



Income Tax Assessment Amendment Regulations 2005 (No. 2)¹

Select Legislative Instrument 2005 No. 75

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 22 April 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

MAL BROUGH
Minister for Revenue and Assistant Treasurer

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1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2005 (No. 2)*.

2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 1 July 2003 — regulations 1, 2 and 3, and Schedule 1;
- (b) on the day after they are registered — Schedule 2.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedules 1 and 2 amend the *Income Tax Assessment Regulations 1997*.

Schedule 1 Amendments taken to have commenced on 1 July 2003

(regulation 3)

[1] After Part 2

insert

Part 4 International aspects of income tax

Subdivision 775-B Realisation of forex gains or losses

775-145.01 Application of forex events to currency and fungible rights and obligations

- (1) For subsection 775-145 (2) of the Act, forex realisation event 1 applies to foreign currency, on a weighted average basis, in the circumstances that an election to use a weighted average basis:
 - (a) has been made in writing; and
 - (b) complies with subregulation (4); and
 - (c) has not been withdrawn in accordance with subregulation (6).

- (2) For subsection 775-145 (2) of the Act, both of forex realisation events 1 and 2 apply to a fungible right, or a part of a fungible right, to receive foreign currency, on a weighted average basis, in the circumstances that an election to use a weighted average basis:
 - (a) has been made in writing; and
 - (b) complies with subregulation (4); and
 - (c) has not been withdrawn in accordance with subregulation (6).

- (3) For subsection 775-145 (2) of the Act, forex realisation event 4 applies to a fungible obligation, or a part of a fungible obligation, to pay foreign currency, on a weighted average basis, in the circumstances that an election to use a weighted average basis:
- (a) has been made in writing; and
 - (b) complies with subregulation (4); and
 - (c) has not been withdrawn in accordance with subregulation (6).
- (4) An election complies with this subregulation if it includes:
- (a) a commencement date of:
 - (i) the date on which it is made; or
 - (ii) if the election is made not later than 90 days after the day on which the *Income Tax Assessment Amendment Regulations 2005 (No. 2)* are registered in accordance with the *Legislative Instruments Act 2003* — the applicable commencement date mentioned in section 775-155 of the Act; or
 - (iii) 1 July 2004; and
 - (b) a statement that the election is for all of the forex realisation events that are applicable to the fungible thing to which the election relates to apply, on a weighted average basis, to:
 - (i) all fungible things (other than a fungible thing in relation to which a choice under Subdivision 775-E of the Act is in effect); or
 - (ii) 1 or more specified classes of fungible things, other than a fungible thing in relation to which a choice under Subdivision 775-E of the Act is in effect, in circumstances (explained in the statement) in which the effect of the election would reasonably be expected to be the reduction of the costs of compliance with the income tax law; or

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- (iii) 1 or more specified fungible things in circumstances (explained in the statement) in which the effect of the election would be consistent with the treatment of those fungible things in the accounting records of the entity making the election, if those records were prepared in accordance with generally accepted accounting principles.

Note The **applicable commencement date** is explained in section 775-155 of the Act.

- (5) An election that complies with subregulation (4) takes effect in accordance with subregulation (4).
- (6) An entity may withdraw an election only if:
- (a) it does not appear on reasonable grounds that the election is being withdrawn for a principal purpose of obtaining a tax benefit; and

Note A tax benefit may be an incidental consequence of the withdrawal of an election.

- (b) either:
- (i) if accounting records in relation to the treatment of fungible things to which the election applies are being kept by the entity and prepared in accordance with generally accepted accounting principles — the election is being withdrawn because there has been a change to the entity's accounting practices; or
- (ii) if:
- (A) accounting records in relation to the treatment of fungible things to which the election applies by the entity are not being kept by the entity and prepared in accordance with generally accepted accounting principles; and
- (B) the election includes the statement mentioned in subparagraph (4) (b) (ii);
- there has been a change in the entity's circumstances that makes the statement mentioned in subparagraph (4) (b) (ii) incorrect.

Note A **weighted average basis**, which is mentioned in section 775-145 of the Act, is used to allow:

- the cost of a fungible amount; or
- the cost of a part of a fungible amount; or
- in the case of a fungible obligation, or a part of a fungible obligation — the proceeds of assuming the obligation or the part of the fungible obligation;

at a particular time to be determined by the weighted average cost of the amounts that were previously added to the fungible amount.

Example demonstrating the use of the weighted average basis to a foreign currency bank account

John deposits amounts of US dollars (**US\$**) into his bank account at times T₁, T₂, T₃ and T₇. At times T₄, T₅ and T₆, John either withdraws some of the US dollars or draws on the account's credit facility.

