director paying penalty or company discharging liability
269-45 Directors' rights of indemnity and contribution

269-40 Effect of director paying penalty or company discharging liability

Liabilities

(1) This section applies to the following liabilities:

(a) the liability of the company under its obligation referred to in section 269-10;

(b) the liability of each director (or former director) to pay a penalty under this Division in relation to the liability of the company referred to in paragraph (a);

(c) a liability under a judgment, to the extent that it is based on a liability referred to in paragraph (a) or (b).

Discharging one liability discharges other liabilities

(2) If an amount is paid or applied at a particular time towards discharging one of the liabilities, each of the other liabilities in existence at that time is discharged to the extent of the same amount.

(3) If, because of section 268-20 (Nature of liability to pay estimate), one of the liabilities is discharged at a particular time to the extent of a particular amount, each of the other liabilities in existence at that time is discharged to the extent of the same amount.

(4) This section does not discharge a liability to a greater extent than the amount of the liability.

269-45 Directors' rights of indemnity and contribution

(1) This section applies if you pay a penalty under this Division in relation to a liability of the company under an obligation referred to in section 269-10.

(2) You have the same rights (whether by way of indemnity, subrogation, contribution or otherwise) against the company or anyone else as if:

(a) you made the payment under a guarantee of the liability of the company; and

(b) under the guarantee you and every other person who has paid, or from whom the Commissioner is entitled to recover, a penalty under this Division in relation to the company's obligation were jointly and severally liable as guarantors.

Subdivision 269-D—Miscellaneous

Table of sections

269-50 How notice may be given
269-55 Division not to limit or exclude Corporations Act

269-50 How notice may be given

The Commissioner may give you a notice under section 269-25 by leaving it at, or posting it to, an address that appears, from information held by the Australian Securities and Investments Commission, to be, or to have been within the last 7 days, your place of residence or *business.

269-55 Division not to limit or exclude Corporations Act

To avoid doubt, this Division is not intended to limit or exclude the operation of Chapter 5 of the *Corporations Act 2001* (External administration), to the extent that Chapter can operate concurrently with this Division.

Part 2—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

11 Paragraph (ea) of Schedule 1

Repeal the paragraph.

12 After paragraph (ga) of Schedule 1

Insert:

(gaa) decisions of the Commissioner of Taxation under Subdivision 268-B or section 268-35 in Schedule 1 to the *Taxation Administration Act 1953*;

Note: Subdivision 268-B and section 268-35 empower the Commissioner to make, reduce and revoke estimates of certain liabilities.

Corporations Act 2001

13 Subsection 443BA(2) (definition of *unpaid amount*)

Repeal the definition.

Higher Education Support Act 2003

14 Paragraph 154-60(a)

Omit ", and Division 1 of Part VI,".

15 After paragraph 154-60(a)

Insert:

(aa) Division 5 of the *Income Tax Assessment Act 1997*; and

16 Section 154-60 (note)

Repeal the note.

Income Tax Assessment Act 1936

17 Subsection 102AAM(14)

Repeal the subsection.

18 At the end of Subdivision B of Division 6AAA of Part III

Add:

102AAN Collection etc. of interest

Sections 170, 172, 174, 254 and 255 of this Act, and Division 5 of the *Income Tax Assessment Act 1997* (How to work out when to pay your income tax), apply to interest payable under section 102AAM in the same way as they apply to income tax.

19 Subsection 159GZZZZH(4)

Omit "204,".

20 Subsection 159GZZZZH(4)

After "former sections", insert "204,".

21 At the end of section 159GZZZZH

Add:

(5) Division 5 of the *Income Tax Assessment Act 1997* (How to work out when to pay your income tax) applies to tax payable under this section in the same way as that Division applies to income tax.

22 Subsection 163B(8)

Repeal the subsection, substitute:

Collection etc. of additional tax

(8) Former sections 204, 205, 206, 215, 216, 258 and 259, and sections 254 and 255, apply to additional tax payable under this section in the same way as they apply to income tax.

23 Subsection 163B(10) (definition of *instalment taxpayer*)

Before "Division 1C", insert "former".

24 Subsection 163B(10) (definition of *relevant entity*)

Before "Division 1B", insert "former".

25 Subsection 254(2)

Repeal the subsection, substitute:

(2) Subsection (1) applies to the following in the same way as it applies to tax:

(a) the general interest charge under:

(i) section 163AA, former section 170AA, former subsection 204(3), former subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB of this Act;

(ii) section 5-15 of the *Income Tax Assessment Act 1997*;

(b) additional tax under former Part VII of this Act;

(c) shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953* and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the general interest charge.

26 Subsection 255(4)

Repeal the subsection, substitute:

(4) This section applies to the following in the same way as it applies to tax:

(a) the general interest charge under:

(i) section 163AA, former section 170AA, former subsection 204(3), former subsection 221AZMAA(1), former subsection 221AZP(1), former subsection 221YD(3) or former section 221YDB of this Act;

(ii) section 5-15 of the *Income Tax Assessment Act 1997*;

(b) additional tax under former Part VII of this Act;

(c) shortfall interest charge.

Note 1: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953* and shortfall interest charge is worked out under Division 280 in Schedule 1 to that Act.

Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the general interest charge.

Income Tax Assessment Act 1997

27 Subsection 3-5(3) (note to question 3)

Omit "sections 204, 213 and 219 of the *Income Tax Assessment Act 1936*", substitute "Division 5 of this Act".

28 Sections 214-165 and 292-400

Repeal the sections.

29 Subsection 721-10(2) (table item 5)

Repeal the item, substitute:

3	section 5-5 of the *Income Tax Assessment Act 1997* (income tax, and other amounts treated in the same way as income tax under that section)	the *financial year to which the income tax etc. relates
5	section 197-70 of the *Income Tax Assessment Act 1997* (untainting tax)	the *franking period of the *head company in which the *untainting tax became due and payable

30 Subsection 721-10(2) (table item 25)

Repeal the item.

31 At the end of subsection 721-10(2)

Add:

Note: The other amounts referred to in item 3 of the table are:

(a) interest payable under section 102AAM of the *Income Tax Assessment Act 1936* (distributions from certain non-resident trust estates); and

(b) tax payable under section 159GZZZZH of that Act (Tax payable where infrastructure borrowing certificate cancelled).

32 Subsection 995-1(1) (definition of *full self-assessment taxpayer*)

Repeal the definition.

Income Tax (Transitional Provisions) Act 1997

33 Section 214-115

Repeal the section.

Social Security Act 1991

34 Section 1061ZZFG

Omit ", and section 204, of the *Income Tax Assessment Act 1936*,", substitute "of the *Income Tax Assessment Act 1936*, Division 5 of the *Income Tax Assessment Act 1997*,".

Student Assistance Act 1973

35 Section 12ZN

Omit "and section 204 of the *Income Tax Assessment Act 1936*", substitute "of the *Income Tax Assessment Act 1936*, Division 5 of the *Income Tax Assessment Act 1997*".

Taxation Administration Act 1953

36 Section 8AAA

Omit "(Most of the provisions are in the *Income Tax Assessment Act 1936*.)".

37 Subsection 8AAB(4) (table items 9 and 30)

Repeal the items.

38 Subsection 8AAB(5) (after table item 2)

Insert:

2AAA	5-15	*Income Tax Assessment Act 1997*

39 Subsection 8AAB(5) (after table item 17L)

Insert:

17M	268-75 in Schedule 1	*Taxation Administration Act 1953*

40 Paragraph 45-130(1)(b) in Schedule 1

Omit "*full self-assessment taxpayer", substitute "*self-assessment entity".

41 Subparagraph 45-130(1)(c)(i) in Schedule 1

Omit "*full self-assessment taxpayer", substitute "self-assessment entity".

42 Subsection 250-5(2) in Schedule 1 (example)

Omit "Division 1 of Part VI of the *Income Tax Assessment Act 1936*", substitute "Division 5 of the *Income Tax Assessment Act 1997*".

43 Subsection 250-10(1) in Schedule 1 (table items 55 and 65 to 85)

Repeal the items.

44 Subsection 250-10(1) in Schedule 1 (at the end of the table)

Add:

100	interest payable under section 102AAM (about distributions from non-resident trust estates)	5-5 of the *Income Tax Assessment Act 1997*
105	tax payable under section 159GZZZZH (Tax payable where infrastructure borrowing certificate cancelled)	5-5 of the *Income Tax Assessment Act 1997*

45 Subsection 250-10(2) in Schedule 1 (after table item 36)

Insert:

36A	compulsory repayment amount under the *Higher Education Support Act 2003*	5-5	*Income Tax Assessment Act 1997*
37	income tax	5-5	*Income Tax Assessment Act 1997*

46 Subsection 250-10(2) in Schedule 1 (after table item 137)

Insert:

138	estimate of payable amounts	268-20 in Schedule 1	*Taxation Administration Act 1953*
139	penalty under Subdivision 269-B	269-20 in Schedule 1	*Taxation Administration Act 1953*

47 Subsection 255-10(1) in Schedule 1 (note)

Omit "paragraph 204(3)(a) of the *Income Tax Assessment Act 1936*", substitute "paragraph 5-15(a) of the *Income Tax Assessment Act 1997*".

48 Subsection 255-20(1) in Schedule 1 (note)

Omit "paragraph 204(3)(a) of the *Income Tax Assessment Act 1936*", substitute "paragraph 5-15(a) of the *Income Tax Assessment Act 1997*".

49 Subsection 280-100(3) in Schedule 1 (note)

Omit "section 204 of the *Income Tax Assessment Act 1936*", substitute "Division 5 of the *Income Tax Assessment Act 1997*".

50 Subsection 280-100(3) in Schedule 1 (note)

Omit "That section", substitute "That Division".

51 Subsection 340-10(2) in Schedule 1 (table item 3)

Before "subsection 204(3)", insert "former".

52 Subsection 340-10(2) in Schedule 1 (after paragraph (a) in the cell at table item 3, column headed "Provision(s)")

Insert:

(aa) section 5-15 in the *Income Tax Assessment Act 1997*; or

Part 3—Application, transitional and saving provisions

Division 1—Preliminary

53 Meaning of *commencement time*

In this Part:

commencement time means the time this item commences.

Division 2—Division 5 of the Income Tax Assessment Act 1997

Income Tax (Transitional Provisions) Act 1997

54 After Division 4

Insert:

Division 5—How to work out when to pay your income tax

Table of Subdivisions

5-A How to work out when to pay your income tax

Subdivision 5-A—How to work out when to pay your income tax

Table of sections

5-5 Application of Division 5 of the *Income Tax Assessment Act 1997*
5-7 References in tax sharing agreements to former section 204
5-10 General interest charge

5-5 Application of Division 5 of the *Income Tax Assessment Act 1997*

Division 5 of the *Income Tax Assessment Act 1997*, as originally enacted, applies in relation to income tax or shortfall interest charge you must pay for:

(a) the 2010-11 financial year; or

(b) a later financial year.

5-7 References in tax sharing agreements to former section 204

(1) A reference in an agreement to section 204 of the *Income Tax Assessment Act 1936* is taken, from the commencement of this section, to be a reference to section 5-5 of the *Income Tax Assessment Act 1997*, if:

(a) paragraph 721-25(1)(a) of the *Income Tax Assessment Act 1997* applies to the agreement; and

(b) the agreement was in force just before the commencement of this section.

(2) This section applies in relation to tax to which Division 5 of the *Income Tax Assessment Act 1997* applies.

5-10 General interest charge

(1) This section applies if, just before the commencement of this section, you were liable, under subsection 204(3) (the ***old provision***) of the *Income Tax Assessment Act 1936*, to pay the general interest charge on an unpaid amount (the ***liability***) of any tax or shortfall interest charge.

(2) On that commencement, the old provision ceases to apply to the liability.

(3) From that commencement, section 5-15 (the ***new provision***) of the *Income Tax Assessment Act 1997*, as originally enacted, applies to the liability as if:

(a) the liability remained unpaid at that time; and

(b) so much of the charge under the old provision as remained unpaid at that time had been imposed under the new provision and remained unpaid at that time.

55 At the end of Part 3-90

Add:

Division 721—Liability for payment of tax where head company fails to pay on time

Table of Subdivisions

721-A Application of Division

Subdivision 721-A—Application of Division

Table of sections

721-25 References in tax sharing agreements to former table item 25

721-25 References in tax sharing agreements to former table item 25

(1) A reference in an agreement to item 25 of the table in subsection 721-10(2) of the *Income Tax Assessment Act 1997* is taken, from the commencement of this section, to be a reference to item 3 of that table, if:

(a) paragraph 721-25(1)(a) of that Act applies to the agreement; and

(b) the agreement was in force just before the commencement of this section.

(2) This section applies in relation to tax to which Division 5 of the *Income Tax Assessment Act 1997* applies.

56 Transitional provision

Despite the repeal of section 204 of the *Income Tax Assessment Act 1936* by this Schedule, that section (other than subsection 204(3)) continues to apply, from the commencement time, to income tax or shortfall interest charge to which Division 5 of the *Income Tax Assessment Act 1997*, as inserted by this Schedule, does not apply.

Division 3—Security deposits

57 Security deposits

If, just before the commencement time, a security requirement is in force under section 213 of the *Income Tax Assessment Act 1936*, the requirement has effect, from the commencement time, as if it had been made under section 255-100 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule.

Division 4—Estimates

58 Estimates

New estimate

(1) Section 268-10 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies in relation to an amount you became liable to pay to the Commissioner under section 16-70 in Schedule 1 to that Act before, on or after the commencement time.

Existing estimate

(2) Subitem (3) applies to an estimate that:

(a) was made under section 222AGA of the *Income Tax Assessment Act 1936* (whether or not notice of it has been sent to you or your trustee); and

(b) was in force just before the commencement time.

(3) The estimate remains in force, from the commencement time, as if it had been made under section 268-10 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule.

59 Bankruptcy or winding up

Section 268-30 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies whether the date of the bankruptcy, or the relevant date, referred to in that section occurred before, on or after the day on which the commencement time occurred.

60 Reducing and revoking estimates

(1) Section 268-40 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies in relation to:

(a) a notice given by the Commissioner before, on or after the commencement time; or

(b) proceedings that relate to the recovery of the unpaid amount of an estimate commenced before, on or after the commencement time; or

(c) an application made under section 234, 459P, 462 or 464 of the *Corporations Act 2001* before, on or after the commencement time.

(2) Section 268-45 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies in relation to a proof of debt lodged before, on or after the commencement time.

61 General interest charge

New charge

(1) Section 268-75 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies in relation to an estimate of which the Commissioner sends notice:

(a) on or after the commencement time; or

(b) no more than 7 days before the commencement time.

Existing charge

(2) Subitems (3) and (4) apply if, just before the commencement time, you were liable, under Subdivision E of Division 8 of Part VI of the *Income Tax Assessment Act 1936* (the ***old Subdivision***), to pay the general interest charge on an unpaid amount of an estimate.

(3) At the commencement time, the old Subdivision stops applying to the liability.

(4) From the commencement time, Subdivision 268-E in Schedule 1 to the *Taxation Administration Act 1953* (the ***new Subdivision***) applies to the liability as if:

(a) the liability remained unpaid at the commencement time; and

(b) so much of the charge under the old Subdivision as remained unpaid at that time:

(i) had been imposed under the new Subdivision; and

(ii) remained unpaid at that time.

62 Payment agreements

(1) This item applies in relation to an agreement that:

(a) was made under section 222ALA of the *Income Tax Assessment Act 1936*; and

(b) was in force just before the commencement time.

(2) The agreement has effect, from the commencement time, as if the agreement were an arrangement made under section 255-15 in Schedule 1 to the *Taxation Administration Act 1953*.

63 Savings—regulations relating to government bodies

(1) This item applies in relation to regulations:

(a) made for the purposes of paragraph 222AGF(7)(c), 222AHE(5)(c) or 222AIH(4)(c) of the *Income Tax Assessment Act 1936*; and

(b) in force just before the commencement time.

