



Income Tax Assessment Amendment Regulations 2004 (No. 3)

Statutory Rules 2004 No. 303

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1997*.

Dated 31 August 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

MALCOLM BROUGH
Minister for Revenue and Assistant Treasurer

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2004 (No. 3)*.

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 1 amends the *Income Tax Assessment Regulations 1997*.

4 Application of amendment

The amendment made by these Regulations does not apply to the extent that, in the period commencing on 4 March 2003 and ending immediately before the date of the notification of these Regulations in the *Gazette*:

- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or
- (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

Schedule 1 Amendment

(regulation 3)

[1] Part 6, before Division 995

insert

Division 974 Debt and equity interests

Subdivision 974-F Related concepts

974-135A Non-cumulative redeemable preference shares issued by credit union

For paragraph 974-135 (8) (d) of the Act, the obligation in respect of the return of investment on the redemption of a non-cumulative redeemable preference share issued by a credit union is not an effectively non-contingent obligation if:

- (a) the share is issued on or after 4 March 2003; and
- (b) the share satisfies, at the time it is issued, the criteria set out in section 7 of Guidance Note *AGN 111.2 — Tier 2 Capital*, published by APRA in September 2000; and
- (c) the share is issued subject to the following terms and conditions:
 - (i) the share has a minimum term of 5 years;
 - (ii) dividend payments for the share are to be paid only:
 - (A) out of operating profits from the current year or the immediately previous year; and
 - (B) to the extent that payment is permitted by law and by relevant regulatory authorities;
 - (iii) dividend payments for the share are not cumulative;
 - (iv) any payments made in relation to the share out of net profits or net assets have preferential rights over payments made in relation to ordinary shares (if any) from the same sources;

- (v) if the share is to be redeemed — the redemption cannot be carried out without the approval of the board of the credit union;
- (vi) if the share is to be redeemed, but the redemption of the share would place the credit union in breach of a prudential standard made under the *Banking Act 1959* — the redemption cannot be carried out without the approval of APRA; and
- (d) the redemption is carried out on or after 4 March 2003; and
- (e) the share is issued only to a member of the credit union; and
- (f) a member of the credit union and its connected entities (within the meaning of subsection 995-1 (1) of the Act) can together hold not more than 10% by value of the shares of that kind issued by the credit union.

974-135B Non-cumulative redeemable preference shares issued by mutual building society

For paragraph 974-135 (8) (d) of the Act, the obligation in respect of the return of investment on the redemption of a non-cumulative redeemable preference share issued by a mutual building society is not an effectively non-contingent obligation if:

- (a) the mutual building society is an ADI; and
- (b) the share is issued on or after 4 March 2003; and
- (c) the share satisfies, at the time it is issued, the criteria set out in section 7 of Guidance Note *AGN III.2 — Tier 2 Capital*, published by APRA in September 2000; and
- (d) the share is issued subject to the following terms and conditions:
 - (i) the share has a minimum term of 5 years;
 - (ii) dividend payments for the share are to be paid only:
 - (A) out of operating profits from the current year or the immediately previous year; and
 - (B) to the extent that payment is permitted by law and by relevant regulatory authorities;

-
- (iii) dividend payments for the share are not cumulative;
 - (iv) any payments made in relation to the share out of net profits or net assets have preferential rights over payments made in relation to ordinary shares (if any) from the same sources;
 - (v) if the share is to be redeemed — the redemption cannot be carried out without the approval of the board of the mutual building society;
 - (vi) if the share is to be redeemed, but the redemption of the share would place the mutual building society in breach of a prudential standard made under the *Banking Act 1959* — the redemption cannot be carried out without the approval of APRA; and
- (e) the redemption is carried out on or after 4 March 2003; and
 - (f) the share is issued only to a member of the mutual building society; and
 - (g) a member of the mutual building society and its connected entities (within the meaning of subsection 995-1 (1) of the Act) can together hold not more than 10% by value of the shares of that kind issued by the mutual building society.