In this example, a weighted average calculation is made at the time of each transaction, where applicable. An alternative method would be to make 1 calculation for the entire income year (although this alternative method is not appropriate in this example because the account balance changes from credit to debit). Generally, either method is suitable as long as it is used consistently.

The weighted average cost (**WAC**) of the US\$ which John holds from times T₁ to T₇ is shown in the table.

| Time | US\$ deposit or withdrawal | Exchange rate US\$: A\$ | Exchange rate A\$: US\$ | A\$ amount | US\$ balance | A\$ equivalent balance (WAC) | WAC per US\$ |
|----------------|----------------------------|--------------------------|--------------------------|------------|--------------|------------------------------|--------------|
| T ₁ | 1 000 | 1.3889 | 0.7200 | 1 388.89 | 1 000 | 1 388.89 | 1.3889 |
| T ₂ | 2 500 | 1.4286 | 0.7000 | 3 571.43 | 3 500 | 4 960.32 | 1.4172 |
| T ₃ | 1 750 | 1.3699 | 0.7300 | 2 397.26 | 5 250 | 7 357.58 | 1.4014 |
| T ₄ | -2 800 | 1.3333 | 0.7500 | -3 733.33 | 2 450 | 3 433.54 | 1.4014 |
| T ₅ | -4 000 | 1.2821 | 0.7800 | -5 128.21 | -1 550 | -1 987.18 | 1.2821 |
| T ₆ | -1 000 | 1.3158 | 0.7600 | -1 315.79 | -2 550 | -3 302.97 | 1.2953 |
| T ₇ | 1 200 | 1.3699 | 0.7300 | 1 643.84 | -1 350 | -1 748.63 | 1.2953 |

Note The WAC per US\$ does not change upon a withdrawal while (and to the extent that) the account balance remains in credit. Also, when a deposit is made, the WAC per \$US does not change while (and to the extent that) the account remains in debit.

[2] Part 6, before Division 995

insert

Division 960 General

Subdivision 960-C Foreign currency

960-50.01 Translation of foreign currency amounts into Australian currency — modification of special translation rules

- (1) The table in subsection 960-50 (6) of the Act is modified by adding after item 11 the following item:

| | | |
|----|---|--|
| 12 | an amount to which any of items 1 to 11 (inclusive) applies | as an alternative to the result mentioned in the item, the amount may be translated into Australian currency using any of the rules set out in Schedule 2 to the <i>Income Tax Assessment Regulations 1997</i> . |
|----|---|--|

- (2) For subsection 960-50 (8) of the Act, Schedule 2 sets out requirements in relation to the translation of amounts into Australian currency.

Subdivision 960-D Functional currency

960-80.01 Translation rules — translation into applicable functional currency

For subsection 960-80 (7) of the Act, the requirements set out in Schedule 2 in relation to the translation of amounts into Australian currency have effect in relation to the translation of amounts into the applicable functional currency as if:

- (a) each reference in that Schedule to Australian currency were a reference to the applicable functional currency; and

(b) the modifications set out in the following table were made:

| Item | Provision | After | Insert |
|------|-----------------------|------------|--|
| 1 | Subclause 1.2 (2) | year | (or, if the entity is an attributable taxpayer in relation to a CFC (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i>) — each subsequent day in the CFC's statutory accounting period (within the meaning of that Part)) |
| 2 | Paragraph 1.2 (3) (a) | activities | (or, if the entity is an attributable taxpayer in relation to a CFC (within the meaning of Part X of the <i>Income Tax Assessment Act 1936</i>), the use of the rate would not be appropriate having regard to the CFC's business or activities) |

960-80.02 Translation rules for an attributable taxpayer of a CFC — translation into applicable functional currency

- (1) For subsection 960-80 (7) of the Act, if:
 - (a) an entity is an attributable taxpayer in relation to a CFC; and
 - (b) the CFC has prepared financial accounts in accordance with standards to which subsection 820-960 (1C) or (1D) of the Act relates; and
 - (c) those financial accounts translate amounts into the applicable functional currency using particular exchange rates; and
 - (d) the entity wishes to translate an amount into the applicable functional currency, using the exchange rate used to translate a corresponding amount in the financial accounts; the entity must translate all amounts into the applicable functional currency using the exchange rates that were used in the financial accounts to translate corresponding amounts.
- (2) In this regulation:

CFC has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

960-80.03 Translation rules — translation from applicable functional currency into Australian currency

- (1) For subsection 960-80 (7) of the Act, if, before the day on which the *Income Tax Assessment Amendment Regulations 2005 (No. 2)* are registered, an entity translates an amount that is not the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80 (1) of the Act, the entity may translate the amount using:
 - (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the entity carries on the relevant business or other activity;
or
 - (b) the exchange rate applicable on the last day of the entity's income year.
- (2) For subsection 960-80 (7) of the Act, if, before the day on which the *Income Tax Assessment Amendment Regulations 2005 (No. 2)* are registered, an entity that is an attributable taxpayer in relation to a CFC translates an amount that is the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80 (1) of the Act, the entity may translate the amount using:
 - (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the CFC carries on the relevant business or other activity;
or
 - (b) the exchange rate applicable on the last day of the CFC's statutory accounting period.