(2) The regulations have effect from the commencement time as if they had been made for the purposes of paragraph (b) of item 2, and item 3, of the table in subsection 268-90(3) in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule.

Division 5—Directors' obligations

64 Application—Division 269 in Schedule 1 to the *Taxation Administration Act 1953*

Subject to item 65, Division 269 in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, applies in relation to an amount payable by a company to the Commissioner before, on or after the commencement time.

65 Transitional—penalties

No doubling-up of penalties

(1) Subsection 269-20(1) in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, does not apply if the due day referred to in that subsection occurs before the commencement time.

(2) Subsection 269-20(3) in Schedule 1 to that Act, as added by this Schedule, does not apply if the 14th day referred to in that subsection occurs before the commencement time.

New provisions apply to existing penalties

(3) Subitem (4) applies in relation to a penalty that, just before the commencement time, was payable under Division 9 of Part VI of the *Income Tax Assessment Act 1936*.

(4) Division 269 in Schedule 1 to the *Taxation Administration Act 1953* (other than section 269-20) has effect, from the commencement time, as if the penalty were payable under Subdivision 269-B in that Schedule.

Penalties remitted because of payment agreement

(5) Subitem (6) applies if:

(a) a penalty payable by a director of a company was remitted under section 222APF of the *Income Tax Assessment Act 1936* because the company made an agreement with the Commissioner as mentioned in paragraph 222APB(1)(b); and

(b) on or after the commencement time, the company contravenes the agreement such that the director would have been liable to pay a penalty under section 222AQA if that section had continued to apply.

(6) Division 269 in Schedule 1 to the *Taxation Administration Act 1953* (other than section 269-20) has effect, from the commencement time, as if the penalty:

(a) had not been remitted; and

(b) were payable under Subdivision 269-B in that Schedule.

Division 6—Provisions relating to former provisions of the Income Tax Assessment Act 1936

66 Inoperative provisions

(1) This item applies if:

(a) just before the commencement time, a person was liable to pay an amount to the Commissioner under:

(i) former section 220AAE, 220AAM or 220AAR of the *Income Tax Assessment Act 1936*; or

(ii) former subsection 221YHZD(1) or (1A) of that Act; or

(iii) former subsection 221YN(1) of that Act; or

(b) the Commissioner has reason to suspect that, just before the commencement time, a person was so liable.

(2) Despite the repeal of Divisions 8 and 9 of Part VI of the *Income Tax Assessment Act 1936* by this Schedule, but subject to item 62 of this Schedule, those Divisions continue to apply, after the commencement time, in relation to the liability or suspected liability, as if the repeal had not happened.

(3) Subsection 268-90(2) in Schedule 1 to the *Taxation Administration Act 1953*, as added by this Schedule, is taken to require a statutory

declaration or affidavit to which that subsection applies to verify any facts:

(a) that relate to the liability, or suspected liability; and

(b) that the declaration or affidavit would have been required to verify if subsection 222AHE(4), 222AID(4) or 222AIH(3) of the *Income Tax Assessment Act 1936*, as in force just before the commencement time, had applied to the declaration or affidavit.

Schedule 2—Forgiveness of commercial debts

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2C

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 243

Insert:

Division 245—Forgiveness of commercial debts

Table of Subdivisions

Guide to Division 245
245-A Debts to which operative rules apply
245-B What constitutes forgiveness of a debt
245-C Calculation of gross forgiven amount of a debt
245-D Calculation of net forgiven amount of a debt
245-E Application of net forgiven amounts
245-F Special rules relating to partnerships
245-G Record keeping

Guide to Division 245

245-1 What this Division is about

When a creditor forgives a commercial debt you owe, you make a gain. This is usually not included in your assessable income. Instead, this Division offsets the forgiven amount against amounts that could otherwise reduce your taxable income in the same or a later income year. Those amounts are:

(a) your tax losses and net capital losses; and

(b) capital allowances and some similar deductions; and

(c) the cost bases of your CGT assets.

245-2 Simplified outline of this Division

(1) This Division applies to any commercial debt (or part of a commercial debt) you owe that is forgiven.

Note: This Division does not apply if:
(a) the debt is waived and the waiver constitutes a fringe benefit; or
(b) the amount of the debt has been, or will be, included in your assessable income in any income year; or
(c) the debt is forgiven under an Act relating to bankruptcy; or
(d) the debt is forgiven by will; or
(e) the debt is forgiven for reasons of natural love and affection; or
(f) the debt is a tax-related liability.

(2) The net forgiven amount of a debt is worked out by reducing the value of your forgiven debt by:
(a) any consideration you provided for the forgiveness; and
(b) any amounts that this Act already brings to account because of the forgiveness.

(3) The net forgiven amounts of all your forgiven debts in an income year are added up. This total net forgiven amount is applied to reduce the following amounts (in the following order):
(a) your tax losses from previous income years;
(b) your net capital losses from previous income years;
(c) the deductions you would otherwise get in the income year, or in a later year, because of expenditure from a previous year (e.g. the capital allowance deductions you would get for the cost of a depreciating asset);
(d) the cost bases of your CGT assets.

(4) Any unapplied total net forgiven amount is disregarded.

(5) Special rules apply to debts of partnerships.

Subdivision 245-A—Debts to which operative rules apply

Guide to Subdivision 245-A

245-5 What this Subdivision is about

This Division applies to a debt if you can deduct interest payable on the debt.

Table of sections

Application of Division

245-10 Commercial debts
245-15 Non-equity shares
245-20 Parts of debts

Application of Division

245-10 Commercial debts

Subdivisions 245-C to 245-G apply to a debt of yours if:

(a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable by you in respect of the debt has been deducted, or can be deducted, by you; or

(b) interest, or an amount in the nature of interest, is not payable by you in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount could have been deducted by you; or

(c) interest or an amount mentioned in paragraph (a) or (b) could have been deducted by you apart from the operation of a provision of this Act (other than paragraphs 8-1(2)(a), (b) and (c)) that has the effect of preventing a deduction.

Note: Paragraphs 8-1(2)(a), (b) and (c) prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income or non-assessable non-exempt income.

245-15 Non-equity shares

This Division applies to a *non-equity share issued by a company as if it were a debt to which section 245-10 applies that is owed by the company to the relevant shareholder.

245-20 Parts of debts

This Division applies to part of a debt in the same way as it applies to a whole debt.

Note: This Division treats interest, or an amount in the nature of interest, payable on a debt as being a separate debt if the interest or amount has accrued but has not been paid.

Subdivision 245-B—What constitutes forgiveness of a debt

Guide to Subdivision 245-B

245-30 What this Subdivision is about

A debt is ***forgiven*** if you no longer have to pay it.

However, this Division does not apply to some cases of forgiveness, such as bankruptcy.

Table of sections

Operative provisions

245-35 What constitutes ***forgiveness*** of a debt
245-36 What constitutes ***forgiveness*** of a debt if the debt is assigned
245-37 What constitutes ***forgiveness*** of a debt if a subscription for shares enables payment of the debt
245-40 Forgivenesses to which operative rules do not apply
245-45 Application of operative rules if forgiveness involves an arrangement

Operative provisions

245-35 What constitutes *forgiveness* of a debt

A debt is ***forgiven*** if and when:

(a) the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or

(b) the period within which the creditor is entitled to sue for the recovery of the debt ends, because of the operation of a statute of limitations, without the debt having been paid.

245-36 What constitutes *forgiveness* of a debt if the debt is assigned

A debt is ***forgiven*** if and when the creditor assigns the right to receive payment of the debt to another entity (the ***new creditor***) and the following conditions are met:

(a) either the new creditor is the debtor's *associate or the assignment occurred under an *arrangement to which the new creditor and debtor were parties;

(b) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of *trading on a market, exchange or other place on which, or facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) are made or accepted.

Note 1: Division 16E of Part III of the *Income Tax Assessment Act 1936* brings to account gains and losses on some securities on an accruals basis.

Note 2: This Division also applies if an assigned debt is subsequently forgiven by the new creditor. Section 245-61 tells you how to work out the value of the debt in that case.

245-37 What constitutes *forgiveness* of a debt if a subscription for shares enables payment of the debt

If an entity subscribes for *shares in a company to enable the company to make a payment in or towards discharge of a debt it owes to the entity, the debt is ***forgiven*** when, and to the extent that, the company applies any of the money subscribed in or towards payment of the debt.

245-40 Forgivenesses to which operative rules do not apply

Subdivisions 245-C to 245-G do not apply to a *forgiveness of a debt if:

(a) the debt is waived and the waiver constitutes a *fringe benefit; or

Note: The waiver by an employer of a debt owed by an employee is usually a fringe benefit: see section 14 of the *Fringe Benefits Tax Assessment Act 1986*.

(b) the amount of the debt has been, or will be, included in the assessable income of the debtor in any income year; or

(c) the forgiveness is effected under an Act relating to bankruptcy; or

(d) the forgiveness is effected by will; or

(e) the forgiveness is for reasons of natural love and affection; or

(f) the debt is a *tax-related liability or a civil penalty under Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (about penalties for promoters and implementers of tax avoidance schemes).

Note: If the forgiveness of your debt involved an arrangement which was entered into before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

245-45 Application of operative rules if forgiveness involves an arrangement

(1) If:

(a) the debtor and the creditor in relation to a debt enter into an *arrangement; and

(b) under the arrangement, the debtor's obligation to pay the debt is to cease at a particular future time; and

(c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);

Subdivisions 245-C to 245-G apply as if the debt were *forgiven when the arrangement is entered into.

(2) If, after the arrangement is entered into, the debt is forgiven, the later forgiveness is disregarded for the purposes of those Subdivisions.

Subdivision 245-C—Calculation of gross forgiven amount of a debt

Guide to Subdivision 245-C

245-48 What this Subdivision is about

The amount of forgiveness (called the gross forgiven amount) for the debtor reflects the loss that the creditor makes for tax purposes. It is worked out in 2 steps:

(a) the value of the debt when it was forgiven is worked out on the basis that you were solvent both then and when you incurred the debt; and

(b) the value of the debt is then offset by any consideration given for the forgiveness of the debt.

The difference between the value of the debt and the amount offset is the gross forgiven amount.

If the debt was owed by several debtors, the gross forgiven amount is divided between them equally.

Table of sections

Working out the value of a debt

245-50 Extent of forgiveness if consideration is given
245-55 General rule for working out the value of a debt
245-60 Special rule for working out the value of a non-recourse debt
245-61 Special rule for working out the value of a previously assigned debt

Working out if an amount is offset against the value of the debt

245-65 Amount offset against amount of debt

Working out the gross forgiven amount

245-75 ***Gross forgiven amount*** of a debt
245-77 Gross forgiven amount shared between debtors

Working out the value of a debt

245-50 Extent of forgiveness if consideration is given

If any consideration is paid or given in respect of the *forgiveness of a debt, the debt that is forgiven is:

(a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and

(b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

Example: Daniel owes Samara $100. Samara agrees to accept $60 in full payment of the debt.

If their agreement specifies that Samara forgives the whole debt in return for $60, paragraph (a) provides that the forgiven debt is $100.

If their agreement instead requires Daniel to repay $60 and specifies that Samara forgives the remaining $40, paragraph (a) would deal with the $40 and paragraph (b) would add the remaining $60, again producing a forgiven amount of $100.

In either case, the $60 Daniel pays is offset against the forgiven amount of $100 in working out the gross forgiven amount of the debt: see sections 245-65 and 245-75.

245-55 General rule for working out the value of a debt

(1) The value of your debt at the time (the ***forgiveness time***) when it is *forgiven is the amount that would have been its *market value (considered as an asset of the creditor) at the forgiveness time, assuming that:

(a) when you incurred the debt, you were able to pay all your debts (including that one) as and when they fell due; and

(b) your capacity to pay the debt is the same at the forgiveness time as when you incurred it.

(2) However, the value of the debt at the forgiveness time is the sum of the following amounts, if that sum is less than the amount applicable under subsection (1):

(a) what would have been the amount applicable under subsection (1) if there had been no change, from the time the debt was incurred until the forgiveness time, in any rate of

interest, or rate of exchange between currencies, that affects the *market value of the debt;

(b) each amount:

(i) that you have deducted or can deduct as a result of the *forgiveness of the debt; and

(ii) that is attributable to such a change.

(3) Paragraph (1)(a) does not apply to the debt if:

(a) either:

(i) the creditor was an Australian resident at the forgiveness time; or

(ii) the *forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and

(b) you and the creditor were not dealing with each other at *arm's length in respect of you incurring the debt; and

(c) the debt was not a *moneylending debt.

Note: This subsection reduces your gross forgiven amount to reflect the reduction in the creditor's loss on the forgiven debt under the capital gains tax regime.

(4) This section has effect subject to sections 245-60 and 245-61 (about non-recourse and assigned debts).

245-60 Special rule for working out the value of a non-recourse debt

(1) The value of a debt when it is *forgiven is the lesser of:

(a) the amount of the debt outstanding at that time; and

(b) the *market value at that time of the creditor's rights mentioned in paragraph (2)(b).

(2) Subsection (1) applies to a debt if:

(a) you incurred the debt directly in respect of financing:

(i) the acquisition of property by you; or

(ii) the construction or development of property by you;

(but not including the manufacture of goods); and

(b) the creditor's rights against you in the event of default in the payment of the debt or interest were, just before the debt was forgiven, limited to all or any of the following:

(i) rights (including the right to money payable) in relation to all or any of the matters mentioned in subsection (3);

(ii) rights in respect of a mortgage or other security over the property;

(iii) rights arising out of any *arrangement relating to the financial obligations, in relation to the property, of the *end user of the property to you.

(3) For the purposes of subparagraph (2)(b)(i), the matters are as follows:

(a) the property or the use of the property;

(b) goods produced, supplied, carried, transmitted or delivered by means of the property;

(c) services provided by means of the property;

(d) the loss or *disposal of the whole or a part of the property or of your interest in the property.

245-61 Special rule for working out the value of a previously assigned debt

If your debt has been assigned as mentioned in section 245-36 and is later *forgiven by the new creditor, the value of that debt when it is later forgiven is:

(a) if the debt was not a *moneylending debt and the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment—the *market value of the debt at the time of the assignment; or

(b) in any other case—the sum of:

(i) the amount or market value of the consideration (if any) you paid or gave, or are required to pay or give, to the creditor in respect of the assignment; and

(ii) the amount or market value of the consideration (if any) the new creditor paid or gave in respect of the assignment.

Working out if an amount is offset against the value of the debt

245-65 Amount offset against amount of debt

(1) The table explains how to work out the amount (if any) that is offset against the value of a debt when it is forgiven (calculated under section 245-55, 245-60 or 245-61) in working out the *gross forgiven amount of the debt.

Amount offset against value of debt		
Item	**Column 1** **In this case:**	**Column 2** **the amount offset is:**
1	the debt is a *moneylending debt, and neither of items 4 and 6 applies	the sum of: (a) each amount that the debtor has paid; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given; and (c) the market value, at that time, of each obligation of the debtor to pay an amount, or to give such an item of property; as a result of, or in respect of, the forgiveness of the debt.
2	the debt is *not* a *moneylending debt, and none of items 3, 4, 5 and 6 applies	the sum of: (a) each amount that the debtor has paid, or is required to pay; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given, or is required to give; as a result of, or in respect of, the forgiveness of the debt.
3	the debt is *not* a *moneylending debt, the conditions in subsection (2) are met and none of items 4, 5 and 6 applies	the *market value of the debt at the time of the *forgiveness.
4	the debt is assigned as mentioned in section 245-36, and item 5 does not apply	the sum of: (a) the amount or *market value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, in respect of the assignment; and (b) the amount or market value of the consideration (if any) paid or given by the new creditor in

Amount offset against value of debt		
Item	**Column 1** **In this case:**	**Column 2** **the amount offset is:**
		respect of the assignment.
5	the debt is assigned as mentioned in section 245-36, and: (a) the debt is *not* a *moneylending debt; and (b) the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment	the *market value of the debt at the time of the assignment.
6	the debt is *forgiven by subscribing for *shares in a company as mentioned in section 245-37	the amount worked out using the formula in subsection (3).

(2) The conditions for the purposes of item 3 of the table in subsection (1) are:

(a) at least one of the following is satisfied:

(i) at the time when the debt was *forgiven, the creditor was an Australian resident;

(ii) the forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and

(b) at least one of the following is satisfied:

(i) there is no amount, and no property, covered by column 2 of item 2 of the table;

(ii) the amount worked out under item 2 of the table is greater or less than the *market value of the debt at the time of the forgiveness and the debtor and creditor did not deal with each other at *arm's length in connection with the forgiveness.

(3) The formula for the purposes of item 6 of the table in subsection (1) is:

$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

where:

amount applied means the amount applied by the company as mentioned in section 245-37.

amount subscribed means the amount subscribed as mentioned in section 245-37.

market value of shares subscribed for means the *market value of all the shares in the company that were subscribed for as mentioned in section 245-37, immediately after those shares were issued.

Working out the gross forgiven amount

245-75 *Gross forgiven amount* of a debt

(1) The ***gross forgiven amount*** of a debt is:

(a) if section 245-65 does not apply to the debt—the value of the debt when it was *forgiven (worked out under section 245-55, 245-60 or 245-61); or

(b) if the value of the debt when it was forgiven exceeds the amount offset under section 245-65 in relation to the debt—the excess.

(2) If the value of the debt when it was *forgiven is equal to or less than the amount offset:

(a) there is no ***gross forgiven amount*** in respect of the debt; and

(b) Subdivisions 245-D to 245-F (about how to work out the net forgiven amount of a debt and how to treat it) do not apply in respect of the debt.

245-77 Gross forgiven amount shared between debtors

If 2 or more entities were liable (except as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, this Subdivision applies as if each entity had a *gross forgiven amount worked out using the formula:

$$\frac{\text{*Gross forgiven amount in relation to the debt}}{\text{Number of entities liable to pay the debt}}$$

Subdivision 245-D—Calculation of net forgiven amount of a debt

Guide to Subdivision 245-D

245-80 What this Subdivision is about

The net forgiven amount of a debt is worked out by subtracting, from the gross forgiven amount of the debt, any amount that this Act already takes into account for the debtor because the debt was forgiven (for example, if some part of the forgiven amount is treated as the debtor's ordinary income).

If the debtor and creditor were companies under common ownership, they may agree to transfer some of the net forgiven amount from the debtor to the creditor. The creditor must apply that amount to reduce the capital loss or deduction it has because of the forgiveness.

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Operative provisions

245-85 Reduction of gross forgiven amount
245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

Operative provisions

245-85 Reduction of gross forgiven amount

(1) The *gross forgiven amount of your debt is reduced by the sum of the following amounts:

(a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in your assessable income for any income year as a result of the *forgiveness of the debt;

(b) any amount by which, under a provision of this Act other than this Division, an amount you could otherwise have deducted for any income year has been, or will be, reduced as

a result of the forgiveness of the debt (except a reduction under Division 727 (about indirect value shifting));

(c) any amount by which the *cost base of any of your *CGT assets has been, or will be, reduced under Part 3-1 or 3-3 as a result of the forgiveness of the debt.

Note: Paragraph (1)(c) does not cover a reduction under Division 727 (indirect value shifting) because that Division is not in Part 3-1 or 3-3.

(2) Subject to section 245-90, the amount remaining after reducing the *gross forgiven amount under subsection (1) is the ***net forgiven amount*** of the debt.

245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

(1) This section applies if:

(a) a debt owed by a company to another company is *forgiven; and

(b) from the time when the debt was incurred until the time when the debt is forgiven, the companies were *under common ownership.

(2) If, apart from this subsection, the creditor would have made a *capital loss as a result of the *forgiveness of the debt:

(a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and

(b) if such an agreement is made:

(i) the creditor's capital loss is reduced by the agreed amount; and

(ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

(iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.

(3) If, apart from this subsection, the creditor could deduct an amount in respect of the debt under section 8-1 (about general deductions)

or section 25-35 (about bad debts) for the *forgiveness income year:

(a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and

(b) if such an agreement is made:

(i) the amount the creditor can deduct is reduced by the agreed amount; and

(ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

(iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.

(4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:

(a) is in writing and signed by the public officer of each company; and

(b) is made before:

(i) the first of those companies lodges its *income tax return for the *forgiveness income year; or

(ii) any later day that the Commissioner determines in writing.

(5) A determination made under subparagraph (4)(b)(ii) is not a legislative instrument.

Subdivision 245-E—Application of net forgiven amounts

Guide to Subdivision 245-E

245-95 What this Subdivision is about

The total of the net forgiven amounts of all your debts forgiven in an income year is applied to reduce 4 classes of amounts that could otherwise reduce your taxable income in the same or a later income year. It is applied in the following order:

(a) to your tax losses from previous income years;

(b) to your net capital losses from previous income years;

(c) to the deductions you would otherwise get in the income year, or in a later income year, because of expenditure from a previous year (for example, the capital allowance deductions you would get for expenditure on acquiring a depreciating asset);

(d) to the cost bases of your CGT assets.

You can choose the order in which the net forgiven amounts reduce the amounts within each class.

If all the amounts in the 4 classes are reduced to nil, any remaining net forgiven amounts are disregarded.

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245-100 Subdivision not to apply to calculation of attributable income
245-105 How ***total net forgiven amount*** is applied

Reduction of tax losses

245-115 Total net forgiven amount is applied in reduction of tax losses
245-120 Allocation of total net forgiven amount in respect of tax losses

Reduction of net capital losses

245-130 Remaining total net forgiven amount is applied in reduction of net capital losses
245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

Reduction of expenditure

245-145 Remaining total net forgiven amount is applied in reduction of expenditure
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245-155 How expenditure is reduced—straight line deductions
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Reduction of cost bases of assets

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245-190 Reduction of the relevant cost bases of a CGT asset

Unapplied total net forgiven amount

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

General operative provisions

245-100 Subdivision not to apply to calculation of attributable income

This Subdivision does not apply to the calculation of:

(a) attributable income of a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936*; or

(b) *attributable income of a *CFC.

245-105 How *total net forgiven amount* is applied

(1) Your ***total net forgiven amount*** for the *forgiveness income year is the total of the *net forgiven amounts of all your debts that are *forgiven in that year.

Note 1: The total net forgiven amount may be reduced under section 707-415.

Note 2: The total net forgiven amount of a partner in a partnership is affected by section 245-215.

(2) Your *total net forgiven amount is applied, in accordance with sections 245-115 to 245-195, for the *forgiveness income year.

Reduction of tax losses

245-115 Total net forgiven amount is applied in reduction of tax losses

The *total net forgiven amount is applied first, to the maximum extent possible, in reduction, in accordance with section 245-120,

of your *tax losses (if any) for any income years, if the tax losses could, if you had enough assessable income, be deducted in:

(a) the *forgiveness income year; or

(b) a later income year.

245-120 Allocation of total net forgiven amount in respect of tax losses

(1) You may choose:

(a) the order in which your *tax losses are reduced; and

(b) the amount applied to reduce each of those losses;

so long as the *total net forgiven amount is applied, to the maximum extent possible, in reduction of those losses.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

Reduction of net capital losses

245-130 Remaining total net forgiven amount is applied in reduction of net capital losses

(1) The *total net forgiven amount (if any) remaining after being applied under section 245-115 is applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of your *net capital losses (if any) specified in subsection (2).

(2) Those *net capital losses are your net capital losses for income years before the *forgiveness income year that you could apply in working out your *net capital gain for the forgiveness income year if you had enough capital gains.

245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

(1) You may choose:

(a) the order in which your *net capital losses are reduced; and

(b) the amount applied in reduction of each of those losses;

so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of those losses.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

Reduction of expenditure

245-145 Remaining total net forgiven amount is applied in reduction of expenditure

(1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115 and 245-130 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-150, 245-155 and 245-157, of your expenditure that:

(a) is mentioned in the following table (other than expenditure covered by subsection (2)) and was incurred by you before the *forgiveness income year; and

(b) apart from this Subdivision, could be deducted by you for the forgiveness income year or a later income year if no event or circumstance (other than a *recoupment of the expenditure by you in the forgiveness income year) occurred that would affect its deductibility.

Table of expenditure

Item	Column 1 General description of expenditure	Column 2 Provision under which a deduction is available for the expenditure
1	Expenditure deductible under Division 40 (Capital allowances)	Division 40 of this Act
2	Expenditure incurred in *borrowing money to produce assessable income	Section 25-25 of this Act
3	Expenditure on scientific research	Subsection 73A(2) of the *Income Tax Assessment Act 1936*
4	Expenditure on *research and development activities	Section 73B, 73BA, 73BH, 73QA or 73QB of the *Income Tax Assessment Act 1936*
5	Advance revenue expenditure	Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936*

Table of expenditure

Item	Column 1 General description of expenditure	Column 2 Provision under which a deduction is available for the expenditure
6	Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1) of the *Income Tax Assessment Act 1936*
7	Expenditure on Australian films	Section 124ZAFA of the *Income Tax Assessment Act 1936*
8	Expenditure on assessable income-producing buildings and other capital works	Section 43-10 of this Act

Note: If the asset to which the expenditure relates was disposed of, lost or destroyed before 28 June 1996 or the expenditure was recouped before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Expenditure is covered by this subsection if:

(a) it was incurred in respect of an asset you *disposed of to an entity that you dealt with at *arm's length in respect of the disposal; and

(b) the disposal occurred during the *forgiveness income year before the *forgiveness of any debt owed by you, and the forgiveness resulted in a *net forgiven amount; and

(c) no provision of this Act includes an amount in your assessable income, or allows you a deduction, as a result of the disposal.

245-150 Allocation of remaining total net forgiven amount in respect of expenditures

(1) You may choose:

(a) the order in which your expenditures are reduced; and

(b) the amount applied in reduction of each of those expenditures;

so long as that the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of your expenditures.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

245-155 How expenditure is reduced—straight line deductions

(1) This section applies in respect of the reduction under section 245-145 of an expenditure of yours, if:

(a) the amount that you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount (the ***base amount***); and

(b) the base amount is worked out without regard to any amount or amounts you previously deducted in respect of that expenditure.

(2) The amount of the reduction of the expenditure must not exceed:

(a) the base amount; less

(b) the amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4)), or can deduct, an amount for any income year before the *forgiveness income year.

(3) For the purpose of working out your deductions for the *forgiveness income year and later income years, any amount that is applied in reduction of your expenditure is taken to reduce the base amount.

(4) You are taken to have deducted the amount of the reduction in respect of the expenditure:

(a) before the *forgiveness income year; and

(b) for the purposes of any provision of this Act that includes an amount in your assessable income or allows you a deduction:

(i) because of the *disposal, loss or destruction of the asset in respect of which the expenditure was incurred; or

(ii) because of the *recoupment of any of the expenditure; or

(iii) because use of the asset for a particular purpose has been otherwise terminated; or

(iv) because a *balancing adjustment event occurs for that asset.

(5) The amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4), or can deduct, an amount for all income years (including income years before the *forgiveness income year) must not exceed the base amount as reduced under subsection (3).

245-157 How expenditure is reduced—diminishing balance deductions

Any amount applied in reduction under section 245-145 of an expenditure of yours is taken to have been deducted by you in respect of the expenditure before the *forgiveness income year, if the amount you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount previously deducted by you in respect of the expenditure.

245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

If:

(a) after the *forgiveness income year you *recoup an amount of expenditure that is subject to reduction under section 245-145; and

(b) as a result of the recoupment, this Act applies to disallow any amount you have deducted in respect of the expenditure;

an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the expenditure is included in your assessable income in the income year in which the expenditure is recouped.

Reduction of cost bases of assets

245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets

(1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115, 245-130 and 245-145 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the *cost base and *reduced cost base of your *CGT assets.

(2) Subsection (1) does not apply to the following *CGT assets:

(a) a *pre-CGT asset;

(b) a CGT asset you *acquire after the start of the *forgiveness income year;

(c) a *personal use asset;

(d) a *dwelling that was your main residence at any time before the forgiveness income year;

(e) goodwill;

(f) a right of yours covered by section 118-305 (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);

(g) a CGT asset that, throughout the period before the forgiveness income year when it was owned by you, was your *trading stock;

(h) a CGT asset if:

(i) expenditure by you (of a kind which is subject to reduction under section 245-145) relates to the asset; and

(ii) a *CGT event in relation to the asset would result in an amount being included in your assessable income, or in you being able to deduct an amount;

(i) if you are a foreign resident at the beginning of the forgiveness income year—an asset of yours that is not *taxable Australian property.

245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets

(1) Subject to section 245-185, you may choose:

(a) your *CGT assets whose *cost base and *reduced cost base are subject to reduction under section 245-175; and

(b) the amount applied in reduction of the cost base and reduced cost base of each of those assets;

so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of the cost base and reduced cost base of such assets.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

245-185 Relevant cost bases of investments in associated entities are reduced last

If your *CGT assets that are subject to reduction under section 245-175 include investments in, or in relation to, an *associate of yours (including *membership interests, or *debt interests, in your associate), the:

(a) *cost base; and

(b) *reduced cost base;

of those assets are not subject to reduction under section 245-175 until the *total net forgiven amount (if any) remaining has been applied, to the maximum extent possible, in reduction of the cost bases of your other CGT assets.

245-190 Reduction of the relevant cost bases of a CGT asset

(1) Subject to subsection (3), if you choose to apply an amount in reduction of the *cost base and *reduced cost base of a particular *CGT asset, the cost base and reduced cost base of the asset, as at any time on or after the beginning of the *forgiveness income year, are reduced by that amount.

(2) The reduction by a particular amount of the *cost base and *reduced cost base of a particular *CGT asset is, for the purpose of working out the amount by which the *total net forgiven amount remaining is applied, taken to be a reduction by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).

(3) The maximum amount by which the *cost base and *reduced cost base of a *CGT asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if a *CGT event had happened to the asset:

(a) subject to paragraph (b), on the first day of the *forgiveness income year; or

(b) if, after the beginning of that income year, an event occurred that would cause the reduced cost base of the asset to be reduced—on the day on which the event occurred;

and the asset had been *disposed of at its *market value on the day concerned.

Unapplied total net forgiven amount

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

(1) If any part of the *total net forgiven amount remains after the application of that amount in making reductions under the preceding provisions of this Subdivision, the remaining part is disregarded.

(2) This section has effect subject to section 245-215 (about partnerships and transferring the remaining part to the partners).

Subdivision 245-F—Special rules relating to partnerships

Guide to Subdivision 245-F

245-200 What this Subdivision is about

Any part of a partnership's total net forgiven amount left over after applying it under Subdivision 245-E is divided between the partners. Each partner treats the partner's share as a net forgiven amount the partner has for the income year.

Table of sections

Operative provisions

245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

Operative provisions

245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

(1) This section applies if any part (the ***residual amount***) of the *total net forgiven amount in relation to a partnership in respect of the *forgiveness income year remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.

(2) If there is a *net income in relation to the partnership in respect of the *forgiveness income year:

(a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and

(b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

where:

partner's share of net income means the part of the net income of the partnership for the forgiveness income year that is included in the partner's assessable income.

(3) If there is a *partnership loss in relation to the partnership in respect of the *forgiveness income year:

(a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and

(b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

where:

partner's share of partnership loss means the part of the partnership loss that the partner has deducted or can deduct.

(4) The *total net forgiven amount of a partner for the *forgiveness income year as worked out under subsection 245-105(1) includes the *net forgiven amount worked out in relation to the partner under this section.

(5) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.