- (3) For subsection 960-80 (7) of the Act, if, on or after the day on which the *Income Tax Assessment Amendment Regulations 2005 (No. 2)* are registered, an entity translates an amount that is not the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80 (1) of the Act, the entity must translate the amount using:
- (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the entity carries on the relevant business or other activity; or
 - (b) if the entity makes an election in writing to use the exchange rate applicable on the last day of the entity's income year — that exchange rate.
- (4) For subsection 960-80 (7) of the Act, if, on or after the day on which the *Income Tax Assessment Amendment Regulations 2005 (No. 2)* are registered, an entity that is an attributable taxpayer in relation to a CFC translates an amount that is the attributable income of a CFC from the applicable functional currency into Australian currency on a day in accordance with an item of the table in subsection 960-80 (1) of the Act, the entity must translate the amount using:
- (a) an exchange rate that is an average of all of the exchange rates during the period, not exceeding 12 months, in which the CFC carries on the relevant business or other activity; or
 - (b) if the entity makes an election in writing to use the exchange rate applicable on the last day of the CFC's statutory accounting period — that exchange rate.
- (5) An election under paragraph (3) (b) or (4) (b) is irrevocable.
- (6) In this regulation:
- CFC** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.
- registered** means registered in accordance with the *Legislative Instruments Act 2003*.
- statutory accounting period** has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

[3] **After Schedule 1**

insert

Schedule 2 Translation of currency amounts — rules and other requirements

(item 12 of the table in subsection 960-50 (6) of the Act, as modified, and subregulation 960-50.01 (2))

Part 1 Rules and requirements for item 12 of the table in subsection 960-50 (6) of the Act

1.1 Exchange rate — consistency with accounting standards used by entity

For item 12 of the table in subsection 960-50 (6) of the Act, as modified, if:

- (a) a financial report (within the meaning of the *Corporations Act 2001*) prepared by an entity:
 - (i) complies with the accounting standards under the *Corporations Act 2001*; and
 - (ii) translates amounts into Australian currency using particular exchange rates; and
 - (iii) has been audited in accordance with the *Corporations Act 2001*; and
- (b) the entity, or another entity, wishes to translate an amount into Australian currency in accordance with that item, using the exchange rate used in that financial report to translate a corresponding amount;

the entity mentioned in paragraph (b) must translate all amounts into Australian currency using the exchange rates that were used in that financial report to translate corresponding amounts.

1.2 Choice of daily exchange rate

- (1) For item 12 of the table in subsection 960-50 (6) of the Act, as modified, an entity may translate all amounts of a particular currency, relating to a particular day, into Australian currency using an exchange rate that is applicable at a time, on that day, chosen by the entity (a *daily exchange rate*).
- (2) If the entity chooses a daily exchange rate relating to a particular day, the entity must choose a daily exchange rate relating to each subsequent day in the income year using the same time of the day as the time to which the first daily exchange rate related.
- (3) However:
 - (a) the entity is not permitted to translate amounts using a daily exchange rate if the use of the rate would not be appropriate having regard to the entity's business or activities; and
 - (b) the entity must obtain the rate from a source that is not an associate of the entity, and not the entity itself, unless the Commissioner notifies the entity that it may obtain the rate from 1 or more specified sources; and
 - (c) the entity must translate amounts relating to the relevant day using that rate.

Example

If an entity is a trader that takes currency positions as part of its business, the use of a single exchange rate for its activities on a day would not be appropriate having regard to its business.

Note **Associate** is defined in subsection 995-1 (1) of the Act.

1.3 Choice of average exchange rate

- (1) For item 12 of the table in subsection 960-50 (6) of the Act, as modified, an entity may, in a period, translate an amount into Australian currency using an exchange rate that is an average of all of the exchange rates that are applicable during a period, not exceeding 12 months, that is chosen by the entity (an *average exchange rate*).

-
- (2) However:
- (a) the entity is not permitted to translate an amount using an average exchange rate unless it appears to the entity on reasonable grounds that the rate would be a reasonable approximation of the exchange rate or rates that the entity would have used if the entity had used the exchange rate required by another appropriate item of the table in subsection 960-50 (6) of the Act; and
 - (b) the entity must obtain:
 - (i) all of the exchange rates that it will use to work out the average exchange rate; or
 - (ii) an average exchange rate that has been worked out for a particular period;
from 1 or more sources that are not associates of the entity, and not the entity itself, unless the Commissioner notifies the entity that it may obtain the rate or rates from 1 or more specified sources; and
 - (c) the entity must translate amounts relating to the relevant period using the rate.