Subdivision 245-G—Record keeping

245-265 Keeping and retaining records

(1) If you incur a debt, you must keep any records that are necessary to enable the following matters to be readily found out:

(a) the date on which you incurred the debt;

(b) the identity of the creditor;

(c) the amount of the debt;

(d) the terms of repayment of the debt;

(e) if the debt is not a *moneylending debt and you and the creditor were not dealing with each other at *arm's length in respect of the incurring of the debt—your capacity at the time when the debt was incurred to pay the debt when it falls due;

(f) if your debt is *forgiven—the date of the forgiveness and the amount offset under section 245-65 (if any) in respect of the debt.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) If a company and another company that are *under common ownership cease to be under common ownership, each company must keep any records that are necessary to enable the following matters to be readily found out:

(a) the date on which the companies ceased to be under common ownership;

(b) the identity of each entity that was a *controller (for CGT purposes) of the company immediately before the companies ceased to be under common ownership;

(c) the identity of each entity that was a controller (for CGT purposes) of the company immediately after the companies ceased to be under common ownership.

(3) You must keep the records required by subsection (1) or (2) in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.

(4) Subject to subsection (5), you must keep the records required by subsection (1) until:

(a) if paragraph (b) does not apply—the end of 5 years after the debt was *forgiven; or

(b) if the period within which the Commissioner may, under section 170 of the *Income Tax Assessment Act 1936*, amend your assessment for the income year to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7) of that Act—the later of:

(i) the end of the assessment period as so extended; and

(ii) the end of the period of 5 years mentioned in paragraph (a).

(5) Subsection (4) does not require you to keep records after the debt is paid.

(6) Subject to subsection (7), each company that keeps any records required by subsection (2) must retain the records until the end of the second income year after the income year in which the companies ceased to be *under common ownership.

(7) If a debt of one of the companies mentioned in subsection (2) was *forgiven at any time after the companies ceased to be *under common ownership and before the end of the second income year after the income year in which the cessation occurred, each company that keeps records required by that subsection must retain the records until the time specified in subsection (4).

(8) You commit an offence if you fail to comply with a provision of this section.

Penalty: 30 penalty units.

(9) An offence against subsection (8) is an offence of strict liability.

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

(10) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

3 Subsection 995-1(1)

Insert:

forgive a debt has the meaning given by sections 245-35, 245-36 and 245-37.

Note: Subdivisions 245-C to 245-G (about forgiveness of commercial debts) apply to certain arrangements as if the arrangements were forgiveness of debts: see section 245-45.

4 Subsection 995-1(1)

Insert:

forgiveness income year, in relation to a debt that is *forgiven, means the income year in which the debt is forgiven.

5 Subsection 995-1(1)

Insert:

gross forgiven amount has the meaning given by section 245-75.

6 Subsection 995-1(1)

Insert:

moneylending debt means a debt resulting from a loan of money in the ordinary course of a *business of lending money carried on by the creditor.

7 Subsection 995-1(1)

Insert:

net forgiven amount, of a debt, has the meaning given by sections 245-85 and 245-90.

8 Subsection 995-1(1)

Insert:

total net forgiven amount has the meaning given by subsection 245-105(1).

Income Tax (Transitional Provisions) Act 1997

9 Before Division 247

Insert:

Division 245—Forgiveness of commercial debts

Table of Subdivisions

245-A Application of Division 245 of the Income Tax Assessment Act 1997

Subdivision 245-A—Application of Division 245 of the Income Tax Assessment Act 1997

Table of sections

245-5 Application and saving
245-10 Pre-28 June 1996 arrangements etc.

245-5 Application and saving

(1) Division 245 of the *Income Tax Assessment Act 1997* applies to debts forgiven in:

(a) the 2010-11 income year; and

(b) later income years.

(2) Despite the repeal of Schedule 2C to the *Income Tax Assessment Act 1936*, that Schedule continues to apply to debts forgiven in:

(a) the 2009-10 income year; and

(b) earlier income years.

(3) Subsection (2) does not limit the effect of section 8 of the *Acts Interpretation Act 1901* in relation to the repeal.

245-10 Pre-28 June 1996 arrangements etc.

(1) Subdivisions 245-C to 245-G of the *Income Tax Assessment Act 1997* do not apply to a forgiveness of a debt if the forgiveness occurs in accordance with the terms of an arrangement that:

(a) was entered into on or before 27 June 1996; and

(b) is evidenced in writing otherwise than by a document evidencing the arrangement or transaction under which the debt arose.

(2) Those Subdivisions also do not apply to reduce your expenditure:

(a) if the asset in respect of which the expenditure was incurred was disposed of by you, or was lost or destroyed, on or before 27 June 1996; or

(b) to the extent (if any) to which the expenditure was recouped by you on or before 27 June 1996.

Part 2—Consequential amendments

Income Tax Assessment Act 1936

10 Subsections 73A(1A) and 82KZM(2)

Omit "Schedule 2C", substitute "the *Income Tax Assessment Act 1997*".

11 Paragraph 82KZMA(6)(b)

Omit "Schedule 2C to this Act", substitute "that Act".

12 Paragraph 82KZMF(2)(b)

Omit "Schedule 2C to this Act", substitute "the *Income Tax Assessment Act 1997*".

13 Subsection 109F(3)

Omit "(except subsection 245-35(4)) of Schedule 2C, assuming the amount were a commercial debt for the purposes of Division 245 of that Schedule", substitute "or 245-37 of the *Income Tax Assessment Act 1997*, assuming the amount were a debt to which Subdivisions 245-C to 245-G of that Act apply".

14 Subsection 109F(3) (note)

Omit "of Schedule 2C", substitute "of the *Income Tax Assessment Act 1997*".

15 Subsection 109F(8) (example)

Omit "subsection 245-35(2) of Schedule 2C", substitute "paragraph 245-35(b) of the *Income Tax Assessment Act 1997*".

16 Sections 124KAA and 124ZAFAA

Omit "Schedule 2C", substitute "the *Income Tax Assessment Act 1997*".

Note: The headings to sections 124KAA and 124ZAFAA are altered by omitting "**Schedule 2C**" and substituting "**the 1997 Act**".

Income Tax Assessment Act 1997

17 Section 12-5 (table item headed "bad debts")

Omit "**245-90 of Schedule 2C**", substitute "245-90".

18 Subsection 25-25(1) (note)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

19 Subsection 25-35(5) (cell at table item 3, column headed "See:")

Repeal the cell, substitute:

section 245-90

20 Subsections 36-15(7) and 36-17(9) (note)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

21 Subsection 40-90(1)

Omit "deductible".

22 Subsection 40-90(1)

Omit "(within the meaning of Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936*) under section 245-155 of that Schedule", substitute "under section 245-155 or 245-157".

23 Subsection 40-645(3) (note 1)

Omit "of this Act" (first and second occurring).

24 Subsection 40-645(3) (note 1)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

25 Subsection 43-50(7)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

26 Section 102-30 (table item 3)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

27 Subsection 104-25(5) (note 2)

Omit "of Schedule 2C to the *Income Tax Assessment Act 1936*".

28 Section 112-97 (table item 19)

Omit "CGT assets of the debtor (except assets that are excluded assets under Schedule 2C)", substitute "certain CGT assets of the debtor".

29 Section 112-97 (cell at table item 19, column headed "See:")

Repeal the cell, substitute:

sections 245-175 to 245-190

30 Paragraph 165-115ZA(2)(b)

Omit "section 245-10 in Schedule 2C to the *Income Tax Assessment Act 1936* (which relates", substitute "Subdivisions 245-C to 245-G (which relate".

31 Paragraph 204-30(2)(c)

Omit "forgiving", substitute "*forgiving".

32 Section 230-470

Omit "forgiveness of a debt (as defined in Subdivision 245-B of Schedule 2C to the *Income Tax Assessment Act 1936*)", substitute "*forgiveness of a debt to which Subdivisions 245-C to 245-G apply".

33 Paragraphs 230-470(a) and (b)

Repeal the paragraphs, substitute:

(a) if section 245-90 (about agreements to forgo capital losses or deductions) applies—the debt's provisional net forgiven amount mentioned in that section; or

(b) if that section does not apply—the debt's *net forgiven amount.

34 Paragraphs 230-515(2)(e) and (f)

Repeal the paragraphs, substitute:

(e) item 3 of the table in subsection 245-65(1) of this Act;

(f) section 775-40 of this Act.

35 Subsection 243-75(1)

Omit "Schedule 2C to the *Income Tax Assessment Act 1936*", substitute "Division 245".

36 Paragraph 243-75(2)(a)

Omit "that Schedule", substitute "Division 245".

37 Paragraph 243-75(2)(b)

Omit "of that Schedule".

38 Subsection 707-140(3)

Omit "forgiven (as defined in Subdivision 245-B in Schedule 2C to the *Income Tax Assessment Act 1936*)", substitute "*forgiven".

39 Subsection 707-140(3)

Omit "subsections 245-105(5) and (6) in that Schedule", substitute "sections 245-115 and 245-130".

40 Subsection 707-415(2) (table item 1)

Repeal the item, substitute:

1	(a) the joining entity owed a debt just before the joining time to an entity that was not a *member of the group at the joining time; and (b) the loss is wholly or partly attributable to the debt; and (c) Subdivision 245-E (about applying the total net forgiven amount to reduce other amounts) applies in relation to the debt (or another debt that is reasonably connected to the debt) because the debt is *forgiven after the joining time	the *total net forgiven amount	applying that total net forgiven amount in accordance with sections 245-115, 245-130, 245-145 and 245-175

41 Subsection 707-415(4)

Omit "gross forgiven amount (within the meaning of section 245-75 in Schedule 2C to the *Income Tax Assessment Act 1936*)", substitute "*gross forgiven amount".

42 Subsection 995-1(1) (note at the end of the definition of *company*)

After "Note", insert "1".

43 Subsection 995-1(1) (at the end of the definition of *company*)

Add:

Note 2: A reference to a company includes a reference to a corporate limited partnership: see section 94J of the *Income Tax Assessment Act 1936*.

44 Subsection 995-1(1) (note at the end of the definition of *partnership*)

After "Note", insert "1".

45 Subsection 995-1(1) (at the end of the definition of *partnership*)

Add:

Note 2: A reference to a partnership does not include a reference to a corporate limited partnership: see section 94K of the *Income Tax Assessment Act 1936*.

Schedule 3—Leases of luxury cars

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2E

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 240

Insert:

Division 242—Leases of luxury cars

Table of Subdivisions

Guide to Division 242
242-A Notional sale and loan
242-B Amount to be included in lessor's assessable income
242-C Deductions allowable to lessee
242-D Adjustments if total amount assessed to lessor differs from amount of interest
242-E Extension, renewal and final ending of the lease

Guide to Division 242

242-1 What this Division is about

A luxury car is one whose market value exceeds the car limit set for a car's capital allowance deductions by section 40-230.

If the lessor of a luxury car is tax exempt, or taxed at a lower rate than the lessee, the lease could be structured to give both parties a better after-tax outcome than if the lessee had bought the car. The lessee could fully deduct the lease payments, thereby avoiding the

capital allowance limit for luxury cars, and the lessor would receive higher lease payments.

This Division removes the tax benefit for the lessee by putting both parties in the same position as if the lessor had sold the car to the lessee and lent the lessee the purchase price.

Subdivision 242-A—Notional sale and loan

Guide to Subdivision 242-A

242-5 What this Subdivision is about

A leased luxury car is treated for income tax purposes as if it had been sold by the lessor to the lessee for the car's market value. The lessor is treated as having lent the lessee the money to buy the car, and the lease payments are treated as payments of the principal and interest on that notional loan.

Table of sections

Operative provisions

242-10 Application
242-15 Notional sale and acquisition
242-20 Consideration for notional sale, and cost, of car
242-25 Notional loan by lessor to lessee

Operative provisions

242-10 Application

(1) This Division applies to a *car that:

(a) is leased (but not under a *short-term hire agreement or a *hire purchase agreement) for consideration; and

(b) was a *luxury car when the lessor first leased it; and

(c) is not *trading stock of the lessee; and

(d) is not a car covered by subsection 40-230(2) (about cars modified to carry individuals with a disability).

(2) The provisions of this Division do not have effect for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936* (about withholding tax on dividends, interest and royalties).

Note: This subsection prevents interest on the notional loan that this Division creates being subject to withholding tax under Division 11A.

(3) For the purposes of paragraph (1)(a), the question whether an agreement is a *short-term hire agreement is determined on the basis that an employee or employer of an entity is an *associate of the entity.

Note: Under the definition of ***short-term hire agreement*** in subsection 995-1(1), successive agreements for the hire of the same asset to an entity or its associates are not short-term hire agreements if they result in substantial continuity of hiring.

242-15 Notional sale and acquisition

(1) This Act has effect as if:

(a) the *car had been disposed of (the ***notional sale***) by the lessor to the lessee; and

(b) the car had been acquired by the lessee;

at the start of the term of the lease.

Note: This Act will apply as it would have if the lessor had actually disposed of the car to the lessee. For example, if the lessor had been deducting an amount for the car's decline in value, the notional disposal will activate the balancing adjustment rules in Subdivision 40-D because the lessor would be treated as no longer holding the car.

(2) This Act also has effect as if the lessee owns the *car until:

(a) the lease (not including any extension or renewal of the lease) ends; or

(b) the lessee enters into a sublease of the car and this Division applies to the car in relation to the sublease.

Note 1: This means that the lessee (and not the lessor) may be able to deduct amounts for the decline in value of the car under Division 40.

Note 2: The lessee will be treated as continuing to own the car until the end of any extension or renewal: see section 242-80.

242-20 Consideration for notional sale, and cost, of car

(1) The consideration for the notional sale by the lessor, and the first element of the *cost of the *car for the lessee, are the car's *market value at the start of the term of the lease.

(2) If:

(a) the lease is a sublease; and

(b) the lessee is one or more of the following:

(i) an *associate of the lessor;

(ii) an employer of the lessor;

(iii) an employee of the lessor;

the first element of the *cost of the *car to the lessee is the sum of:

(c) the amount that would have been the car's *adjustable value at the start of the term of the lease for the purposes of applying this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and

(d) any amount that is included in the lessor's assessable income under section 40-285 as a balancing adjustment because the lessor is treated as having disposed of the car.

Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends paragraph (2)(d) to cover amounts included in assessable income under former provisions corresponding to section 40-285.

242-25 Notional loan by lessor to lessee

(1) This Act has effect as if, on the grant of the lease, the lessor had made a loan (the ***notional loan***) to the lessee:

(a) for a period equal to the term of the lease (not including the term of any extension or renewal); and

(b) of an amount (the ***notional loan principal***) equal to the consideration for the notional sale of the *car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the term of the lease, for the first element of the *cost of the car to the lessee; and

(c) subject to payment of interest.

Note: There is a further notional loan if the lease is extended or renewed: see section 242-80.

(2) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments.

Subdivision 242-B—Amount to be included in lessor's assessable income

Guide to Subdivision 242-B

242-30 What this Subdivision is about

The lessor's assessable income includes the interest on the notional loan.

The lease payments to the lessor are non-assessable non-exempt income.

Note: If the consideration for a notional sale of a car exceeds the adjustable value of the car to the lessor, the excess will be included in the lessor's assessable income under section 40-285.

There would be a similar result if the lessor is treated as having reacquired the car and then sells the car for more than the cost of reacquisition.

Table of sections

Operative provisions

242-35 Amount to be included in lessor's assessable income
242-40 Treatment of lease payments

Operative provisions

242-35 Amount to be included in lessor's assessable income

Accrual amounts

(1) The lessor's assessable income for an income year includes:

(a) if a *luxury car lease payment period for the lease of a *car occurs wholly during that income year—the amount (an ***accrual amount***) worked out under subsection (2) for that luxury car lease payment period; and

(b) if part of a luxury car lease payment period for the lease of a car occurs during that income year—so much of the amount (also an ***accrual amount***) worked out under subsection (2) for that luxury car lease payment period as may appropriately

be related to that income year in accordance with generally accepted accounting principles.

(2) The amount is:

$$\text{Outstanding notional loan principal at the start of the lease payment period} \times \text{Implicit interest rate}$$

where:

implicit interest rate is the implicit interest rate under the lease for the *luxury car lease payment period, taking into account the payments to be made by the lessee under the lease and any *termination amounts.

outstanding notional loan principal at the start of the lease payment period is:

(a) the sum of the notional loan principal and the accrual amounts for earlier *luxury car lease payment periods; less

(b) the sum of the *luxury car lease payments that the lessee was required to make before the start of the relevant luxury car lease payment period.

Excessive periods

(3) If, apart from this subsection, a *luxury car lease payment period for the lease of a *car would exceed 6 months, this Division applies as if each of the following were a separate luxury car lease payment period:

(a) the first 6 months of the original luxury car lease payment period;

(b) if the original luxury car lease payment period was not longer than 12 months—the remaining part of the original luxury car lease payment period;

(c) if the original luxury car lease payment period was longer than 12 months—each successive 6 month period in the original luxury car lease payment period;

(d) the period (if any) after the end of the last of the periods to which paragraph (c) applies.

242-40 Treatment of lease payments

(1) The *luxury car lease payments under the lease are not assessable income and are not *exempt income of the lessor.

Note: Those lease payments are instead taken into account in calculating accrual amounts that are included in the lessor's assessable income under section 242-35.

(2) In working out the amounts the lessor can deduct for any income year, ignore the fact that subsection (1) makes the *luxury car lease payments *non-assessable non-exempt income.

Note: This allows the lessor to continue to deduct amounts related to earning the lease payments (such as interest on an amount the lessor borrowed to acquire the car), just as if the amounts related to earning interest on the notional loan to the lessee.

Subdivision 242-C—Deductions allowable to lessee

Guide to Subdivision 242-C

242-45 What this Subdivision is about

The lessee is entitled to deduct the interest on the notional loan to the same extent that the lessee would have been able to deduct the lease payments apart from this Division.

Table of sections

Operative provisions

242-50 Extent to which deductions are allowable to lessee
242-55 Lease payments not deductible

Operative provisions

242-50 Extent to which deductions are allowable to lessee

(1) If a *luxury car lease payment period for the lease of a *car occurs wholly during an income year of the lessee, the lessee can deduct the accrual amount for that period for that income year.

Note 1: If a luxury car lease payment period would otherwise be longer than 6 months, subsection 242-35(3) divides the original period into periods of no longer than 6 months.

Note 2: For ***accrual amount***, see subsection 242-35(1).

(2) If part of a *luxury car lease payment period for the lease of a *car occurs during an income year of the lessee, the lessee can deduct so much of the accrual amount for that period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

(3) The lessee can deduct an accrual amount, or part of an accrual amount, for a *luxury car lease payment period under subsection (1) or (2) for an income year only to the extent that the lessee could deduct the luxury car lease payments made for that year apart from this Division.

242-55 Lease payments not deductible

The lessee cannot deduct the *luxury car lease payments that the lessee makes under the lease for any income year.

Note: Those payments are instead taken into account in calculating accrual amounts that are deductible under section 242-50.

Subdivision 242-D—Adjustments if total amount assessed to lessor differs from amount of interest

Guide to Subdivision 242-D

242-60 What this Subdivision is about

When a luxury car lease is extended, renewed or ends, the overall nominal gain to the lessor is compared to the nominal interest so far paid under the lease.

If the overall nominal gain is greater, the difference is assessable income of the lessor, and the lessee may be able to deduct it.

If the overall nominal gain is less, the lessor can deduct the difference, which may also be assessable income of the lessee.

This process ensures that the right amount has been taxed over the term of the lease.

Table of sections

Operative provisions

242-65 Adjustments for lessor
242-70 Adjustments for lessee

Operative provisions

242-65 Adjustments for lessor

(1) This section applies at the following times:
  (a) if the term of the lease is extended—when the extension takes effect;
  (b) if the lease is renewed—when the renewal takes effect;
  (c) when the lease (including any extension or renewal of the lease) ends.

(2) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease exceeds the amount worked out under subsection (4), the excess is included in the lessor's assessable income for the income year in which the relevant time occurs.

Note: Subsection 242-80(8) treats the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

(3) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease is less than the amount worked out under subsection (4), the lessor can deduct the difference for the income year in which the relevant time occurs.

(4) The amount for the purposes of subsections (2) and (3) is the sum of:
  (a) the notional loan principal; and
  (b) the sum of the accrual amounts that have been or are to be included in the lessor's assessable income of any income year.

Note: For ***accrual amount***, see subsection 242-35(1).

242-70 Adjustments for lessee

(1) If:

(a) an amount is included in the lessor's assessable income for an income year under subsection 242-65(2); or

(b) an amount would have been so included if the lessor had been subject to tax on assessable income;

the lessee can deduct a corresponding amount for the same income year.

(2) If:

(a) the lessor can deduct an amount for an income year under subsection 242-65(3); or

(b) the lessor could have deducted an amount under that subsection if the lessor had been subject to tax on assessable income;

a corresponding amount is included in the lessee's assessable income for the same income year.

(3) The lessee cannot deduct an amount for any income year under subsection (1), and an amount is not included in the lessee's assessable income of any income year under subsection (2), except to the extent (if any) that the lessee could deduct the *luxury car lease payments made apart from this Division.

Subdivision 242-E—Extension, renewal and final ending of the lease

Guide to Subdivision 242-E

242-75 What this Subdivision is about

When a luxury car lease ends (whether it expires or is terminated before its expiry date), one of 3 things will happen:

(a) if the lease is extended or renewed—the original notional loan is treated as having been repaid and the lessor is treated as having made a new loan to the lessee; or

(b) if the lessee acquires the car from the lessor—the lessee continues to own the car for tax purposes, and the actual transfer and the termination payment to acquire the car are ignored for tax purposes; or

(c) if the lessee's right to use the car ends—the lessee is treated as having sold the car back to the lessor.

In each case, there may be adjustments under Subdivision 242-D to ensure that the right amount has been taxed over the term of the lease.

Table of sections

Operative provisions

242-80 What happens if the term of the lease is extended or the lease is renewed
242-85 What happens if an amount is paid by the lessee to acquire the car
242-90 What happens if the lessee stops having the right to use the car

Operative provisions

242-80 What happens if the term of the lease is extended or the lease is renewed

(1) The rules in this section have effect if, after the end of the lease (or the end of any extension of the lease term or renewal of the lease), the lessee continues to have the *right to use the *car because the term of the lease is extended (or further extended) or the lease is renewed (or further renewed).

(2) This Act has effect as if the lessee continued to be the owner of the *car until the end of the lease as extended or renewed.

(3) However, this Act has effect as if the lessee stopped being the owner of the *car if:

(a) the lessee enters into a sublease in respect of the car; and

(b) this Division applies to the car in respect of that sublease.

(4) This Act has effect as if the notional loan that arose because of the grant of the lease, or because of the previous extension or renewal, had been repaid.

Note: Also, Subdivision 242-D (about balancing adjustments) will apply to the ending, extension or renewal.

(5) This Act has effect as if, on the grant of the extension or renewal, the lessor had made a new loan (the ***notional loan***) to the lessee:

(a) for the period of the extension of the term of the lease or the period of the renewed lease, as the case may be; and

(b) of an amount (the ***notional loan principal***) equal to the *car's *market value when the extension or renewal is granted; and

(c) subject to the payment of interest.

(6) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments under the lease as extended or renewed (or further extended or renewed).

(7) In determining whether subsection (1) applies to the lessee, disregard any period after the end of the lease (or the end of any extension of the lease term or renewal of the lease) and before the extension or renewal (or further extension or renewal) is granted and during which the lessee did not have the *right to use the *car if the extension or renewal (or further extension or renewal):

(a) has effect from the time immediately after the end of that term, extension or renewal; or

(b) otherwise results in substantial continuity of the leasing of the car to the lessee.

(8) The amount of the notional loan is treated, for the purposes of section 242-65 (about the lessor's balancing adjustments), as a *termination amount paid to the lessor under the lease or under the previous extension or renewal.

242-85 What happens if an amount is paid by the lessee to acquire the car

If, at the end of the lease or, if it is extended or renewed, at the end of any extension or renewal (the ***end time***), an amount is paid to the lessor by, or on behalf of, the lessee to acquire the *car, the following provisions have effect:

(a) the amount paid is not included in the lessor's assessable income;

(b) the lessee cannot deduct the payment;

(c) this Act has effect as if:

(i) the lessee continued to be the owner of the car until the lessee disposes of it; and

(ii) the transfer to the lessee of legal title to the car were not a disposal of the car by the lessor.

242-90 What happens if the lessee stops having the right to use the car

(1) If, at the end time:

(a) the lessee stops having the *right to use the *car; and

(b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;

the following provisions have effect.

Note: For ***end time***, see section 242-85.

(2) This Act has effect as if the *car:

(a) were sold by the lessee to the lessor; and

(b) were acquired by the lessor;

at the end time.

(3) The consideration for the sale of the *car by the lessee, and the first element of the *cost of the car to the lessor, are the *market value of the car at the end time.

(4) If the *car is afterwards acquired by an *associate of the lessee or an employer or employee of the lessee, this Act has effect as if the first element of the *cost of the car as a *depreciating asset were the lesser of:

(a) the sum of:

(i) the amount that would have been the *adjustable value of the car at that time for the purposes of applying this Act to the lessee if the lessee were not treated under this Division as having disposed of the car; and

(ii) any amount that is included in the lessee's assessable income under section 40-285 as a balancing adjustment because the lessee is treated as having disposed of the car; and

(b) the cost of the acquisition of the car by the associate, employer or employee.

Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends subparagraph (a)(ii) to cover amounts included in assessable income under former provisions corresponding to section 40-285.

(5) For the purposes of paragraph (1)(a), the lessee is not treated as having stopped to have the *right to use the *car if:

(a) the term of the lease is extended (or further extended), or the lease is renewed (or further renewed), at a time after, but not immediately after, the end of that term, extension or renewal with effect from the time immediately after that end; or

(b) the extension or renewal (or further extension or renewal) otherwise results in substantial continuity of the leasing of the car to the lessee.

Part 2—Consequential amendments

Income Tax Assessment Act 1997

3 Section 10-5 (table item headed "leases of luxury cars")

Repeal the item, substitute:

leases of luxury cars

accrual amounts 242-35
adjustment amounts (lessee) 242-70
adjustment amounts (lessor) 242-65

4 Section 11-55 (table item headed "notional sale and loan")

Omit "**42A-40 in Schedule 2E**", substitute "242-40".

5 Section 12-5 (table item headed "leases of luxury cars")

Repeal the item, substitute:

leases of luxury cars

accrual amounts 242-35
adjustment amounts (lessee) 242-70
adjustment amounts (lessor) 242-65
lease payments not deductible 242-55
payments to acquire car not deductible 242-85

6 Subsection 25-35(4A)

Omit "lease payments", substitute "*luxury car lease payments".

7 Subsection 25-35(4A)

Omit "Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "Division 242 (about luxury car leases)".

8 Subsection 25-35(4B)

Omit "finance charge", substitute "interest".

9 Subsection 25-35(4B)

Omit "lease payments", substitute "*luxury car lease payments".

10 Subsection 25-35(4C)

Repeal the subsection.

11 Subsection 28-12(1) (note 2)

Omit "subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "subsection 242-15(2)".

12 Subsection 28-45(1) (note 1)

Omit "Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies is to be worked out under section 42A-20 in that Division", substitute "Division 242 applies is to be worked out under section 242-20".

13 Subsection 28-90(6) (note 1)

Omit "subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "subsection 242-15(2)".

14 Section 40-40 (table item 1)

Repeal the item, substitute:

1	A *car in respect of which a lease has been granted that was a *luxury car when the lessor first leased it	The lessee (while the lessee has the *right to use the car) and *not* the lessor

15 Subsection 40-185(1) (note 1)

Omit "is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "ends under subsection 242-90(3)".

16 Subsection 40-305(1) (note 1)

Omit "is terminated under subsection 42A-105(3) of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "ends under subsection 242-90(3)".

17 Paragraph 40-755(4)(b)

Omit "right to use", substitute "*right to use".

18 Paragraph 43-175(2)(a)

Omit "right to use or occupy", substitute "*right to use or a right to occupy".

19 After subparagraph 118-12(2)(a)(vi)

Insert:

(via) section 242-40 (about luxury car lease payments);

20 Subparagraphs 118-12(2)(b)(viii) and (ix)

Repeal the subparagraphs, substitute:

(viii) subsection 271-105(3) in Schedule 2F (amounts subject to family trust distribution tax).

21 Paragraph 230-460(2)(a)

Omit "Division 42A (about leases of luxury cars) of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "Division 242 (about luxury car leases)".

22 Paragraphs 230-460(2)(b) and (c)

Omit "of this Act".

23 Section 240-10

Omit "*notional loan", substitute "notional loan".

24 Subsection 240-25(4)

Omit "a charge (the ***finance charge***)", substitute "interest".

25 Subsection 240-25(6)

Omit "*notional loan principal is taken to be repaid, and the *finance charge", substitute "notional loan principal is taken to be repaid, and the interest".

26 Paragraph 240-30(a)

Omit "finance charge", substitute "interest".

27 Subsection 240-60(1) (method statement, step 1)

Omit "*notional loan principal", substitute "notional loan principal".

28 Subsection 240-60(1) (method statement, step 3)

Repeal the step, substitute:

Step 3.	Work out the ***implicit interest rate*** for the *arrangement payment period, taking into account the *arrangement payments payable by the *notional buyer under the *arrangement and any *termination amounts.

29 Subsection 240-60(1) (method statement, step 4)

Omit "*notional loan principal", substitute "notional loan principal".

30 Section 240-78

Repeal the section.

31 Subsection 240-80(4)

Omit "*notional loan principal", substitute "notional loan principal".

32 Subsection 240-80(5)

Omit "*notional loan for", substitute "notional loan for".

33 Subsection 240-80(5)

Omit "*notional loan principal", substitute "notional loan principal".

34 Paragraph 240-90(4)(a)

Omit "*notional loan principal", substitute "notional loan principal".

35 Subdivision 240-G (heading)

Repeal the heading, substitute:

Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of interest

36 Section 240-100

Omit "finance charge", substitute "interest".

37 Subsection 240-105(4) (formula)

Omit "*Notional loan principal", substitute "Notional loan principal".

38 Paragraph 240-115(2)(b)

Omit "Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*", substitute "Division 242 (about luxury car leases)".

39 Subsection 243-15(5)

Repeal the subsection (including the note), substitute:

(5) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is taken to be a debt that has been used to wholly or partly finance or refinance expenditure.

40 Subsection 243-20(4)

Repeal the subsection, substitute:

(4) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) under a *hire purchase agreement is also a ***limited recourse debt***.

41 Subsection 243-25(2)

Repeal the subsection, substitute:

(2) However, a debt arrangement that is a notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is not taken to have terminated merely because it has been renewed or extended.

Note: Under Division 240, notional loans are taken to have ended if the relevant arrangement is renewed or extended.

42 Subsection 243-30(2)

Repeal the subsection, substitute:

(2) If the debt agreement is a notional loan arising under Division 240 (about arrangements treated as a sale and loan), the property that is the subject of the agreement is the ***financed property***.

43 Section 830-75 (heading)

Repeal the heading, substitute:

830-75 Extended meaning of *subject to foreign tax*

44 Section 830-75

Omit "subject to tax" (wherever occurring), substitute "subject to foreign tax".

45 Subsection 855-55(4)

Omit "subject to tax (within the meaning of Part X of the *Income Tax Assessment Act 1936*)", substitute "*subject to foreign tax".

46 Subparagraphs 974-130(4)(a)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) the lease or bailment is not an *arrangement to which Division 240 of this Act (about arrangements treated as a sale and loan), or Division 242 of this Act (about luxury car leases), applies;

47 Subsection 995-1(1) (definition of *depreciating asset lease*)

Omit "right to use", substitute "*right to use".

48 Subsection 995-1(1) (definition of *finance charge*)

Repeal the definition.

49 Subsection 995-1(1) (definition of *in-house software*)

Omit "right to use", substitute "*right to use".