Note 1 Item 12 of the table in subsection 960-50 (6) of the Act is available as an alternative to the special translation rules in items 1 to 11 (inclusive) in that table. Therefore, subclause (2) requires the entity to consider whether using the translation rules in item 12 would lead to a reasonable approximation with the translation rules in another appropriate item of the table.

Note 2 **Associate** is defined in subsection 995-1 (1) of the Act.

Schedule 2 Amendments commencing on the day after registration

(regulation 3)

[1] Subregulation 960-50.01 (1)

omit

the following item:

insert

the following items:

[2] Subregulation 960-50.01 (1), before added item 12

insert

| | | |
|-----|---|--|
| 11A | an amount (other than an amount of a receipt or a payment) to which none of the above items applies | the amount is to be translated into Australian currency at an exchange rate that is reasonable having regard to the circumstances. |
|-----|---|--|

[3] Subregulation 960-50.01 (1), added item 12, column 2

omit

items 1 to 11 (inclusive)

insert

items 1 to 11A (inclusive)

[4] After subregulation 960-50.01 (2)*insert*

- (3) For subsection 960-50 (7) of the Act, the table in subsection 960-50 (6) of the Act is modified by omitting item 8 and substituting the following items:

- | | | |
|----|---|---|
| 8 | an amount that you deduct (other than under section 25-35 or Division 40) | <ul style="list-style-type: none"> (a) if the amount is paid at or before the time when it became deductible — the amount is to be translated to Australian currency at the exchange rate applicable at the time of payment; or (b) in any other case — the amount is to be translated to Australian currency at the exchange rate applicable at the time when it became deductible. |
| 8A | an amount that you deduct under section 25-35 | <ul style="list-style-type: none"> (a) if the debt was included in your assessable income — the amount is to be translated to Australian currency at the exchange rate applicable at the time of translating the income; or (b) if the debt was in respect of money that you lent — the amount is to be translated to Australian currency at the exchange rate applicable at the time of translating the money that was lent; or (c) if you bought the debt — the amount is to be translated to Australian currency at the exchange rate applicable at the time of translating the debt that you bought. |

- 8B the value of an amount to which a contract (a *spot foreign exchange contract*) for the exchange of amounts in different currencies relates if:
- (a) the spot foreign exchange contract includes a requirement that consideration be provided within 2 business days after the contract is entered into; and
 - (b) that requirement is satisfied
- the value of the amount to which the contract relates is to be translated to Australian currency at the exchange rate applicable at the tax recognition time (within the meaning of Division 775) referred to in the forex realisation event that happens on payment or receipt of that amount, unless the entity's usual business practice is not to translate the amount at the exchange rate applicable at the tax recognition time for the purpose of recording the transaction in the entity's accounting records.
- Note* An entity's usual business practice may be to translate amounts into Australian currency at a different exchange rate because the entity recognises gains and losses under spot foreign exchange contracts in the entity's accounting records.
- 8C the value of an amount to which a contract (a *spot contract*) for the exchange of an amount in a foreign currency and a security relates if:
- (a) the spot contract includes a requirement that consideration be provided within 2 business days after the contract is entered into; and
 - (b) that requirement is satisfied
- the value of the amount to which the contract relates is to be translated to Australian currency at the exchange rate applicable at the tax recognition time (within the meaning of Division 775) referred to in the forex realisation event that happens on payment or receipt of that amount, unless the entity's usual business practice is not to translate the amount at the exchange rate applicable at the tax recognition time for the purpose of recording the transaction in the entity's accounting records.
- Note* An entity's usual business practice may be to translate amounts into Australian currency at a different exchange rate because the entity recognises gains and losses under spot contracts in the entity's accounting records.

[5] Schedule 2, item 1.3, note 1

omit

items 1 to 11 (inclusive)

insert

items 1 to 11A (inclusive)

[6] Schedule 2, after Part 1

insert

**Part 2 Translation of foreign currency amounts
into Australian currency — rules and
requirements for item 11A of the table in
subsection 960-50 (6) of the Act**

**2.1 Exchange rate — consistency with an entity's
financial records**

For item 11A of the table in subsection 960-50 (6) of the Act,
as modified, if:

- (a) an entity keeps financial records (within the meaning of the *Corporations Act 2001*) of the exchange rates that the entity uses to translate amounts into Australian currency; and
- (b) the entity, or another entity, translates an amount to which the records correspond into Australian currency in accordance with item 11A;

the exchange rate that the entity mentioned in paragraph (b) uses must be the same as the exchange rate specified in those records for translating the amount into Australian currency.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.