50 Subsection 995-1(1) (definition of *IRU*)

Omit "right to use", substitute "*right to use".

51 Subsection 995-1(1)

Insert:

luxury car lease payment, in relation to a *car to which Division 242 (about luxury car leases) applies, means an amount that the lessee under the lease is required to pay for the rental or hire of the car, but does not include:

(a) an amount in the nature of a penalty payable for failure to make a payment for rental or hire on time; or

(b) a *termination amount.

52 Subsection 995-1(1)

Insert:

luxury car lease payment period means a period for which a *luxury car lease payment under the lease is allocated or expressed to be payable.

Note: If a luxury car lease payment period for a lease of a luxury car would otherwise be longer than 6 months, subsection 242-35(3) divides the original period into periods of no longer than 6 months.

53 Subsection 995-1(1) (definition of *luxury car*)

Repeal the definition, substitute:

luxury car: a *car is a ***luxury car*** at a time if section 40-230 would reduce its *cost as a *depreciating asset if an entity acquired it at that time for its *market value.

Note 1: Division 242 treats a lease of a luxury car as a notional sale of the car by the lessor to the lessee financed by a notional loan by the lessor to the lessee.

Note 2: Section 242-10 of the *Income Tax (Transitional Provisions) Act 1997* extends this definition to cover reductions of cost under former provisions corresponding to section 40-230.

54 Subsection 995-1(1) (definition of *notional loan*)

Repeal the definition.

55 Subsection 995-1(1) (definition of *notional loan principal*)

Repeal the definition.

56 Subsection 995-1(1) (definition of *special accrual amount*)

Repeal the definition, substitute:

special accrual amount means an amount that is included in assessable income, or an amount that can be deducted from assessable income, under any of the following:

(a) Division 230 (about taxation of financial arrangements), other than Subdivision 230-B;

(b) Subdivision 230-A if:

(i) the accruals method provided for in Subdivision 230-B is applied to take account of the gain or loss concerned; and

(ii) all the *financial benefits provided and received under the *financial arrangement concerned are denominated in a particular *foreign currency;

(c) Division 240 (about arrangements treated as a sale and loan);

(d) Division 242 (about luxury car leases);

(e) Division 16D of Part III of the *Income Tax Assessment Act 1936* (about certain arrangements relating to the use of property);

(f) Division 16E of Part III of the *Income Tax Assessment Act 1936* (about accruals assessability in respect of certain security payments).

57 Subsection 995-1(1)

Insert:

subject to foreign tax has the meaning given to the expression "subject to tax" by Part X of the *Income Tax Assessment Act 1936*.

58 Subsection 995-1(1) (definition of *subject to tax*)

Repeal the definition.

59 Subsection 995-1(1) (definition of *termination amount*)

Repeal the definition, substitute:

termination amount means an amount payable because an *arrangement in relation to property ends and includes:

(a) if, at the end of the arrangement, one party to the arrangement acquires the property from the other party—an amount payable for the acquisition; or

(b) if, at the end of the arrangement, the property is lost or destroyed—any amounts paid to the owner of the property as a result of the loss or destruction; or

(c) otherwise—the *market value of the property at the end of the arrangement.

Part 3—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

60 Before Division 247

Insert:

Division 242—Leases of luxury cars

Table of sections

242-10 Application
242-20 Balancing adjustments

242-10 Application

(1) Division 242 of the *Income Tax Assessment Act 1997* (the ***new Division***) applies to assessments for the 2010-11 income year and later years.

(2) However, the new Division does not apply to a lease of a car if the lease was granted on or before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996 unless the lease was extended after that time (whether the extension took effect before or after that time).

(3) The definition of ***luxury car*** in subsection 995-1(1) of the *Income Tax Assessment Act 1997* applies to a reduction under former section 57AF of the *Income Tax Assessment Act 1936* or former section 42-80 of the *Income Tax Assessment Act 1997* in the same way as it applies to a reduction under section 40-230 of the *Income Tax Assessment Act 1997*.

242-20 Balancing adjustments

Sections 242-20 and 242-90 of the *Income Tax Assessment Act 1997* apply to an amount included in assessable income under former Subdivision 42-F or 42-G of the *Income Tax Assessment Act 1997* and former subsection 59(2) of the *Income Tax Assessment Act 1936* in the same way as they apply to an amount

included in assessable income under section 40-285 of the *Income Tax Assessment Act 1997*.

Schedule 4—Farm management deposits

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2G

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 392

Insert:

Division 393—Farm management deposits

Table of Subdivisions

Guide to Division 393
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Guide to Division 393

393-1 What this Division is about

You can deduct a farm management deposit you make, if:

(a) you are an individual carrying on a primary production business (including a primary production business you carry on as a partner in a partnership or as a beneficiary of a trust); and

(b) you hold the deposit for at least 12 months; and

(c) you meet some other tests.

The amount of the deposit withdrawn is included in your assessable income in the income year in which it is repaid. Special rules apply if the deposit is repaid in exceptional circumstances.

Farm management deposits allow you to carry over income from years of good cash flow and to draw down on that income in years when you need the cash. This enables you to defer the income tax on your taxable primary production income from the income year in which you make the deposit until the income year in which the deposit is repaid.

Note: An FMD provider must, every quarter, give certain information to the Agriculture Secretary about farm management deposits: see section 398-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Subdivision 393-A—Tax consequences of farm management deposits

Table of sections

393-5 Deduction for making farm management deposit
393-10 Assessability on repayment of deposit
393-15 Transactions to which the deduction, assessment and 12 month rules have modified application

393-5 Deduction for making farm management deposit

Entitlement to deduction

(1) You can deduct the amount of a *farm management deposit for an income year if:

(a) you are the *owner of the deposit; and

(b) the deposit is made at a time during the year when you are an individual carrying on a *primary production business in Australia; and

(c) if during the year, at a time after the deposit was made, you stopped carrying on a primary production business in Australia—you started carrying on such a business again within 120 days (whether or not during the year); and

(d) your *taxable non-primary production income for the year is not more than $65,000; and

(e) you do not die or become bankrupt during the year.

Note 1: This section does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Note 2: This Division applies to certain partners and beneficiaries as if they were individuals who carried on a primary production business: see subsections 393-25(2) and (3).

Sum of deductions not to exceed taxable primary production income

(2) The sum of the deductions that you would otherwise be entitled to under this section for *farm management deposits made in the income year must *not* exceed your *taxable primary production income for the income year.

Amounts to be deducted in order of deposits

(3) If you are entitled to deduct amounts in respect of 2 or more deposits, deduct the amounts in the order in which the deposits were made (until you reach the limit imposed by subsection (2)).

393-10 Assessability on repayment of deposit

Amount assessable

(1) Your assessable income for an income year includes the amount worked out using the following formula, if:

(a) you are the *owner of a *farm management deposit; and

(b) the deposit is repaid in full or in part in the year; and

(c) the amount worked out using the formula is greater than nil:

*Unrecouped FMD deduction in respect of the deposit just before the repayment	−	Amount (if any) of the deposit that remains just after the repayment

Note 1: This subsection does not apply if the deposit is reinvested, the term of the deposit is extended, or the deposit is transferred at the depositor's request: see section 393-15.

Note 2: In a case where not all of the deposit is deductible under section 393-5, repayment of the non-deductible amount can take place without the amount being assessable. Once that amount is repaid, the remainder is assessable when it is repaid, so that the deduction is recouped.

Example: Matt makes a farm management deposit of $120,000 on 1 April 2011. His taxable primary production income for the 2010—11 income year is $50,000; therefore, the deposit is only partly deductible in the year because it exceeds his taxable primary production income. Matt makes the following withdrawals from the deposit: $45,000 on 1 May 2013, $40,000 on 1 March 2014 and $35,000 on 1 September 2015.

The unrecouped FMD deduction immediately before the first repayment of $45,000 is $50,000. No amount is included in his assessable income for the 2012-2013 income year because the difference between the unrecouped FMD deduction ($50,000) and the amount of the deposit remaining after the repayment ($75,000) is less than nil.

The unrecouped FMD deduction immediately before the second repayment of $40,000 is $50,000. $15,000 is included in Matt's assessable income for the 2013-2014 income year because the difference between the unrecouped FMD deduction ($50,000) and the amount of the deposit remaining after the second repayment ($35,000) is $15,000, which is greater than nil.

The unrecouped FMD deduction immediately before the third repayment of $35,000 is $35,000; that is, $50,000 less $15,000. $35,000 is included in Matt's assessable income for the 2015-2016 income year; that is, the difference between the unrecouped FMD deduction ($35,000) and the amount of the deposit remaining after the third repayment ($0).

Unrecouped FMD deduction

(2) The ***unrecouped FMD deduction*** in respect of a *farm management deposit at a particular time is:

(a) if no part of the deposit has been repaid before that time—the amount of the deduction under section 393-5 for making the deposit; or

(b) if one or more parts of the deposit have been repaid before that time—the unrecouped FMD deduction in respect of the deposit just before the most recent such repayment, reduced by any amount included in the *owner's assessable income under this section as a result of that repayment.

Example: Mia makes a deposit of $3,000, all of which is deductible. The deposit's unrecouped FMD deduction just before a first repayment of $1,000 is the amount of the deduction (that is, $3,000—see paragraph (2)(a)). The deposit's unrecouped FMD deduction just before a second repayment is $2,000 (that is, according to paragraph (2)(b), the unrecouped FMD deduction immediately before the first repayment ($3,000) reduced by the $1,000 included in Mia's assessable income as a result of the first repayment).

Note 1: If the deposit was originally an income equalisation deposit, see section 393-10 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: Section 393-55 affects the unrecouped FMD deduction of a new deposit linked to an old deposit affected by Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*.

Application of Division to transfer, reinvestment or other dealing

(3) This Division applies to a transfer, reinvestment or other dealing with a *farm management deposit as if it were a repayment of the deposit, if:

(a) you are the depositor; and

(b) the transfer, reinvestment or other dealing is on your behalf or at your request.

Note: Section 393-15 modifies the application of the deduction, assessment and 12 month rules to certain transfers, reinvestments and other dealings.

Deemed repayment because of death, bankruptcy etc.

(4) This section applies as if a *farm management deposit had been repaid when it became repayable, rather than when it is actually repaid, if the deposit became repayable because of the requirement contained in the relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.).

Note 1: This means that the amount of the deposit is included in your assessable income for the income year when the death, bankruptcy etc. occurs, rather than for any later year in which the deposit might be repaid.

Note 2: This also means that, under subsection 45-120(5) in Schedule 1 to the *Taxation Administration Act 1953* (about Pay as you go (PAYG) instalments), the amount of the deposit is included in your instalment income for the period in which the death, bankruptcy etc. occurs.

However, under section 12-140 in that Schedule, an amount may also be required to be withheld from the actual payment if you do not quote your tax file number or ABN to the relevant FMD provider.

Note 3: Section 393-60 of this Act may limit the operation of subsection (4) if the farm management deposit is with an ADI that becomes a declared ADI under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*.

393-15 Transactions to which the deduction, assessment and 12 month rules have modified application

(1) The provisions mentioned in subsection (2) do not apply in relation to the following transactions:

(a) the immediate reinvestment of a *farm management deposit as a farm management deposit with the same *FMD provider;

(b) the extension of the term of a farm management deposit (even if other terms such as those relating to interest payable are also varied);

(c) the transfer of a farm management deposit in accordance with a requirement of the relevant agreement as set out in item 13 of the table in section 393-35 (which allows for transfers of deposits at the request of the depositor).

Note: This means that these transactions:

(a) will not result in assessable income for the owner; and

(b) will not give rise to a deduction; and

(c) will not, if the transaction occurs within 12 months after the end of the day the deposit is made, result in the deposit losing its status as a farm management deposit.

(2) The provisions are:

(a) section 393-5 (about deductions for making a farm management deposit); and

(b) subsection 393-10(1) (about assessability of the repayment of a farm management deposit); and

(c) subsections 393-40(1) and (2) (about repayment of a farm management deposit within the first 12 months); and

(d) subsections 393-40(3) and (4) (about repayment of a farm management deposit in exceptional circumstances).

(3) For the purposes of working out the *unrecouped FMD deduction for a deposit that is subject to a transaction mentioned in subsection (1), the transaction does not cause the deposit to be a different deposit.

Note: This ensures that the unrecouped FMD deduction (which affects how much income tax is assessed in the event of a repayment) equals the deduction for the original deposit, less any amount included in your assessable income because of a previous repayment of the deposit.

Subdivision 393-B—Meaning of farm management deposit and owner

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393-20 Farm management deposits
393-25 Owners of farm management deposits
393-30 Effect of contravening requirements
393-35 Requirements of agreement for a farm management deposit
393-40 Repayment of deposit within first 12 months
393-45 Partly repaid farm management deposits

393-20 Farm management deposits

*Meaning of **farm management deposit***

(1) A deposit with an *FMD provider is a ***farm management deposit*** if:

(a) the depositor applies to make the deposit in accordance with subsection (2); and

(b) the deposit is made under an agreement between the FMD provider and the depositor that:

(i) describes the deposit as a farm management deposit; and

(ii) at all times while the deposit is with the FMD provider, contains requirements to the effect set out in the table in section 393-35.

The agreement may also contain additional requirements that are not inconsistent with those set out in that table.

Depositor to provide information in application form

(2) For the purposes of paragraph (1)(a), the depositor must apply to the *FMD provider to make the deposit by completing and signing a form that:

(a) permits the depositor to state the *owner's *tax file number in the form; and

(b) requires the depositor to provide any other information required by regulations for the purposes of this paragraph; and

(c) contains any statements, required by regulations for the purposes of this paragraph, that are to be read by the depositor when completing the form.

Note 1: A depositor who makes a false or misleading statement in such a form commits an offence against section 8K or 8N of the *Taxation Administration Act 1953*.

Note 2: If the owner does not quote his or her tax file number or ABN to the FMD provider, the Pay as you go (PAYG) withholding required under section 12-140 in Schedule 1 to the *Taxation Administration Act 1953* from a repayment of the deposit is at the highest marginal tax rate.

Note 3: Division 4A of Part VA of the *Income Tax Assessment Act 1936* sets out rules for quoting tax file numbers in connection with farm management deposits.

*Meaning of **FMD provider***

(3) In this Act:

FMD provider means an entity that:

(a) is an *ADI; or

(b) carries on in Australia the *business of banking, so long as the Commonwealth, a State or a Territory guarantees the repayment of any deposit taken in the course of that business; or

(c) carries on in Australia a business that consists of or includes taking money on deposit, so long as the Commonwealth, a State or a Territory guarantees the repayment of any deposit taken in the course of that business.

393-25 Owners of farm management deposits

*Meaning of **owner***

(1) The ***owner*** of a *farm management deposit is:

(a) if paragraph (b) does not apply—the individual who made or is making the deposit; or

(b) in the case of a deposit made or being made by the trustee of a trust on behalf of a beneficiary who is an individual—the beneficiary.

Primary production businesses carried on by partnerships and trusts

(2) This Division applies to you as if you were an individual who is carrying on a *primary production business that is actually carried on by a partnership, if you are an individual who is a partner in the partnership.

(3) This Division, and section 97A of the *Income Tax Assessment Act 1936* (about beneficiaries who are owners of farm management deposits), apply to you as if you were an individual who is carrying on a *primary production business that is actually carried on by a trustee, if you are an individual who is a beneficiary presently entitled to a share of the income of the trust.

Application of Division to beneficiary no longer under legal disability

(4) If:

(a) a *farm management deposit was made by a trustee on behalf of a beneficiary of a trust; and

(b) the beneficiary was under a legal disability when the deposit was made; and

(c) the beneficiary is no longer under a legal disability;

then this Division, and Division 4A of Part VA of the *Income Tax Assessment Act 1936*, apply as if the beneficiary had made the deposit.

Note: Division 4A of Part VA of the *Income Tax Assessment Act 1936* is about quotation of tax file numbers in connection with farm management deposits.

393-30 Effect of contravening requirements

(1) A deposit is not a ***farm management deposit*** if, when the deposit was accepted, a requirement contained in the relevant agreement as set out in items 1 to 6 of the table in section 393-35 was contravened.

(2) A deposit is not, and is taken never to have been, a ***farm management deposit*** if a requirement contained in the relevant agreement as set out in items 7 to 9 of the table in section 393-35 is contravened at any time in relation to the deposit.

(3) So much of a deposit as causes a requirement contained in the relevant agreement as set out in item 10 of the table in section 393-35 to be contravened is not a ***farm management deposit***.

393-35 Requirements of agreement for a farm management deposit

An agreement mentioned in paragraph 393-20(1)(b) must contain requirements to the effect of those set out in the following table:

Requirements of agreement for a farm management deposit

Item	Requirement
1	The *owner must be an individual who is carrying on a *primary production business in Australia when the deposit is made. Note: This Division applies to certain partners and beneficiaries as if they were individuals who carried on a primary production business: see subsections 393-25(2) and (3).
2	The deposit: (a) must not be made by 2 or more individuals jointly; and (b) must not be made on behalf of 2 or more individuals.
3	The deposit must not be made by a trustee on behalf of a beneficiary unless the beneficiary is: (a) under a legal disability; and (b) presently entitled to a share of the income of the trust.
4	The deposit must be $1,000 or more when it is made, unless the deposit is: (a) the immediate reinvestment of a *farm management deposit as a farm management deposit with the same *FMD provider; or (b) the extension of the term of a farm management deposit (even if other terms such as those relating to interest payable are also varied).
5	The *owner must not, at any time while the deposit is with the *FMD provider, have any *farm management deposits with any other FMD provider.
6	Rights of the depositor in respect of the deposit must not be transferable to another entity.
7	The deposit must not be the subject of a charge or other encumbrance to secure any amount.
8	Amounts that would otherwise accrue as interest or other earnings on the deposit must not reduce liabilities of the depositor to pay interest to the *FMD provider in respect of loans or other debts of the depositor.

Requirements of agreement for a farm management deposit	
Item	**Requirement**
9	Interest or other earnings on the deposit must not be invested as a *farm management deposit with the *FMD provider without having first been paid to the depositor.
10	The deposit must not be more than $400,000, and the sum of the balances from time to time of the deposit and all other *farm management deposits of the *owner with the *FMD provider must not be more than $400,000.
11	The deposit must be repaid if: (a) the *owner dies or becomes bankrupt; or (b) the owner ceases to carry on a *primary production business in Australia and does not start carrying on such a business again within 120 days.
12	The amount of any repayment of the deposit must be $1,000 or more, except if the entire amount of the deposit is repaid.
13	The *FMD provider must transfer the deposit by electronic means to another FMD provider that agrees to accept the deposit as a *farm management deposit, if the first FMD provider is: (a) requested in writing by the depositor to do so; and (b) given any information or other assistance from the depositor necessary for the purpose.
14	The *FMD provider must not deduct from the deposit (whether at the time it is made, while it is with the FMD provider or at the time of its repayment) any administration fee or other amount required by the FMD provider to be paid in respect of the deposit or otherwise.

393-40 Repayment of deposit within first 12 months

Partial repayment within first 12 months

(1) Any part of a deposit repaid within 12 months after the end of the day the deposit is made is not, and is taken never to have been, part of a ***farm management deposit***.

Note 1: A repayment covered by subsection (3) or (5) is disregarded in applying this subsection. The normal rules in sections 393-5 (about deductions for making a farm management deposit) and 393-10 (about assessability of the repayment of a farm management deposit) apply instead.

Note 2: This subsection does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Deposit not to be reduced to less than $1,000 within first 12 months

(2) A deposit is not, and is taken never to have been, a ***farm management deposit*** if the amount of the deposit is reduced to less than $1,000 because of one or more repayments within 12 months after the end of the day the deposit is made.

Note 1: A repayment covered by subsection (3) or (5) is disregarded in applying this subsection.

Note 2: This subsection does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Repayment in exceptional circumstances

(3) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a *farm management deposit if all of the following circumstances are satisfied:

(a) the repayment is made in the income year following the income year in which the deposit is made with the *FMD provider;

(b) at the time of the repayment, the *owner of the deposit is eligible for the issue of an exceptional circumstances certificate (within the meaning of subsection 8A(2) of the *Farm Household Support Act 1992*) that relates to a *primary production business of that owner;

(c) by the end of 3 months after the end of the income year in which the repayment is made, such an exceptional circumstances certificate is issued in respect of that owner;

(d) a declaration of exceptional circumstances (as referred to in paragraph 8(c) of the *Rural Adjustment Act 1992*) was not in force in relation to that primary production business when the deposit was made.

(4) Any later deposit that is made by, or on behalf of, that *owner in the income year in which the repayment is made is not, and is taken never to have been, a ***farm management deposit***.

Repayment in the case of death, bankruptcy or ceasing to carry on a primary production business

(5) Subsections (1) and (2) do not apply to a repayment of a *farm management deposit because of the requirement contained in the

relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.).

Certain transactions do not affect the day the deposit was made

(6) Subsections (1) to (4) apply as if a *farm management deposit that:

(a) is made as a result of a transaction mentioned in subsection 393-15(1) (about reinvesting a deposit, extending the term of a deposit and transferring a deposit at the depositor's request); or

(b) is affected by such a transaction;

were made on the day on which the original deposit was made.

Example: A farm management deposit is made on 1 July 2010 for a term of 6 months, but is extended in December 2010 for another 6 months. For the purposes of subsections (1) to (4), the day the extended deposit was made remains as 1 July 2010.

Note: Section 393-40 of the *Income Tax (Transitional Provisions) Act 1997* provides for a special rule for deposits transferred under the repealed *Loan (Income Equalization Deposits) Act 1976*.

393-45 Partly repaid farm management deposits

A reference to a ***farm management deposit*** is a reference to so much of the deposit as has not been repaid.

Subdivision 393-C—Special rules relating to financial claims scheme for account-holders with insolvent ADIs

Guide to Subdivision 393-C

393-50 What this Subdivision is about

A deposit (the ***new deposit***) arising from:

(a) an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* relating to a farm management deposit (the ***old deposit***); or

(b) a distribution from liquidation of an ADI that is attributable to a farm management deposit (also the ***old deposit***);

is treated as a transfer of the old deposit and does not give rise to new assessable income or deductions.

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Operative provisions

393-55 Farm management deposits arising from farm management deposits with ADIs subject to financial claims scheme

393-60 Repayment if owner of farm management deposit with insolvent ADI dies, is bankrupt or ceases to be a primary producer

Operative provisions

393-55 Farm management deposits arising from farm management deposits with ADIs subject to financial claims scheme

Application

(1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account containing a *farm management deposit (the ***old deposit***) with an *ADI (the ***old ADI***) and either:

(a) an amount (the ***new deposit***) is deposited into either of the following to meet, in whole or part, so much of the entitlement as relates to the old deposit:

(i) an existing account for a farm management deposit;

(ii) an account established under section 16AH of that Act for the purposes of meeting (in whole or part) the entitlement; or

(b) an amount (also the ***new deposit***) is deposited by a liquidator of the old ADI into either of the following as so much of a distribution from the liquidation of the old ADI as relates to the old deposit:

(i) an existing account for a farm management deposit;

(ii) an account established under section 16AR of that Act for the payment of the distribution.

Note: If an amount is deposited in connection with an account with the old ADI containing 2 or more old deposits, the amount is to be apportioned between each old deposit, so that so much of the amount

as is attributable to a particular old deposit is regarded as a distinct new deposit relating to that old deposit.

New deposit is a farm management deposit

(2) This Division (except this section) applies to the new deposit as if the new deposit were a transfer of the old deposit in accordance with a requirement contained in the relevant agreement for the old deposit as set out in item 13 of the table in section 393-35 (which allows for transfers of deposits at the request of the depositor). To avoid doubt, this Division applies in that way as if the amount transferred were the amount of the new deposit, even if that is more or less than the amount of the old deposit.

Note 1: The effects of this include the following:

(a) section 393-5 (about deductions for making a farm management deposit) does not apply in relation to the making of the new deposit (see paragraphs 393-15(1)(c) and (2)(a));

(b) subsection 393-10(1) (about assessability of the repayment of a farm management deposit) can only apply to the extent of any difference between the amount transferred and the amount of the old deposit (see paragraphs 393-15(1)(c) and (2)(b));

(c) subsections 393-40(1), (2) and (4) (about repayment of a farm management deposit within the first 12 months) can only apply to the extent of any difference between the amount transferred and the amount of the old deposit (see paragraphs 393-15(1)(c) and (2)(c) and (d));

(d) the day the old deposit was made, for the purposes of subsections 393-40(1) and (2) (about repayment of a farm management deposit within the first 12 months) and (3) and (4) (about repayment in exceptional circumstances), is maintained for the new deposit (see subsection 393-40(6)).

Note 2: Also, the unrecouped FMD deduction in respect of the new deposit is the same as the unrecouped FMD deduction in respect of the old deposit (see subsection 393-15(3)), unless subsection (6) or (7) of this section applies because the new deposit is less than the old deposit.

(3) In determining whether either of the following is a *farm management deposit, disregard a requirement contained in an agreement as set out in item 4 of the table in section 393-35 (requiring the deposit to be $1,000 or more):

(a) the new deposit;

(b) a deposit made later directly by the transfer of the new deposit in accordance with a requirement of the relevant agreement for the new deposit as mentioned in item 13 of that table.

(4) In determining whether a deposit made after the entitlement arises is a *farm management deposit, disregard the old deposit when determining whether a requirement contained in an agreement as set out in item 5 of the table in section 393-35 (prohibiting farm management deposits with other FMD providers) has been complied with.

Note: Subsection (4) means that a deposit made with a financial institution other than the old ADI after the entitlement arises can be a farm management deposit (despite subsection 393-30(1)) even though the owner of the deposit still has the old deposit with the old ADI.

(5) A requirement contained in an agreement as set out in item 5 of the table in section 393-35 does not apply to the new deposit to prevent it from being a *farm management deposit.

Note: Subsections (4) and (5) mean that, despite subsection 393-30(1) (which prevents a deposit, or part of a deposit, from being a farm management deposit if certain requirements are not met), the fact that you are the owner of both the new deposit with one financial institution and the old deposit with another financial institution does not prevent the new deposit from being a farm management deposit.

Unrecouped FMD deduction for new deposit less than old deposit

(6) Despite subsection (2) and subsection 393-15(3), if the new deposit is less than the old deposit at the time (the ***declaration time***) the old ADI became a declared ADI under the *Banking Act 1959*, the ***unrecouped FMD deduction*** in respect of the new deposit is the amount worked out using the following formula:

$$\text{Unrecouped FMD deduction in respect of old deposit just before declaration time} \times \frac{\text{New deposit}}{\text{Old deposit just before declaration time}}$$

Note: The new deposit could be less than the old deposit if the entitlement is paid in instalments (each of which will be a separate new deposit).

(7) However, if the amount worked out under subsection (6) is more than the difference (if any) between:

(a) the *unrecouped FMD deduction in respect of the old deposit just before the declaration time; and

(b) the total of the amounts worked out under all previous applications of subsection (6) in relation to that old deposit;

the ***unrecouped FMD deduction*** in respect of the new deposit is equal to the difference (if any).

Note: This ensures that when new deposits linked to the old deposit are repaid, the total amount included in assessable income will not exceed the unrecouped FMD deduction in respect of the old deposit.

Relationship with other provisions

(8) This section has effect despite Division 253 (about tax treatment of entitlements under the financial claims scheme for insolvent ADIs).

393-60 Repayment if owner of farm management deposit with insolvent ADI dies, is bankrupt or ceases to be a primary producer

Subsection 393-10(4) does not apply in relation to so much of a *farm management deposit with an *ADI as is equal to the sum of the amounts described in subparagraphs (d)(i) and (ii) of this section if:

(a) you are the *owner of the deposit; and

(b) the deposit becomes repayable during an income year because of the requirement contained in the relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.); and

(c) during the income year, the ADI becomes a declared ADI under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*; and

(d) at the end of the income year, you have either or both of the following:

(i) an unmet entitlement under that Division connected with the account for the farm management deposit;

(ii) an unmet claim against the ADI, or an unpaid debt owed to you by the ADI, in the winding up of the ADI connected with the account for the deposit.

Note: Subsection 393-10(4) makes the repayment of a farm management deposit assessable in the income year when the death, bankruptcy etc. occurs, rather than in any later year in which it might be repaid.

3 Subsection 995-1(1) (definition of *farm management deposit*)

Repeal the definition, substitute:

farm management deposit has the meaning given by Subdivision 393-B.

4 Subsection 995-1(1)

Insert:

FMD provider (short for farm management deposit provider) has the meaning given by subsection 393-20(3).

5 Subsection 995-1(1)

Insert:

owner of a *farm management deposit has the meaning given by subsection 393-25(1).

6 Subsection 995-1(1)

Insert:

unrecouped FMD deduction (short for unrecouped farm management deposit deduction) has the meaning given by subsections 393-10(2) and 393-55(6) and (7).

Taxation Administration Act 1953

7 At the end of Part 5-25 in Schedule 1

Add:

Division 398—Miscellaneous reporting obligations

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398-A Farm Management Deposit reporting

Guide to Division 398

398-1 What this Division is about

This Division contains reporting obligations not covered by other Divisions of this Part.

Subdivision 398-A—Farm Management Deposit reporting

Table of sections

398-5 Reporting to Agriculture Department

398-5 Reporting to Agriculture Department

FMD provider must provide quarterly information

(1) An *FMD provider must, within 60 days after the end of a *quarter, give in writing to the *Agriculture Secretary the information specified in subsection (3) if the provider holds a *farm management deposit at the end of any month in the quarter.

Penalty: 10 penalty units.

(2) An offence under subsection (1) is an offence of strict liability.

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

Information required

(3) The information is:

(a) the number of *farm management deposits held at the end of each month in the *quarter; and

(b) the number of depositors in respect of such deposits at the end of each month in the quarter; and

(c) the sum of the balances of such deposits at the end of each month in the quarter; and

(d) any other information, in relation to farm management deposits held by the *FMD provider at any time in the quarter, that is required by the regulations for the purposes of this section.

Regulations not to require identity of depositor

(4) Regulations made for the purposes of paragraph (3)(d) must not require information:

(a) that discloses the identity of a depositor; or

(b) from which the identity of a depositor could reasonably be inferred.

Part 2—Consequential amendments

Farm Household Support Act 1992

8 Subsection 3(2) (paragraph (aa) of the definition of *exempt livestock proceeds*)

Omit "Schedule 2G to the *Income Tax Assessment Act 1936)*", substitute "the *Income Tax Assessment Act 1997*)".

Income Tax Assessment Act 1936

9 Subsection 6(1)

Insert:

> ***farm management deposit*** has the meaning given by the *Income Tax Assessment Act 1997*.

10 Subsection 6(1)

Insert:

> ***FMD provider*** has the meaning given by the *Income Tax Assessment Act 1997*.

11 Subsection 6(1) (definition of *income from personal exertion* or *income derived from personal exertion*)

Omit "section 393-15 of Schedule 2G", substitute "section 393-10 of the *Income Tax Assessment Act 1997*".

12 Subsection 6(1)

Insert:

> ***owner*** of a farm management deposit has the meaning given by the *Income Tax Assessment Act 1997*.

13 Subsection 95(1) (definition of *net income*)

Omit "under Schedule 2G", substitute "under Division 393 of the *Income Tax Assessment Act 1997* (Farm management deposits)".

14 At the end of paragraph 97A(1)(a)

Add "and".

15 Paragraph 97A(1)(b)

Omit "and".

16 Paragraph 97A(1)(c)

Repeal the paragraph.

17 At the end of paragraph 97A(1A)(a)

Add "and".

18 Paragraph 97A(1A)(b)

Omit "and".

19 Paragraph 97A(1A)(c)

Repeal the paragraph.

20 Subsection 97A(2)

Repeal the subsection.

21 At the end of section 97A

Add:

Note: This section applies to certain beneficiaries as if they were individuals who are carrying on a primary production business: see subsection 393-25(3) of the *Income Tax Assessment Act 1997*.

22 Subsection 101A(4)

Omit "(within the meaning of Schedule 2G)".

23 Subsection 170(10) (table item 29)

Repeal the item.

24 Subsection 170(10AA) (at the end of the table)

Add:

210	Division 393	Farm management deposits

25 Subsections 177B(1) and (2)

Repeal the subsections, substitute:

(1) Nothing in the following limit the operation of this Part:
  (a) the provisions of this Act (other than this Part);
  (b) the *International Tax Agreements Act 1953*;
  (c) the *Petroleum (Timor Sea Treaty) Act 2003*.

(2) This Part does not affect the operation of Division 393 of the *Income Tax Assessment Act 1997* (Farm management deposits).

26 Section 202DK

Repeal the section.

27 Section 202DL

Omit "financial institution" (first occurring), substitute "FMD provider".

28 Paragraph 202DL(a)

Omit "393-30(3) of Schedule 2G", substitute "393-20(2) of the *Income Tax Assessment Act 1997*".

29 Paragraph 202DL(b)

Omit "financial institution", substitute "FMD provider".

30 At the end of section 202DL

Add:

Note: If a farm management deposit was made by a trustee on behalf of a beneficiary who was under a legal disability when the deposit was made, and the beneficiary is no longer under a legal disability, this Division applies as if the beneficiary had made the deposit: see subsection 393-25(4) of the *Income Tax Assessment Act 1997*.

31 Paragraph 202DM(1)(a)

Omit "a financial institution", substitute "an FMD provider".

Note: The heading to subsection 202DM(1) is altered by omitting "*financial institution*" and substituting "*FMD provider*".

32 Subsection 202DM(1)

Omit "the financial institution", substitute "the FMD provider".

33 Paragraph 202DM(3)(a)

Omit "a financial institution", substitute "an FMD provider".

Note: The heading to subsection 202DM(3) is altered by omitting "*financial institution*" and substituting "*FMD provider*".

34 Subsection 202DM(3)

Omit "the financial institution", substitute "the FMD provider".

35 Section 264AA

Repeal the section.

36 Paragraph 268-35(5)(j) in Schedule 2F

Omit "Farm Management Deposits", substitute "farm management deposits".

37 Paragraph 268-35(5)(j) in Schedule 2F (note)

Repeal the note, substitute:

Note: See Division 393 of the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997

38 Section 10-5 (table item headed "farm management deposits")

Omit:

repayments of	**393-1 of Schedule 2G**

substitute:

repayments of	393-10

39 Section 12-5 (table item headed "primary production")

Omit:

farm management deposits	**393-1 to 393-65 of Schedule 2G**

substitute:

farm management deposits	Division 393

40 Paragraph 26-55(2)(c)

Repeal the paragraph, substitute:

(c) the amount you can deduct for the income year under section 393-5 (which provides for deductions for making *farm management deposits).

41 Subparagraph 61-570(1)(a)(iii)

Omit "section 393-15 of Schedule 2G to the *Income Tax Assessment Act 1936*", substitute "section 393-10".

42 Paragraph 165-55(5)(j)

Omit "Farm Management Deposits", substitute "*farm management deposits".

43 Paragraph 165-55(5)(j) (note)

Repeal the note, substitute:

Note: See Division 393.

44 Subsection 230-460(15)

Repeal the subsection, substitute:

Farm management deposits

(15) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if:

(a) the right or obligation is the right or obligation of an *owner of a *farm management deposit; and

(b) the right or obligation relates to the deposit.

45 Subsection 253-5(1) (paragraph (b) of the note)

Omit "Subdivision 393-D in Schedule 2G to the *Income Tax Assessment Act 1936*", substitute "Subdivision 393-C".

46 Subsection 392-80(3)

Repeal the subsection, substitute:

Primary production deductions

(3) Your ***primary production deductions*** for the *current year are:

(a) all amounts you can deduct that relate exclusively to your *assessable primary production income for the current year; and

(b) so much of any other amounts you can deduct (other than *apportionable deductions) to the extent that they reasonably relate to your assessable primary production income for the current year.

Taxation Administration Act 1953

47 Subsections 8J(18) and (19)

Repeal the subsections.

48 Subsection 45-120(4) in Schedule 1

Omit "section 393-10 in Schedule 2G to the *Income Tax Assessment Act 1936*", substitute "section 393-5 of the *Income Tax Assessment Act 1997*".

49 Subsection 45-120(5) in Schedule 1

Omit "section 393-15 in Schedule 2G to the *Income Tax Assessment Act 1936*", substitute "section 393-10 of the *Income Tax Assessment Act 1997*".

Part 3—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

50 After Division 392

Insert:

Division 393—Farm management deposits

Table of Subdivisions

393-A Tax consequences of farm management deposits
393-B Meaning of farm management deposit and owner

Subdivision 393-A—Tax consequences of farm management deposits

Table of sections

393-1 Application of Division 393 of the *Income Tax Assessment Act 1997*
393-5 Unrecouped FMD deduction
393-10 Unrecouped FMD deduction for deposits made as a result of section 25B of the *Loan (Income Equalization Deposits) Act 1976*

393-1 Application of Division 393 of the *Income Tax Assessment Act 1997*

Division 393 of the *Income Tax Assessment Act 1997* (about farm management deposits) applies to assessments for:

(a) the 2010-11 income year; and
(b) later income years.

393-5 Unrecouped FMD deduction

A reference in Division 393 of the *Income Tax Assessment Act 1997* to a deduction under section 393-5 of that Act for making a farm management deposit is taken to include a reference to a deduction under section 393-10 in Schedule 2G to the *Income Tax Assessment Act 1936*, as in force just before the commencement of

this section, if the deposit was made before the 2010-11 income year.

393-10 Unrecouped FMD deduction for deposits made as a result of section 25B of the *Loan (Income Equalization Deposits) Act 1976*

Despite subsection 393-10(2) of the *Income Tax Assessment Act 1997*, if:

(a) no part of a farm management deposit has been repaid before a particular time; and

(b) the deposit was made with an FMD provider as a result of a request to which section 25B of the *Loan (Income Equalization Deposits) Act 1976*, as in force on 21 February 2005, applied;

the ***unrecouped FMD deduction*** in respect of the deposit at that time is equal to the amount of the unrecouped deduction (within the meaning of the former subsection 159GA(3) of the *Income Tax Assessment Act 1936*) in respect of the deposit immediately before it ceased to be a deposit under the *Loan (Income Equalization Deposits) Act 1976*.

Note: This means that the unrecouped deduction relating to the deposit under the *Loan (Income Equalization Deposits) Act 1976* continues to apply (by becoming an unrecouped FMD deduction) when the deposit is transferred to an FMD provider as a farm management deposit. The *Loan (Income Equalization Deposits) Act 1976* was repealed on 22 February 2005.

Subdivision 393-B—Meaning of farm management deposit and owner

Table of sections

393-40 The day the deposit was made for deposits made as a result of section 25B of the *Loan (Income Equalization Deposits) Act 1976*

393-40 The day the deposit was made for deposits made as a result of section 25B of the *Loan (Income Equalization Deposits) Act 1976*

If a farm management deposit was made with an FMD provider as a result of a request under section 25B of the *Loan (Income*

Equalization Deposits) Act 1976, as in force on 21 February 2005, then:

(a) subsections 393-40(1) to (4) of the *Income Tax Assessment Act 1997* apply as if the day the deposit was made was the day on which the deposit was originally made under the *Loan (Income Equalization Deposits) Act 1976*; and

(b) subsection 393-40(6) does not apply to the deposit.

Note: The *Loan (Income Equalization Deposits) Act 1976* was repealed on 22 February 2005.

51 Application of other amendments

The amendments made by Parts 1 and 2 of this Schedule (other than item 2) apply to assessments for:

(a) the 2010-11 income year; and

(b) later income years.

Schedule 5—General insurance

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2J

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 320

Insert:

Division 321—General insurance companies and companies that self-insure in respect of workers' compensation liabilities

Table of Subdivisions

321-A Provision for, and payment of, claims by general insurance companies
321-B Premium income of general insurance companies
321-C Companies that self-insure in respect of workers' compensation liabilities

Subdivision 321-A—Provision for, and payment of, claims by general insurance companies

Table of sections

321-10 Assessable income to include amount for reduction in outstanding claims liability
321-15 Deduction for increase in outstanding claims liability
321-20 How value of outstanding claims liability is worked out
321-25 Deduction for claims paid during current year

321-10 Assessable income to include amount for reduction in outstanding claims liability

A *general insurance company's assessable income for the *current year includes an amount equal to the amount (if any) by which:

(a) the value, at the end of the previous income year, of the company's liability for *outstanding claims under *general insurance policies; exceeds

(b) the value, at the end of the current year, of that liability.

Note: Those values are worked out under section 321-20.

321-15 Deduction for increase in outstanding claims liability

A *general insurance company can deduct for the *current year an amount equal to the amount (if any) by which:

(a) the value, at the end of the current year, of the company's liability for *outstanding claims under *general insurance policies; exceeds

(b) the value, at the end of the previous income year, of that liability.

Note: Those values are worked out under section 321-20.

321-20 How value of outstanding claims liability is worked out

Work out the value, at the end of an income year, of a *general insurance company's liability for *outstanding claims under *general insurance policies in this way:

Method statement

Step 1. Add up the amounts that, at the end of the income year, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

(a) liabilities for outstanding claims under those policies; and

(b) direct settlement costs associated with those outstanding claims.

Step 2.	Reduce the step 1 amount by so much of it as the company expects at the end of the income year to recover: (a) under a contract of reinsurance; or (b) in any other way; other than under a contract of reinsurance to which subsection 148(1) of the *Income Tax Assessment Act 1936* (about reinsurance with non-residents) applies.

321-25 Deduction for claims paid during current year

A *general insurance company can deduct for the *current year amounts paid during that year in respect of claims under *general insurance policies.

Subdivision 321-B—Premium income of general insurance companies

Table of sections

321-45 Assessable income to include gross premiums
321-50 Assessable income to include amount for reduction in value of unearned premium reserve
321-55 Deduction for increase in value of unearned premium reserve
321-60 How value of unearned premium reserve is worked out

321-45 Assessable income to include gross premiums

A *general insurance company's assessable income for the *current year includes the gross premiums received or receivable by the company during the current year in respect of *general insurance policies.

321-50 Assessable income to include amount for reduction in value of unearned premium reserve

A *general insurance company's assessable income for the *current year includes an amount equal to the amount (if any) by which:

(a) the value, at the end of the previous income year, of the company's unearned premium reserve; exceeds

(b) the value, at the end of the current year, of that reserve.

Note: Those values are worked out under section 321-60.

321-55 Deduction for increase in value of unearned premium reserve

A *general insurance company can deduct for the *current year an amount equal to the amount (if any) by which:

(a) the value, at the end of the current year, of the company's unearned premium reserve; exceeds

(b) the value, at the end of the previous income year, of that reserve.

Note: Those values are worked out under section 321-60.

321-60 How value of unearned premium reserve is worked out

Work out the value, at the end of an income year, of a *general insurance company's unearned premium reserve in this way:

Method statement

Step 1. Add up the gross premiums received or receivable by the company, in relation to *general insurance policies issued in the course of carrying on *insurance business, in that or an earlier income year.

Step 2. Reduce the step 1 amount by so much of the costs incurred by the company in connection with the issue of those policies as relate to the gross premiums, including, for example, costs such as:

(a) commission and brokerage fees; and

(b) administration costs of processing insurance proposals and renewals; and

(c) administration costs of collecting premiums; and

(d) selling and underwriting costs; and

(e) fire brigade charges; and

(f) stamp duty; and

(g) other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.

Step 3. Reduce the step 2 amount by any premiums (the ***relevant reinsurance premiums***) paid or payable by the company, in that or an earlier income year, for the reinsurance of risks covered by those policies, except:

(a) reinsurance premiums that the company cannot deduct because of subsection 148(1) of the *Income Tax Assessment Act 1936* (about reinsurance with non-residents); and

(b) reinsurance premiums that were paid or payable in respect of a particular class of *insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of a loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.

Step 4. Add to the step 3 amount any reinsurance commissions received or receivable by the company that relate to the relevant reinsurance premiums.

Step 5. The value, at the end of an income year, of the unearned premium reserve is so much of the step 4 amount as the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later income years.

Subdivision 321-C—Companies that self-insure in respect of workers' compensation liabilities

Table of sections

321-80 Assessable income to include amount for reduction in outstanding claims liability
321-85 Deduction for outstanding claims liability
321-90 How value of outstanding claims liability is worked out
321-95 Deductions for claims paid during current year

321-80 Assessable income to include amount for reduction in outstanding claims liability

The assessable income for the *current year of a company that is not required by law to insure, and does not insure, against liability for workers' compensation claims includes an amount equal to the amount (if any) by which:

(a) the value, at the end of the previous income year, of the company's liability for such claims that:
  (i) arose from events that occurred in that or an earlier income year; and
  (ii) were not paid in full before the end of the previous income year; exceeds
(b) the value, at the end of the current year, of that liability.

Note: Those values are worked out under section 321-90.

321-85 Deduction for outstanding claims liability

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct for the *current year an amount equal to the amount (if any) by which:

(a) the value, at the end of the current year, of the company's liability for such claims that:
  (i) arose from events that occurred in the current or an earlier income year; and
  (ii) were not paid in full before the end of the current year; exceeds
(b) the value, at the end of the previous income year, of that liability.

Note: Those values are worked out under section 321-90.

321-90 How value of outstanding claims liability is worked out

Work out the value, at the end of an income year, of a company's liability for claims covered by section 321-80 or 321-85 by adding up the amounts that, at the end of that income year, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

(a) liabilities for those claims; and

(b) direct settlement costs associated with those claims.

321-95 Deductions for claims paid during current year

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct for the *current year amounts paid during that year in respect of such claims.

Part 2—Consequential amendments

Income Tax Assessment Act 1936

3 Subsection 6(1) (definition of *outstanding claims*)

Repeal the definition.

4 Subsection 6(1) (both the definitions of *value of the outstanding claims liability*)

Repeal the definitions.

5 Subsection 6(1) (definition of *value of the unearned premium reserve*)

Repeal the definition.

Income Tax Assessment Act 1997

6 Section 10-5 (table item headed "general insurance")

Repeal the item, substitute:

general insurance companies and companies that self insure	
gross premiums	321-45
reduction in value of outstanding claims liability	321-10 and 321-80
reduction in value of unearned premium reserve	321-50

7 Section 12-5 (table item headed "general insurance")

Repeal the item, substitute:

general insurance companies and companies that self insure	
claims paid	321-25 and 321-95
increase in value of outstanding claims liability	321-15 and 321-85
increase in value of unearned premium reserve	321-55

8 Section 713-710

Omit "in Schedule 2J to the *Income Tax Assessment Act 1936*" (wherever occurring).

9 Paragraph 713-710(b)

Omit "in that Schedule".

10 Section 713-710 (note 1)

Omit "in that Schedule".

11 Section 713-710 (note 2)

Omit "in that Schedule".

12 Subsection 995-1(1) (definition of *contract of reinsurance*)

Repeal the definition, substitute:

contract of reinsurance, in respect of *life insurance policies, does not include a contract of reinsurance in respect of:

(a) the parts of *complying superannuation/FHSA life insurance policies in respect of which the liabilities of the company that issued the policies are to be discharged out of a *complying superannuation/FHSA asset pool; or

(b) policies that are *exempt life insurance policies.

13 Application

The amendments made by this Schedule apply to the first income year starting on or after the day on which this Act receives the Royal Assent and later income years.

[*Minister's second reading speech made in—*
House of Representatives on 17 March 2010
Senate on 15 June 2010]